

**GENERAL AGREEMENT ON  
TARIFFS AND TRADE**

RESTRICTED

ADP/W/146

5 June 1987

Special Distribution

---

Committee on Anti-Dumping Practices

Original: English

REPLIES BY KOREA TO QUESTIONS PUT BY AUSTRALIA  
ON THE ANTI-DUMPING LEGISLATION OF KOREA

Reproduced herewith are replies by Korea to questions put by Australia in document ADP/W/137 on the Anti-Dumping Legislation of Korea (ADP/1/Add.13/Rev.1).

---

I. Korean Customs Act, Article 10

Question 1, paragraph 2

Please explain how a person entitled to initiate a dumping investigation described in the Act as "Any person having an interest in or the competent Minister having jurisdiction over the domestic industry subject to material injury ..."

would always qualify as

a person making "... a written request by or on behalf of the industry affected", ... as specified in Article 5:1 of the Code?

Answer

In interpreting our legislation, the Customs Act and the Presidential Decree should be considered simultaneously.

Article 4-4(2) of the Presidential Decree defines the concept of "Any person having an interest in the domestic industry" in paragraph (1) of Article 10 of the Customs Act as "the party who files a petition on behalf of the domestic industry: a domestic producer or a wholesaler of a like product, an association of whose members produce or wholesale a like product, or a certified or recognized union of workers which represents industry involved in the production or wholesale of a like product."

These parties illustrated in the Decree may file a petition "by or on behalf of the industry affected" as provided in Article 5:1 of the Code.

"The competent Minister having jurisdiction over the domestic industry" may be regarded as representing the industry affected.

Particularly, when we take into consideration the fact that Article 5:1 of the Code allows the self-initiation of an anti-dumping investigation, our legislation is in accordance with the Code.

Question 2, paragraphs 2 and 3

Does "evidence of the importation of the dumped product" include evidence that the goods are dumped as required by Article 5:1 of the Code?

Answer

Yes. "Evidence of the importation of the dumped product" includes evidence that the goods are dumped as required by Article 5:1 of the Code.

Question 3, paragraph 5

A complaint may be rejected if the dumping margin, quantity or material injury etc. is "insignificant". How would Korea's interpretation of "insignificant" differ from its interpretation of "negligible" which is the description used in the Code (Article 5:3) applying to this situation?

Answer

It is a matter of translation. Whether we use the expression "insignificant" or "negligible", there would be little difference in actual application.

Question 4, paragraph 7

Please explain how circumstances which "lead to the belief" only that dumping and material injury has occurred can substantiate the "preliminary affirmative finding of dumping ... and sufficient evidence of injury" necessary before provisional measures are taken? (Code Article 10:1).

Answer

Under our present anti-dumping legislation, there is no such procedure as preliminary determination.

However, the fact that the Minister of Finance determines, after an initiation of an anti-dumping investigation that there is sufficient evidence which leads to the belief that dumping exists and that material injury resulting therefrom has occurred is, in reality, no different from the preliminary affirmative finding of dumping and sufficient evidence of injury.

Question 5, paragraph 7

What is a "significant percentage of the trade" and does a decision in respect of that exporter apply to others as well?

Answer

The Korean Government does not have any provision or precedent that defines the meaning of a "significant percentage of the trade" or tells whether the decision in question applies to others as well.

The Korean Government will define the meaning of a "significant percentage of the trade" in actual application of the provision in question, considering practices of other contracting parties and the spirit of the GATT.

Question 6, paragraph 9

In what circumstances would provisional measures not be cancelled if the Minister of Finance deems it necessary to continue the investigation after an undertaking has been offered?

Answer

There seems to be a misprint in our English translation.

The word "investigation" in the phrase "the investigation may continue if the Minister of Finance deems it necessary, or if the exporter requests the continuation thereof" shown in Article 10, paragraph 9, means the "investigation of injury".

Provisional measures will be cancelled if an undertaking is accepted.

Question 7, paragraph 10

What data must be provided by the exporter after an undertaking has been accepted?

