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## 1. Navigating Trade Tensions: China Anti-Dumping Measures and Legal Framework Analysis

### Background

The trade landscape between China and the European Union (EU) has been marked by recent tensions, particularly in the sectors of renewable energy and electric vehicles (EVs). The [EU's investigations into China's state support for its wind turbine and solar panel suppliers](#), along with the [imposition of additional tariffs on Chinese EV imports](#), which would lead to tariffs ranging from 17.4% to 37.6% being applied on Chinese EV imports, have stirred up the trade waters.

In response to the EV tariffs and an escalation of tensions, China has intensified its scrutiny of European imports, with the most recent and significant developments being the anti-dumping investigations launched into European brandy and pork sectors.

In January, China launched what appeared to be a tit-for-tat [investigation into brandy imports from EU](#) after a request by the China Alcoholic Drinks Association. The investigation could lead to China imposing duties on European brandy imports, which would notably impact French producers, who account for approximately 99% of all EU brandy exports to China, reaching \$1.74 billion in value.

Furthermore, on June 17, 2024, China initiated an [anti-dumping investigation into EU pork and pig by-products exports](#), focusing on major exporters such as Danish Crown, Vion Boxtel, and Litera Meat. The Chinese Ministry of Commerce (MOFCOM) is scrutinizing whether these exports have been sold at prices below cost, and if they have caused harm to the domestic pork market in China.

The EU has expressed [concerns over the trade imbalance with China](#), with the EU Commission President highlighting the need to address this issue through negotiations rather than confrontation. In response, China has emphasized the importance of dialogue and cooperation to resolve trade disputes stating that [the responsibility for escalating trade frictions lies with the EU](#).

Against this backdrop, it is imperative to examine the Chinese anti-dumping investigation legal framework and procedure.

### Legal Framework

From a legal standpoint, China's legal framework of anti-dumping system consists of the [Foreign Trade Law \(2022 Amendment\)](#), the [Anti-Dumping Regulations \(2004 Revision\)](#), a dozen of departmental rules and judicial review rules that guide enforcement and procedure.

Specifically, it involves:

#### - **Foreign Trade Law (2022 Amendment) (hereafter "FTL"):**

The cornerstone of China's international trade legislation, the FTL was first enacted in 1994 and has been amended several times, most recently in 2022. Article 41 of the FTL states: "*Where a product from other countries or regions is dumped into the domestic market at a price less than its normal value and under such conditions as to cause or threaten to cause material injury to the established domestic industries, or materially retards the establishment of domestic industries, the State may take anti-dumping measures to eliminate or mitigate such injury, threat of injury or retardation.*"

#### - **Anti-Dumping Regulations (2004 Revision) (hereafter "ADR"):**

Initially promulgated in 1997, the ADR were revised in 2001 and further amended in 2004. These regulations provide the procedural and substantive rules for conducting anti-dumping investigations, including the initiation of investigations, determination of dumping, and assessment of injury to domestic industries. The 2004 amendments also reflect institutional changes, revising the Ministry of Foreign Trade and Economic

Cooperation (MOFTEC) and the State Economic and Trade Commission (SETC) into MOFCOM based on the institutional reform of the State Council in 2003.

- **Departmental Rules:**

The MOFTEC (now MOFCOM) formulated a series of departmental rules to implement the provisions of the Anti-Dumping Regulations. Those department rules covered essential aspects of China's anti-dumping regime, including, inter alia, initiation, sampling, questionnaire, disclosure of information, public hearing, on-the-spot verification, etc. All these Rules were formally notified to the WTO in accordance with the WTO Anti-Dumping Agreement.

- **Judicial Review Rules:**

The application of anti-dumping measures in China is subject to judicial review, ensuring adherence to national laws and WTO standards. Chinese courts perform a limited review, verifying the legality and procedural correctness of MOFCOM's decisions, including the sufficiency and authenticity of evidence, correct legal application, and absence of procedural violations or authority misuse. (See Article 6 of [\*Rules of the Supreme People's Court on Certain Issues Concerning the Hearing of International Trade Administrative Case\*](#)).

Another significant point is that when a court encounters multiple plausible interpretations of a legal or regulatory provision, it is mandated to adopt the interpretation that aligns with China's international treaty obligations, unless China has explicitly reserved on that specific clause. (See Article 9 of [\*Rules of the Supreme People's Court on Certain Issues Concerning the Hearing of International Trade Administrative Case\*](#)).

**Investigation Procedures**

The procedures for conducting anti-dumping investigations in China typically involves the following steps:

- **Initiation:**

An investigation is initiated either upon application by or on behalf of the domestic industry, or by the MOFCOM on its own initiative (Article 13 of ADR). Applications must include evidence of (1) the existence of dumping of the imported products under application for investigation; (2) the damage to domestic industry; (3) the causal link between the dumping and damage (Article 15 of ADR).

