

GENERAL AGREEMENT ON

RESTRICTED

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TARIFFS AND TRADE

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Committee on Anti-Dumping Practices

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RESPONSES OF THE REPUBLIC OF KOREA TO QUESTIONS SUBMITTED BY THE EUROPEAN COMMUNITIES*

Question

Article 4.9 of the Presidential Decree stipulates that an anti-dumping duty or an undertaking will lose its effect 3 years after the date of imposition or acceptance, unless the applied period is fixed.

1. Does the Minister have complete discretion in fixing a specific application period? Is the Minister bound by any limit concerning the duration of the measures?
2. In how many cases did the Minister make use of his power to choose a specific application period and in how many cases did the period exceed the 3 year period stipulated in Article 4.8? (give a percentage).

Answer

Determination of the application period of the anti-dumping duty is declared by Presidential Decree under Article 10.1 of the Customs Act. The period of an undertaking is determined by the Minister under Article 10.9 of the Customs Act (see ADP/1/Add.13/Rev.1). There is no limit explicitly stipulated in the law pertaining to the application period of an anti-dumping duty and an undertaking.

However, the Presidential Decree of the Customs Act stipulates that an anti-dumping duty and an undertaking are effective for 3 years, unless the application period has been otherwise fixed, and are automatically invalidated 3 years after the date on which the anti-dumping duty or the undertaking was imposed. Thus far, in cases where the application period has been otherwise fixed, the periods were for less than 3 years.

Since the establishment of this provision, there have been two relief measures in Korea. Both of them were "in cases where the application period has been otherwise fixed". The application period in both cases was 2 years, (less than the stipulated 3 years). There has been no case in which the applied period exceeded 3 years.

¹Document ADP/W/308

Question

In determining whether the home market price is below the cost of production what is the appropriate period for cost recovery?

Answer

The treatment of sales below cost is based on paragraph 1 of Article 4.2 of the Presidential Decree, which provides "... when, because of the particular market situation, such sales do not permit a proper application of the aforementioned definition (which defines normal value to mean the price actually paid or payable in the ordinary course of trade for the like products ...) ...".

However, because the provision mentioned above has not been applied thus far in Korea, the Korean Government cannot address the specific question concerning the recovery period posed by the EC delegation. However, if sales below cost became a problem in Korea, they would be considered as not having been made in the ordinary course of trade, provided they do not reflect prices which would permit the recovery of costs within a "reasonable period" in the normal course of trade.

In addition, as there is not a specific provision covering this point in the current GATT Anti-Dumping Code, we hope a specific and uniform provision will be adopted in the Uruguay Round.