Answer

Data which the Minister of Finance considers relevant to the fulfilment of the undertaking must be provided by the exporter.

In the case of the Dicumyle Peroxide investigation last year, the Korean Government accepted undertakings from the relevant exporters. We, however, have never required any data from the exporters.

Customs authorities, however, monitor the import price of the Dicumyle Peroxide to find out any violation of the undertaking.

Question 8, paragraph 10

If the exporter has complied with the undertaking provisions, why is further verification at a later date necessary?

Answer

The Korean Government understands that the verification in question is explicitly allowed in Article 7:5 of the Code.

The Korean Government will require the verification only when the verification is indispensable to determine the violation of the undertaking.

II. Presidential Decree of the Customs Act

Article 4-2 (Normal Value and Dumping Price)

Question 9, paragraph 3

Does the "constructed value" in a state-controlled, non-market economy mean the cost of producing the product in that country or in some third country?

Answer

The constructed value in a state-controlled, non-market economy means the cost of producing the product in some market economy country.

Question 10, paragraph 3

When are sales prices in state-controlled, non-market economy countries "not recognized" as normal values?

Answer

Our legislation does not state when sales prices in state-controlled, non-market economy countries are "not recognized" as normal values.

The Korean Government understands that sales prices may not be recognized as normal values when elements of cost or price are determined by the state authorities.

Question 11, paragraph 4

If the exporter and the importer as associated, does that automatically mean that the price is unreliable?

Answer

No. The Korean Government will not accept the price actually paid or payable when the special relationship between the exporter and importer influences the price.

Question 12, paragraph 4

When the dumping price is set on the basis of the first sale to an independent buyer in Korea, is the price set at FOB level or CIF level?

Answer

The dumping price is set at the price actually paid or payable at which the first sale is made to an independent buyer in Korea, with appropriate adjustments made.

Question 13, paragraph 4

In other circumstances, has the Minister of Finance set "reasonable standards" for the establishment of the dumping price? If so, what are they?

Answer

The Minister of Finance has not set any "reasonable standard" for the establishment of the dumping price.

Article 4-3 (Comparison of normal value and dumping)

Question 14, paragraph 1

What "other factors" are considered to influence the price comparison when making due allowance for the normal values?

Answer

The Korean Government believes that all factors affecting price comparability should be considered to the greatest extent possible.

"Other factors" include those which should be considered for fair comparison, but are not covered by such expressions as the "differences in physical characteristics, in quantities, and conditions of sale, in taxation" in the paragraph in question.

Specific factors to be considered will be different depending on each case.

The Korea Government will take into account the spirit and principle of the GATT and the provisions of other contracting parties in determining which factors should be considered.

Question 15, paragraph 3

Is it necessary to establish that all producers actually receive a quantity discount, or is it sufficient if they are eligible to receive it after a certain quantity has been purchased and it can be shown that some have actually received it?

Answer

The Korean Government does not require that all purchasers actually receive a quantity discount.

Question 16, paragraphs 4 and 5

In requiring that certain differences must be shown to "directly" influence market price of cost of production, what does "directly" mean?

Answer

"Directly" means that the influence on market price or cost of production should be quantifiable and traceable on a reasonable basis.

Article 4-4 (Request for the imposition of an anti-dumping duty)

Question 17, paragraphs 1 and 2

Is it correct to interpret these paragraphs to mean that wholesalers and unions can lodge complaints, but that material injury must be to the producers of the goods?

Answer

Yes. Material injury must be to the producers of the goods. Wholesalers and unions, however, can lodge complaints on behalf of the industry affected.

Article 4-5 (Investigation of dumped import and injury)

Question 18, paragraph 3

What information from banks and other relevant organization is to be provided? Do such organizations refer confidential information to the Minister for Finance without referral to the company concerned? What is such information used for?

Answer

Banks and other relevant organizations are expected to inform the Minister of Finance if they think some imports are being dumped.

The Ministry of Finance does not require confidential information and the organizations in question will not provide confidential information against the interests of the company concerned.

