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LEGISLATION OF THE REPUBLIC OF KOREA

Korean Responses to Questions of European Communities
and United States

The attached communication has been received from the Permanent
Delegation of the Republic of Korea.

Responses to the European Communities'
Questions Concerning Korean Customs Legislation

It appears that Article 43-14 refers to a number of international agreements of which the Valuation Code is one. For a clearer understanding of the effect of this provision it would be helpful to have information on the following matters:

1. What are the "exceptions", if any, relating to customs value which subsist after 5.2.86 ?

(Response)

No "exceptions" are being maintained after 5.2.86

2. Is the provision of the GATT Code ("Treaty") :
 - published in Korean legislation ?
 - available to customs officers and importers ?

(Response)

Yes, the Code was published in the Korean Gazette in January 1981, both in Korean and English and the Code is readily available publicly.

3. Have the provisions of Articles 9-9, 9-10 and 9-11 and the related provisions indicated in the Presidential Decree been deleted from the Customs Law ? - are these provisions replaced by other provisions ?

(Response)

They have not been deleted yet. However, the Korean Government will revise the Customs Legislations to make them fully consistent with the GATT Code as early as possible.

Responses to the United States' Questions
concerning Korean Customs Legislation

1. The Republic of Korea implemented the GATT Agreement on Customs Valuation on February 5, 1986 and has submitted its implementing legislation to the GATT Customs Valuation Committee for review at the Committee's upcoming (April 29-30) meeting. The following are the U.S. Delegation's comments and questions on the four parts of the legislation (i.e., the Korean Measures to Implement the New Valuation Code, the Customs Law, the Presidential Decree and the Commissioner's Decree).

2. Korean Measures to Implement the New Valuation Code :

It is stated in Section I of the "Korean Measures to Implement the New Valuation Code", that "some" exceptions will be invalid from February 5, 1986. Does this mean that other exceptions will remain valid thereafter ? Paragraph 5 seem to indicate there will be no exceptions. Please clarify.

(Response)

There will be no exceptions from 5th Feb. 86. "Some" should be read "all the".

3. The Customs Law :

Are there provisions in Korea's legislation which correspond to the following provisions of the GATT Agreement on Customs Valuation :

---Article 6.2

(Response)

There is no special provision to compel any non-resident to submit any kind of records or information.

---Article 7.2

(Response)

They are provided in the Article 28.(4) of the New Commissioner's Decree.

---Article 7.3

(Response)

Article 17 of the Presidential Decree on civil Affairs Administration provides that all public servants are obligated to answer the importer's inquiry in writing within a definite period of time.

---Article 8.3

(Response)

There is no specific provision for it.
However, since we apply the GATT Valuation Code through Article 43-14 of the Customs Law, the implementation and interpretation of Korean Customs Law and Decrees shall be based on the GATT Valuation Code.

---Article 8.4

(Response)

There is no specific provision like this in the customs Law.
However Article 9-3 of the Custom Law enumerates the additions in determining Customs Value, therefore no additions which are not provided in this Article, shall be made to the price actually paid or payable.

---Article 10

(Response)

There are no specific provisions in the Customs Law and Decrees.
In Korea, however, all public servants are obligated under the provisions of Article 60 of the National public servant Law to refrain from publishing any secret he may have learned during his term of office.

---Article 11

(Response)

Article 38 of Customs Law stipulates the right of appeal first to customs authorities or the Customs Commissioner, and then to the National tax Tribunal. And Korean customs authorities do not give any kind of penalty to petitioner.

---Article 15.1 (a)

(Response)

Article 9 of the Custom Law provides that the basis for the purpose of levying ad valorem duties shall be the Customs Value of imported goods.

---Article 15.1 (b)

(Response)

Article 2 of Customs Law provides that "Importation shall mean the delivery into Korea of goods".

---Article 15. (b) - last sentence

(Response)

It is provided in Article 3-6 of the Presidential Decree.

---Article 15.2 (d)

(Response)

Article 3-6 of the Presidential Decree is relevant to this question.

