

Fair Trade Commission Directions on Cases Involving Foreign Enterprises

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Amended by the 688th Commissioners' Meeting on January 13, 2005
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made retroactive to February 6, 2012
Amended by the 1307th Commissioners' Meeting on November 23, 2016
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I. General Provisions

1. The Directions are prescribed by the Fair Trade Commission (hereinafter referred to as "the Commission") for handling procedural matters on cases involving foreign enterprises related to the Fair Trade Law (hereinafter referred to as "the Law").
2. Unless otherwise provided by other laws or regulations, international treaties or agreements, or customary international law, the Directions shall apply when the Commission handles procedural matters on cases involving foreign enterprises under the Law.
3. The term "cases involving foreign enterprises" refers to cases where the complainant, respondent, investigated party, applicant, party filing report or party requesting official interpretation of the Law is a foreign enterprise.

II. Acceptance of Cases Involving Foreign Enterprises

4. When filing a complaint involving foreign enterprises, the complaint shall be prepared in Chinese language, specify the following matters, and be signed by the complainant:
 - (1) The name, age, gender, nationality, occupation and domicile of the complainant and the respondent. Where the complainant is a juristic person or an organization with an administrator or representative, the following shall be included: the complainant's name, office, or business place, and the administrator's or the representative's name, age, gender,

nationality, occupation and domicile. Registration document of the administrator or the representative, as certified by the competent authority, shall also be enclosed.

- (2) Facts regarding the respondent's violation of the Law;
 - (3) Evidences; where the evidentiary documents are in a foreign language, a Chinese translation of which shall be submitted;
 - (4) A foreign enterprise shall appoint an agent domiciled within the territory of the Chinese Taipei to handle matters on its behalf regarding filing the complaint against a violation of the Law by another enterprise. A power of attorney shall be enclosed with the complaint.
5. Where the complaint does not conform to the requirements mentioned in Point 4 above and such nonconformance is amendable, the Commission shall set a time limit and notify the complainant to amend or supplement the complaint. If the complainant is a foreign enterprise, the Commission may, when it considers necessary, specify a period of time for the complainant to present the laws, regulations or customs under which a citizen or an organization of the Chinese Taipei is entitled to similar rights in the complainant's home country. Where the complainant fails to amend or supplement within the time limit specified in the preceding two paragraphs, the Commission may terminate the investigation.
 6. If a foreign enterprise files a complaint against a domestic enterprise for violation of the Law, the Commission shall decide whether or not to accept such complaint based on the principle of reciprocity. When no prior case is found in which the complainant's home country denied the reciprocal protection for an enterprise of this country, the Commission may decide ex officio whether or not to accept the said complaint.
 7. The filing documents related to the merger notification case involving foreign enterprises shall be prepared in accordance with the Directions for Enterprises Filing for Merger.

The application documents related to the filing for approval or extension of concerted actions involving foreign enterprises shall be prepared in accordance with Directions on Filings for Approval or Extension of Concerted Actions and the application form shall be filled in Chinese. If any information provided in the application documents is in a foreign language, the Commission may request a Chinese translation of such information be attached.

III. Collection of Information and Evidence Outside of the Territory of the Republic of China

8. The Commission may collect information and evidence through the following channels:
 - (1) The Commission shall first consider whether there is a domestic information-providing source and shall seek the assistance of related businesses to obtain information that can be released to the public.
 - (2) The Commission may write to request the concerned foreign enterprises to provide the information it needs.
 - (3) The Commission may make a list of the foreign information or evidence needed and write to request the assistance of the representative offices of the Ministry of Foreign Affairs (hereinafter referred to as "the MOFA") or the Ministry of Economic Affairs (hereinafter referred to as "the MOEA") stationed abroad.
 - (4) The Commission may proceed to conduct the investigation in accordance with Article 27 of the Law. However, the Commission shall have an overall consideration of foreign sovereignty, the principle of reciprocity, and whether compulsorily demanding the concerned foreign enterprise to cooperate will achieve the goal of its investigation.
 - (5) The Commission may collect the necessary information or evidence through the help of private organizations, trade associations and others.
9. If the foreign respondent refuses to cooperate for the investigation, the Commission may make a decision based on the readily available information and evidence. When it is likely that the respondent has violated the Law, the Commission may notify the complainant to submit supplementary evidence or request the respondent again to cooperate for the investigation.
10. Where the foreign enterprise cannot be identified or located, the Commission may handle the case through the following procedures:
 - (1) The Commission may request the assistance of a trade association, local industrial/business organizations, or the MOEA's representative office stationed abroad to confirm the foreign entity's identity or location.
 - (2) Where the foreign enterprise still cannot be identified in spite of all its investigative efforts, the Commission shall terminate the investigation.
11. Presentations or defense (including record-taking) at the Commission shall be conducted in accordance with the following procedures:
 - (1) Points of Attention in Conducting Investigation established by the Commission shall be observed.
 - (2) When the Commission notifies a foreign enterprise to appear before the Commission for a presentation or defense, the unit in charge of the case

