

# **EU-China Trade Project (II)**

## **Leniency Policy and Practice**

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Province

# Leniency Policy and Practice

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## **what is the reason for setting up a leniency program ?**

- cartels are secret and by their nature difficult to discover
- circumstantial evidence is often not enough to prove a cartel infringement
- leniency is a key factor for ensuring a more effective enforcement , an increased detection record and appropriate sanctions

## **what is the overriding principle ?**

- race for immunity at every stage of the procedure
- create a strong incentive to cooperate
- create a simple mechanism with clear rules and limited availability

## **what are the tools ?**

- immunity
  - reduction of fines (leniency)
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## **when and to whom do we grant immunity ?**

- to a whistleblower who is first to provide substantial evidence against a cartel
  - cooperates fully and on a continuous basis
  - had not been the sole ringleader of the cartel
  - the cartel authority does not already have enough evidence to obtain a search warrant or
  - to a whistleblower who is first to approach the cartel authority
  - the cartel authority does not (yet) have sufficient evidence to prove the offence; this evidence is provided by the whistleblower
  - no immunity has been granted to another whistleblower before
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## **reduction of fines**

- if whistleblower provides information which makes a significant contribution to proving the cartel
- cooperates fully and continuously

## **amount of reduction depends on**

- sequence of application
- value of the contribution

! the value of the contribution overrides the sequence of application !

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## **Obligation to cooperate**

- full and complete
    - all evidence which is available to him and his employees (including former employees)
    - name all employees involved and
    - ensure that all employees cooperate fully and continuously
    - must not be prompted by the cartel authority
  - continuously
    - give evidence in court
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## **failure to cooperate fully and continuously:**

- revocation of grant of immunity or leniency
  - company which has cooperated later will benefit
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## **further obligations**

- end involvement in the cartel on request of the authority
  - must not tell own employees of the cooperation
  - must not tell other participants of the cooperation until he is relieved from this obligation
  - must not destroy evidence
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## **cartel authority will as a rule**

- not disclose the identity of the applicant until the Statement of Objections is issued
- not disclose the contents of the application to private third parties

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## **declaration to cooperate („marker“)**

- in writing or orally
  - in English or German
  - must contain minimum information on
    - type of infringement (e.g. price cartel)
    - approximate duration (e.g. 2010 to date)
    - which product market (e.g. production of sugar)
    - which geographical market (e.g. national)
    - which participants (e.g. company A, B and C)
    - general statement of willingness to cooperate is not sufficient !
    - no anonymous leniency applications
    - no joint leniency applications by two or more participants
  - only two possible contact persons in the authority
  - institutionalized procedure within the authority (who has to inform whom)
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## **cartel authority:**

- will confirm to applicant in writing that a marker has been placed
  - stating the date and time of receipt
  - stating the contents
  - esp. important in case the marker is set during a dawn raid

## **if applicant requests immunity:**

- the cartel authority will inform him about his status (first/second ...)
  - set a time limit for the drafting of a full leniency application (usually up to 8 weeks)
  - application of leniency can be combined with bonus for settlement
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