- **Sampling:**

The MOFCOM may select a sample of exporters or producers for the investigation, ensuring a representative assessment of the situation (Article 20, Paragraph 1 of ADR).

- **Questionnaire and Data Collection:**

Detailed questionnaires are sent to the sampled companies to gather necessary data on prices, volumes, and costs (Article 20, Paragraph 1 of ADR).

- **Public Hearings:**

Public hearings may be held to provide an opportunity for all stakeholders to present their views and evidence (Article 20, Paragraph 1 of ADR).

- **Disclosure of Information:**

The MOFCOM is required to disclose the essential facts underpinning its preliminary conclusions, allowing all interested parties to comment (Article 20, Paragraph 2 of ADR).

- **On-the-Spot Verification:**

The MOFCOM may conduct on-site visits to verify the information provided by the companies under investigation (Article 20, Paragraph 3 of ADR).

- **Preliminary Determination:**

If the preliminary determination confirms the establishment of dumping and the consequent damage to the domestic industry, provisional anti-dumping measures may be taken. However, in cases where the applicant withdraws the application, the conditions for anti-dumping are not met, the margin of dumping or damage is very low, or the MOFCOM considers it is not appropriate to continue the anti-dumping investigation, the investigation should be terminated (Article 27 of ADR).

- **Final Determination:**

If the final determination confirms dumping, injury, and a causal link, anti-dumping duties may be imposed. If not, any provisional measures must be revoked. An anti-dumping investigation shall be ended within 12

months as of the date of announcement of the decision on initiating the investigation unless extended due to special circumstances (Article 26 of ADR).

- **Administrative Review:**

The MOFCOM may review the necessity of anti-dumping duties and price undertakings, either on its own initiative or upon request by interested parties. The review may result in the maintenance, modification, or revocation of the measures.

- **Judicial Review:**

Interested parties may seek judicial review of the MOFCOM's decisions in accordance with the Administrative Litigation Law and relevant regulations such as [\*Regulations on Several Issues Concerning the Application of Law in the Trial of Anti-Dumping Administrative Cases\*](#).

**Conclusion**

China, once a moderate user of anti-dumping measures, is now more actively employing them to protect its domestic markets. This shift underscores the dynamic nature of trade policy in response to global economic and geopolitical conditions.

As legal frameworks and policies evolve, constructive dialogue and cooperation between China and the EU are essential to manage trade disputes, fostering a stable and mutually advantageous trade environment.

For businesses, a thorough understanding of the legal mechanisms and procedures on both sides is crucial for navigating the complexities of international trade conflicts and devising effective strategic responses.

**2. SPC clarifies rules for foreign law ascertainment and application in foreign-related cases**

On July 10, 2024, the Supreme People's Court (SPC), China's top court, released the first batch of [\*typical cases to specify rules for ascertaining and applying foreign laws in handling foreign-related civil and commercial cases\*](#), with the aim of further optimizing the country's legal and business environment.

Following [\*SPC's Interpretation on Several Issues Concerning the Application of the Law of the People's Republic of China on the Application of Law for Foreign-Related Civil Relations \(II\)\*](#) in late 2023, which specified the matter of ascertaining foreign laws, the SPC has now released a set of illustrative cases to ensure a comprehensive and accurate understanding of the interpretations.

The cases cover a spectrum of foreign-related disputes, including disputes over company contribution, sales contracts, guarantee contracts, multimodal transport contracts, and engineering supervision contracts. The foreign laws encompass those of the United States, the United Kingdom, Mexico, Tajikistan, as well as the Hong Kong Special Administrative Region.

The identification of foreign laws in overseas-related cases is a fundamental prerequisite for determining the basic legal facts of a case and making a fair judgment. In accordance with *the Law on the Application of Law for Foreign-Related Civil Relations* and its judicial interpretation, People's Court is responsible for ascertaining foreign law when parties have not opted for the application of foreign law.

A case in point involved a financial loan guarantee dispute between a Zhejiang-based bank branch and a Hong Kong-registered technology company with US-registered company shares. The court, at the request of the parties, entrusted a foreign law ascertainment and research center to ascertain the laws of multiple legal domains involved in the case, thereby efficiently addressing the legal disputes.

The SPC's release of a first batch typical cases provides guidance for ascertaining foreign laws with specifications on the subject responsible for ascertaining, as well as ascertaining approaches. We believe that with future releases of other batches of typical cases on ascertaining and applying foreign laws, it would correspondingly provide clearer guidance on rules for parties to be abided by when dealing with foreign civil and commercial disputes.

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