may request one of the commissioners in charge of the case to preside over the presentation or defense.

- (3) When a foreign enterprise comes to the Commission for presentation or defense, it shall submit the identification documents of the enterprise and its representative (or administrator). In addition, identification documents and a power of attorney shall be submitted if the enterprise is represented by an agent who has a domicile in the Chinese Taipei.
 - (4) If the representative of the foreign enterprise is not Chinese literate, he/she may be accompanied by a person knowing Chinese language who shall present his/her power of attorney, and identification, and sign for the record.
 - (5) The proceeding of the presentations or defense shall, in principle, be recorded in Chinese and the facts pending for confirmation shall also be recorded.
 - (6) If the documents and evidence presented by the foreign enterprise are in a foreign language, they shall be submitted with Chinese translations.
12. When materials submitted by a foreign enterprise involve trade secrets, they shall be treated in the same manner as those submitted by a national of the Chinese Taipei in accordance with the Commission's relevant regulations on confidentiality.
13. Authentication of documents:
- (1) Foreign official documents:
The Commission may determine the authenticity of foreign official document under the specific circumstances. However, foreign official documents that have been certified by a Chinese Taipei embassy, consulate or representative office shall be presumed to be authentic.
 - (2) Foreign private documents:
The party that presents foreign private documents shall be responsible for proving its authenticity. However, those that have been notarized by a court of justice, a public notary, or certified by an overseas representative office of the Chinese Taipei, or those delivered that are not contested by the opposing party, shall be presumed to be authentic.

IV. Service of Document Outside of this Territory

14. When effecting extraterritorial service of official documents in cases involving foreign enterprises, the Commission shall entrust service of the official documents to the competent government agency of that nation or the embassy,

minister, consulate or any other institution or organization of the Chinese Taipei residing in that nation.

If no service can be effected as required by the preceding paragraph, the official documents may be served by delivering it to a post office to be sent by a registered mail, return receipt requested, and the return receipt shall be filed. If the service cannot be effected pursuant to any of the provisions of the preceding two paragraphs, or if it is foreseeable that following such provisions would be to no avail, the service may be effected by publication.

15. The official documents of a case involving foreign enterprises may be served without an English translation, but an English introduction shall be enclosed to explain the nature and legal effects of the documents served.
16. If needed, where the official document to be served is a disposition, it shall be served:
 - (1) with an English translation of the ruling section; or
 - (2) with an English translation of the entire disposition. A note shall be given in the English translation to indicate: "This translation is based on the Chinese version. In case of any discrepancy between this translation and the Chinese version, the Chinese version shall prevail." The English translation shall be served with the original copy of the disposition and a form of service certificate through the assistance of the MOFA.

V. Enforcement of the Administrative Disposition

17. The follow-up of the enforcement of an administrative disposition outside of this territory shall be pursued in accordance with Point 8 to Point 10 hereof regarding the collection of information and evidence.
18. Where the foreign enterprise fails to pay the administrative fines within the time limit specified in a Commission disposition, the Commission shall file a motion with the court for the compulsory execution of the disposition.

VI. Supplementary Provisions

19. The Directions shall apply mutatis mutandis to matters related to the Law but not involving foreign enterprises handled by the Commission where collecting information and evidence outside of the Chinese Taipei is required.
20. For the purpose of handling cases involving matters outside of the Chinese Taipei, the Commission may proceed with the assistance of competent authorities of those countries who entered into a bilateral agreement with the Chinese Taipei.