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Committee on Anti-Dumping Practices

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Committee on Subsidies and
Countervailing Measures

QUESTIONS POSED BY THE REPUBLIC OF KOREA ON
THE ANTI-DUMPING AND COUNTERVAILING DUTY LEGISLATION
OF THE UNITED STATES¹

1. Sec. 701(c)(2) - Revocation of status as a contracting party

This provision mandates to the United States Trade Representative the power to deny unilaterally the status of a foreign country as a contracting party to the GATT Subsidies Code if it decides that such a foreign country does not in fact honour the obligations imposed by the GATT provisions.

It is one of the agreed principles of GATT that a contracting party should follow dispute settlement procedures under the GATT régime when it considers the actions of another contracting party as inconsistent with the present GATT provisions.

How does the US justify under the current GATT régime the above provision which seems to clearly indicate a unilateral determination of the legitimate status of other contracting parties to the multilateral agreement?

2. Sec. 702(b) - Standing of the petitioner

Sec. 702(b) enumerates a labour union or wholesaler as a petitioner for a countervailing duty investigation. What is the US interpretation of the terms "by or on behalf of the industry affected" in Article 2:1 of the Subsidies Code? Why does the US include a wholesaler of a like product under consideration as an interested party?

3. Sec. 771(4)(E) - Industry producing processed agricultural products

1. According to Sec. 771(4)(E) the US seems to regard raw agricultural products and processed products as like products in the case of meeting certain conditions such as a single continuous line of production and a substantial coincidence of economic interest, etc.

On the other hand, the GATT Anti-Dumping Code defines, from the viewpoint of physical identity, a like product as a product which is identical i.e. alike in all respects to or has characteristics closely resembling the product under consideration.

¹ADP/1/Add.3/Rev.4-SCM/1/Add.3/Rev.3

How does the US intend to resolve incongruities in the definitional scope of the Sec. 771(4)(E) concept of like product with the concept as set in the Anti-Dumping Code (Article 2:2)?

2. Why does the US define the domestic industry in agro-fishery products differently from manufactured products? What provision of the Anti-Dumping Code is used to justify these different definitions of the domestic industry?

3. Is Sec. 771(4)(E) valid even in cases where a raw agricultural product is transformed into many processed products through diverse continuous production lines, if a substantial coincidence of economic interest between the producer of the raw product and the processors exists?

4. In relation with the expression "substantially or completely" in Sec. 771(4)(E)(ii), could the US present its quantitative criteria for judging substantiality or completeness?

4. Sec. 771(7)(C)(v) - Treatment of negligible imports

1. What degree of volume and market share of imports does the US consider to be negligible and have no discernible adverse impact?

2. In case the market share of an import is found to be negligible even though sales transactions involving the import are not isolated and sporadic but continuous, might it be reasonable to judge that there is no adverse impact on the domestic industry?

5. Sec. 773(a)(5) - Fictitious Market

This provision seems to stipulate that different movements in the prices of different forms of merchandise, in turn resulting in a dumping margin decline, could evidence the establishment of a fictitious market.

However, the respective prices of merchandise whose brands or models are diverse might be changed differently, even in the opposite direction, due to changes in market conditions, fluctuations in the prices of raw materials, productivity improvements, or technical advancements in some production lines.

What does the US mean by a fictitious market?

How can the US determine the true price change resulting from adjusting volatile market conditions, etc., from the fictitious market case?

6. Sec. 780 - Downstream product monitoring

1. Sec. 780(a) gives a producer of a component part a right to petition for a finished product (or a downstream product). Does this mean that the US considers component parts and finished products to be like products?

If so, please explain in what cases or under which circumstances components and finished products could be determined as being identical, i.e. alike in all respects according to the definition of like product under the Anti-Dumping Code. If not, what is the reason the US acknowledges a component producer as a petitioner for a finished product? What articles of GATT support this view?

2. In this provision, the US seems to envision a scenario in which a component part incorporated into a downstream product is sold at unfairly low prices in the country of origin or in a third country at a price similar to that at which it would have been dumped into the US and, in turn, because of these low prices, the downstream products produced at a relatively low price are then imported into the US. Does the US have conclusive positive evidence or a strong theoretical expectation as to support the idea that there exists low prices for component parts in such a third-party country? In addition, how will the US calculate the dumping margin for these downstream products?

7. Sec. 781 - Circumvention

1. Sec. 781(a) and (b)

What is the procedure for extending an outstanding anti-dumping duty to merchandise assembled in the US or in other foreign countries? Is a petition by an interested party for the extension of anti-dumping duty prerequisite to the initiation of an investigation on assembled products? What kind of investigation on assembled products is to be conducted? How does the US decide the amount of the anti-dumping duty on assembled products? During the investigation and final decision will the US take into account the usage ratio of local parts and components or any other factor?

What is the meaning of the word "related" in Sec. 781(a)(2)(B)? How does the US decide whether one manufacturer is related to others?

What provision of GATT is Sec. 781(b) based upon?

2. Sec. 781(c)

Could the US present its interpretation of the concept of like products as noted in Article 2:2 of the GATT Anti-Dumping Code? Does the US consider products with minor alterations to be included in like products with respect to the product on which an anti-dumping order is issued?

What defines or determines a minor alteration? How does the US make a distinction between a minor alteration of merchandise and other alterations?

3. Sec. 781(d)

Often a new product is usually developed through attaching new additive functions to the present good or changing the present design. The new product often has the same expectation from consumers and follows similar distribution channels and/or advertising as the present product, but it has some improvement in quality, function, etc., with respect to the old product. However, Sec. 781(d) seems to disregard all of these aspects.

On the basis of which GATT provisions does the US justify its attempt to extend an outstanding anti-dumping duty on present products to future products still on the drawing board, in the name of the same expectation, distribution channel, etc. given that such aspects are but typical features of developing a new product, apart from the real nature of the new product? In other words, in concordance with GATT, how does the US define "newness"?