According to this Article, identical goods or similar goods shall mean goods which were produced in the same country as the goods being valued.

But, the phrase "produced in the same country" is missing in the distributed text by misprint.

---Article 15.2 (e)

(Response)

Article 24.(5) of the New Commissioner's Decree provides for it.

---Article 15.3

(Response)

There is no specific definition of "goods of the same Class or Kind".

However it is reflected in Article 26 and 27 of the New Commissioner's Decree.

---Article 15.5

(Response)

It is provided in Article 17 (2) of the New Commissioner's Decree.

---Article 16

(Response)

See answer for Article 7.3

---Note to Article 1. "Price Actually paid or payable" second and fourth paragraphs.

(Response)

They are provided in Article 16 (2) and (3) of the New Commissioner's Decree.

---Note to Article 1, Paragraph 1(A) (III) & a (B)

(Response)

They are provided in Article 14 (2) and Article 15 of the New Commissioner's Decree.

---Note to Article 8

(Response)

They are partially included in Articles 18, 2, 20 of the New Commissioner's Decree.

4. To what does the term "reduced difference" in Article 9-3, Paragraph 3(3) of the Korean legislation refer?

(Response)

"Reduced Difference" means the difference between the full price and reduced price. This phrase attempts to reflect "apportioned as appropriate" in Article 7.1 (b) of the GATT Valuation Code.

5. Is it intended that the note to Article 9-3, Paragraph 3(4) in the Korean legislation, containing the phrase "condition of sale" will eventually be incorporated as a substantive provision of Korea's legislation rather than as a note ?

(Response)

Yes, See Article 20(1) of the New Commissioner's Decree.

6. Does the word "disposal" in Article 9-3, Paragraph 3(5) of the Korean legislation encompass a "resale" of the goods as specifically provided in Article 8.1(d) of the GATT Valuation Code ?

(Response)

Yes, it encompasses "resale".

7. To what does the phrase "other expenses" in Article 9-3, Paragraph 3(6) refer ? Is this the same as the provision in Article 8.2(b) of the GATT Valuation Code for "loading, unloading and handling" ?

(Response)

Yes, it encompasses the cost of loading, unloading and handling.

8. Articles 2.2 and 3.2 of the GATT Valuation Code provide for adjustment for "significant" differences in transport costs, whereas Article 9-4, Paragraph 1(2) appears to require adjustment for "all" differences in transport costs. Please explain this apparent inconsistency.

(Response)

The meaning of "significant difference" in Article 2.2 and 3.2 of the GATT Code itself is ambiguous. "Any difference" in the text does not necessarily mean "all difference", practically it might mean "significant difference".

9. According to GATT Valuation Code, deductions under Article 5.2 should be the same as those under the preceding paragraph. It appears that this may not be the case in the relevant portions of the Korean legislation. A comparison of the language of Paragraphs 1(3) and 2(1) of Article 9-6 with the Commission's Decree (pages 36 and 37) leads to some confusion. For example, whereas domestic sales taxes are listed as eligible for deduction from the transaction price for valuation purposes in the legislation (Article 9-6, paragraph 1(3)), they appear to have been omitted from point (4) on page 37 of the Commissioner's Decree. Please clarify. Additionally, does the phrase "taxes and other official charges" include customs duties payable by reason of the importation of the goods ?

(Response)

It is obvious that all kinds of taxes (including the Customs duty) and other official charges in connection with the importation and domestic sale of the goods concerned shall be deducted.

10. What is encompassed within the phrase "other expenses" contained in Article 9-7, paragraph (3) of the Korean legislation ?

(Response)

It encompasses the cost of loading unloading and handling.

11. Article 9-8 appears to be an incomplete sentence. Perhaps this is an error in translation from Korean into English. Please clarify.

(Response)

The phrase "provide that" in the fourth line should be read "shall provide".

12 Are the provisions of Article 9-12 intended to permit the ascertainment of freight charges to be made on any basis other than the actual amount of freight paid ? If so, is there a basis for this in the GATT Valuation Code ? Please explain the meaning and intent of Article 9-12, Paragraph (3).