The information provided by such organizations will be used only for reference.

The Korean Government would like to emphasize the fact that no information has been received from those organizations in question so far.

Question 19, paragraph 7

Should it not be automatic for non-confidential data supporting a case against an importer to be given to the exporter or importer so that they may properly defend their interests and explain the facts of the case? Is such information withheld until a specific request is made?

Answer

According to Article 4.7(5) of the Presidential Decree, important contents concerning:

1. initiation of an anti-dumping investigation
2. provisional measures
3. imposition of an anti-dumping duty
4. undertaking and suspension of investigation
5. review

are published in the Gazette and notified to the interested parties in writing.

Any further detailed information will be available for the asking so far as the information is not confidential in accordance with Article 6:3 of the Code.

Article 4-7 (Review of undertaking and measures)

Question 20, paragraph 1

When reviewing the imposition of duties or the necessity of continuation of securities more than once per year, will a review be made of normal values in each country and of the continuation of injury?

Answer

Yes. The review will be made of normal values in each country and of the continuation of injury.

Question 21, paragraph 2

If some error of law or fact occurs in the assessment of normal values or dumping margins or injury during the investigation, an affected party is not permitted to ask for correction of the error until at least one year after the date of imposition of the duty. Is that correct?

Answer

Article 4-7, paragraph 2 of the Presidential Decree are not intended to ban the request for correction of error of law or fact.

The Korean Government is willing to accept the request for correction of such error.

Question 22, paragraph 4

Does a request for retrospectivity by a person with an interest in the domestic industry need to be supported by other interested parties, or will the Minister impose such duties at the request of any interested person?

Answer

The Minister of Finance will impose the duties at the request of any interested person after examining the necessity of such imposition.

III. General Questions

Question 23

Why are there no appeal provisions apart from requesting a review?

Answer

Any alleged illegal measure by administering authorities is subject to judicial review under Article 38 through Article 43-3 of the Customs Act and the Administrative Litigation Law.

Question 24

It is not clear who makes the final decision; is it the Minister for Finance or the Customs and Tariff Deliberation Committee?

Answer

The Minister of Finance makes the final decision. In some important decisions, however, a meeting of the Customs and Tariff Deliberation Committee is required for the decision to become effective.

Question 25

Is Korea willing to conduct enquiries in any accused country?

Answer

Enquiries in any accused country will be conducted only when such enquiries are indispensable to the investigation, subject to the consent of the firms concerned.

Question 26

Are world prices for commodities acceptable as the basis for normal value assessment?

Answer

Under our present anti-dumping legislation, there is no room for world prices to be accepted as the basis for normal value assessment.

Question 27

What is Korea's attitude to the constructed value of goods made from imported raw materials where those raw materials were purchased at dumped prices?

Answer

The Korean Government is in favour of the draft recommendation concerning input dumping (ADP/W/83/Rev.2).

Where inputs are purchased, either internationally or domestically, in the ordinary course of trade, the constructed value of the end-product should be established using the actual purchase price of the inputs.

When, however, the producer of the input and the manufacturer of the end-product are related and the price is less than that which would prevail in the ordinary course of trade and does not cover the full cost of the input, investigating authorities may calculate the normal value of the end-product, on the basis of the lower of the constructed value of the input or the prevailing market price in the ordinary course of trade.

However, admitting that the above position is theoretically justifiable, the Korean Government expresses concern that due to the practical difficulties in investigating this kind of dumping, any anti-dumping measures applied following such an investigation would be contrary to the spirit and provisions of GATT and the Code.

Question 28

Can any of the powers specified in Korea's legislation be delegated?

Answer

No. Under our present anti-dumping legislation, there exists no provision allowing power delegation.

Question 29

There are no provisions for automatic cancellation of any duties imposed (sunset clauses). Do all revocations of such duties require detailed investigation?

Answer

Under our present anti-dumping legislation, imposition of anti-dumping duties is revoked only after the review under Article 4:7 of the Presidential decree.