

GENERAL AGREEMENT ON

RESTRICTED

ADP/W/145

SCM/W/134

3 June 1987

TARIFFS AND TRADE

Special Distribution

Committee on Anti-Dumping Practices

Original: English

Committee on Subsidies and
Countervailing Measures

REPLIES BY KOREA TO QUESTIONS PUT BY THE EEC ON THE ANTI-DUMPING AND COUNTERVAILING DUTY LEGISLATION OF KOREA

Reproduced herewith are replies by Korea to questions put by the EEC in document ADP/W/135-SCM/W/127 on the anti-dumping and countervailing duty legislation of Korea (ADP/1/Add.13/Rev.1-SCM/1/Add.13/Rev.2).

1. Article 10(1) of the Customs Act states that a duty may be imposed "if deemed necessary to protect the domestic industry concerned".

Does this part of the provision constitute a so-called public interest clause which is contained in the anti-dumping legislation of some of the Parties? If this is the case who defines the public interest?

Answer

- In order to impose an anti-dumping duty, the Korean Government determines not only the existence of dumping and material injury resulting therefrom, but also the need for protecting the domestic industry concerned.

Various factors may be considered in determining the need to protect the domestic industries concerned, such as the effects on other related industries, consumer's interests and national economic interests as a whole.

- The Minister of Finance determines the need to protect the domestic industry concerned, after taking into consideration the opinions of the relevant ministers and the interested parties.

2. Why does Article 10(3) of the Customs Act not mention the fact that self-initiation of anti-dumping investigations should only be considered "in special circumstances"? (cf. Art. 5(1) of the Code)

Answer

- Under Article 10(3) of the Customs Act, anti-dumping investigation is initiated only when the Minister of Finance considers the investigation necessary.

Though there is no such explicit expression as "in special circumstances", the Minister of Finance will consider, in actual applications, the self initiation of anti-dumping investigation only in special circumstances, in accordance with the principle of the Code.

- We would like to point out that from our one year's experience with anti-dumping system, self initiation is not likely to occur, due to the difficulties in determining the injury and necessity of protecting domestic industry.

3. Which would be "Special circumstances" that would preclude disclosure of information under Article 4-5(7) of the Presidential Decree?

Answer

- Examples of "special circumstances" would be when disclosure of information would be of significant competitive advantage to a competitor, or would have a significantly adverse effect upon the person supplying the information or upon the person from whom he acquired the information.

4. Why should reviews under Article 4-7(1) be carried out "more than once per year"?

Answer

- The Korean Government believes that considering the rapidly changing economic conditions, to restrict the review to only one time per year would not be appropriate.

Especially, as review upon request is not allowed for at least one year after the date of the imposition of the anti-dumping duty or the date of undertaking, the provision in question would allow to the interested parties an opportunity to present their changed positions.

5. Article 4-4(2) provides that e.g. wholesalers and unions shall have the right to file a petition for anti-dumping measures. To what extent is this wide definition of petitioners compatible with Article 4(1) of the Code which refers to "producers" only?

Answer

- The definition of domestic industry in Article 4-4(1) of the Presidential Decree is completely in accordance with Article 4(1) of the Code.

Article 4-4(2) of the Presidential Decree, however, includes wholesalers and unions as interested parties eligible to file a request for an anti-dumping investigation.

- That is because the Korean Government thinks that while, in determining injury, the domestic industry in question should include only "producers" of like products, wholesalers and unions may request an anti-dumping investigation "on behalf of the industry affected".
- The Korean Government is willing to discuss this matter more if you feel there is a problem with our opinion.
- It should be emphasized that the basic position of my government is to interpret the phrase "by or on behalf of the industry affected", as strictly as possible in order to prevent the probable abuse of anti-dumping investigation.

6. Does the domestic industry have the right, under Article 4-6(3) to reject an undertaking offered by an exporter and are the authorities bound by such rejection?

Answer

- The domestic industry may submit its opinions concerning the content of an undertaking.

Their opinions have no binding force upon the Minister of Finance.

- The Minister of Finance, however, will take the opinion into consideration when determining whether to accept the undertaking or not.

7. Please explain the phrase in Article 4-6(4) "if the interested party denies the enforcement of the undertaking".

Answer

- With regard to the phrase in question, the more appropriate translation from our language would be "If the interested party does not comply with the undertaking".
- The interested party would be the party who entered into undertaking with the Minister of Finance.

8. Please explain the term "any person who has an interest in a domestic industry" used in Article 4-7(4).

Answer

- According to Article 4-4(2) of the Presidential Decree, the term "Any person who has an interest in a domestic industry" means the party who files a petition on behalf of a domestic industry: a domestic producer or wholesaler of the product, an association of whose members produce or wholesale the product, or a certified or recognized union of workers which represents an industry involved in the production or wholesale of the product.