(Response)

There is no basis for it in the GATT Valuation Code. But, it is one of the reasonable means to calculate the dutiable transportation charge.

This provision is retained for the benefit of the importers.

13 Do the provision of Article 143 of the Korean legislation, which only mention "collateral", also include sureties and other appropriate instruments mentioned in Article 13 of the GATT Valuation Code ?

(Response)

The meaning of collateral in this Article included guarantee.

Article 21 of the Customs Law provides for the kind of guarantee.

- (1) Money
- (2) Debts and bonds issued by the Korea government or local government
- (3) Bank guarantee for payment
- (4) Securities listed on the Korean stock Exchange designated by a presidential Decree
- (5) Insurance Policy as guarantee for Payment of taxes
- (5-2) Credit guarantee under the provisions of the Credit Guarantee Fund Law.
- (6) Immovable property
- (7) Guarantee by surety prescribed by a presidential Decree.

The word "Collateral" may be replaced by "guarantee"

14 The Presidential Decree :

Is the phrase "occurring at or about the same time" which appears in Article 1.2(b) of the GATT Valuation Code included within Article 3-4 of the Presidential Decree ?

If so, where ?

(Response)

It is provided in Article 17(3) of the New Commissioner's Decree.

15. What is the basis in the GATT Valuation Code for Article 4 in the Presidential Decree ?

(Response)

There is no basis for it in the GATT Valuation Code. But it is one of the reasonable means to calculate the dutiable transportation charge.

16 The Commissioner's Decree :

Regarding the transaction value of identical or similar goods, the Commissioner's Decree (page 35, paragraph (5)) appears to contain some of the thoughts in the Interpretative Note to Article 2 of the GATT Valuation Code. However, the Korean text is much less explicit than the GATT text. Is it intended that this portion of the Commissioner's Decree precisely parallel that of the GATT text ? If not, in what respect is it intended to differ from the GATT text ?

(Response)

Yes, it has the same meaning as that of the provisions of GATT Text.

17. Regarding the transaction value of identical or similar goods, the Commissioner's Decree (page 34, paragraph (1)) indicates that such goods shall be those "shipped within three months retroactively" from the shipping date of the goods being valued. Articles 2 and 3 of the GATT Valuation Code provide that the identical or similar goods being used shall be those "exported at or about the same time as the goods being valued", and is intended to provide flexibility depending on the nature of the goods undergoing valuation

and the circumstances of the sale. Is the three month period provided in the Korean Law intended to equate with the letter and intent of the "at or about the same time" standard in the GATT Valuation Code ?

(Response)

In the New Commissioner's Decree, "3 months" period was replaced by "at or about the same time", as in the GATT Valuation Code.

It is provided in Article 17(3) of the New Commissioner's Decree.

18 In that portion of the Commissioner's Decree relating to the customs value based on the domestic sales price (page 35, paragraph 1(1), it appears that a time element (i.e., the actual number of days) is missing. Please clarify and provide justification for the time limit. Regarding paragraph 1(2) on page 36 of the Commissioner's Decree, please provide justification for the one month time limit therein, which appears inconsistent with the 90 day provision in the GATT Valuation Code.

(Response)

- (1) "90" was missing between "within" and "days" at third line on page 34 paragraph 1(1)
- (2) In the New Commissioner's Decree, "one Month" period was replaced by "at or about the same time".

Additional Questions

1. Article 1.2(c) prohibits the use of substitute values when determining whether sales between related parties meet the test values in Article 1.2(b). Is there any provision in the Korean Customs Law prohibiting substitute values as per Article 1.2(c) ?

(Response)

There is no provision prohibiting substitute values in the Korean Customs Legislation. Nevertheless substitute values will not be applied in the above mentioned case, because the Code Article 1.2(c) will be duly observed in the customs administration.

2. \ With regard to the notes on pages 18 and 25 of VAL/1/Add.19, we are unclear where these referenced sections of the Commissioner's Decree are to be found. Could Korea please clarify ?

(Response)

The Republic of Korea recently submitted the new Commissioner's Decree. Please refer the new Commissioner's Decree.