

GENERAL AGREEMENT ON

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TARIFFS AND TRADE

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Committee on Anti-Dumping Practices

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KOREA - ANTI-DUMPING DUTIES ON IMPORTS OF POLYACETAL RESINS FROM THE UNITED STATES

Request by the United States for conciliation under Article 15:3 of the Agreement

Addendum

The following communication has been received from the United States Trade Representative.

The United States is concerned that the Korean Trade Commission's (KTC) affirmative material injury determination concerning polyacetal resin from the United States departs from the standards set forth in the Anti-Dumping Code, and therefore, is inconsistent as a matter of law with Korea's obligations under the Code. The Code directs that a determination of material injury shall "involve an examination of both (a) the volume of the dumped products and their effect on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products." Article 3.1. The Code also directs that the KTC "consider whether there has been a significant increase in dumped imports either in absolute terms or relative to production or consumption in the importing country", and "whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product in the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree, or prevent price increases, which otherwise would have occurred, to a significant degree." Article 3.2.

The Code also requires that the investigating authority shall evaluate "all relevant economic factors and indices having a bearing on the state of the industry such as actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments." Article 3.3.

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The KTC determination failed to apply these required Code factors. For example, the KTC reached an affirmative determination despite declining import volume, both in absolute terms and relative to Korean consumption and production, and despite the absence of evidence that imports undercut Korean prices or otherwise depressed prices or prevented price increases by the Korean producer. In addition, the Korean producer's market share grew from zero to approximately 80 per cent of the Korean market in the course of two years.

In sum, the KTC determination did not properly apply the Code factors for a determination of whether dumped imports are a cause of material injury, but, rather, substituted a different non-Code-sanctioned standard. The United States is concerned that the KTC approach, if permitted to stand, may establish a precedent for similarly flawed determinations in the future.