

Committee on Anti-Dumping Practices

Original: English

Committee on Subsidies and Countervailing Measures

QUESTIONS CONCERNING THE NOTIFICATIONS PROVIDED
BY THE GOVERNMENT OF KOREA OF LAWS AND
REGULATIONS UNDER ARTICLES 18.5 AND 32.6 THE AGREEMENTS

The following communication, dated 14 July, has been received from the Hong Kong Economic and Trade Office.

List of Questions for Korea's Anti-dumping Legislation

The Customs Act

Article 10(2)

1. Article 6.8 of the WTO AD Agreement provides that in cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations may be made on the basis of the facts available. The provisions for 'best information available' in Annex II of the Agreement shall be observed.

Article 8.6 of the Agreement states that in case of violation of undertakings, the authorities of the importing country may take, under the Agreement in conformity with its provisions, expeditious actions which may constitute immediate application of provisional measures using the best information available.

Article 10(2) of the Customs Act states that in cases where the undertakings by exporters are not fulfilled, or a demand for the presentation of materials on the fulfilment of the undertakings and a demand to allow the verification of the materials presented is not compiled, any **utmost information available** shall apply in the determination of dumping and material injury, etc.

Article 4-11(10) of the Enforcement Decree of the Customs Act states that if the exporter refuses to fulfil the undertaking, the Minister of Finance and Economy may continue the anti-dumping measures on the basis of **any information available**.

Question: Would Korea clarify whether the terms 'utmost information available' and 'any information available' will be applied in accordance with the provisions of 'best information available' as provided in the WTO AD Agreement? How would the Korean legislation ensure compliance with provisions in Annex II of the WTO AD Agreement?

Article 10(3) - Price undertaking

2. Article 8.1 of the WTO AD Agreement provides that proceedings may be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to **cease exports** to the area in question **at dumped prices** so that the authorities are satisfied that the injurious effect of the dumping is eliminated.

Article 10(3) of the Customs Act states that the exporter or the Minister of Finance and Economy may offer or suggest undertakings to revise the price or to **cease or reduce exports** so that the injury caused by the dumping could be eliminated.

Question: Would Korea clarify whether the provision on undertakings as provided for under Article 10(3) of the Customs Act means 'undertakings to cease or reduce exports at dumped prices'? Would Korea advise if there is any difference between the two articles in providing for undertakings?

The Enforcement Decree of the Customs Act

Article 4-2 - Request for the Imposition of an AD Duty

3. Article 4-2(1) states that any interested party to a domestic industry suffering material injury may request the Minister of Finance and Economy to impose anti-dumping duty under the **conditions** as prescribed by the Ordinance of the Prime Ministry.

Question: Can Korea elaborate what are those 'conditions'? What does 'the Ordinance of the Prime Ministry' refer to?

Article 4-10 - Application of Provisional Measures

4. Under Article 4-10(3) of the Enforcement Decree of the Customs Act, the Ministry of Finance and Economy may prolong the application period of the provisional measures in accordance with the **international agreement**, if it is **deemed necessary**.

Question: On the 'international agreement', is it referring to the WTO AD Agreement, Article 7.4 in particular? For the phrase 'deemed necessary', would Korea clarify what would be the considerations of the Ministry of Finance and Economy?

5. Article 7.2 of the WTO AD Agreement provides that provisional measures may take the form of a security equal to the amount of the anti-dumping duty provisionally estimated, being not greater than the provisionally estimated margin of dumping. Article 4-10(4) of the Enforcement Decree of the Customs Act however states that the security shall be provided in value exceeding the amount equivalent to the provisional anti-dumping duty.

Question: It seems that this Article contradicts the requirement of the WTO AD Agreement. Would Korea provide an explanation for this?

Article 4-12 - Retroactive Imposition of the Anti-Dumping Duty

6. According to sub-paragraph 4 of Article 4-12(1), retroactive anti-dumping duty may be imposed on **other products** imported during such a period as determined by the Minister of Finance and Economy under the conditions as prescribed by the international agreement.

Question: What are the 'other products'? What conditions in the international agreement is it referring to?

The Regulation of the Customs Act

Article 4 - Application for the Investigation for the Imposition of an AD Duty

7. According to Article 4-2(2) of the Enforcement Decree of the Customs Act, domestic industry means the domestic production industry that accounts for all or a major portion of the total domestic production of the products that are the **same in kind and quality** and the products **similar** with those imported at a price that is lower than the normal value.

Article 4(1) of the Regulation of the Customs Act defines that the term 'product same in kind and quality' means a product that is identical in all respects, including physical characteristics, quality, recognition by the users, etc. (including products altered insignificantly in appearance) to the imported product and the term 'similar product' means a product which, although not the product same in kind and quality, can be **substituted** for the imported product due to an identical function and due to characteristics and constituent parts that are similar to such imported product.

Article 4.1 of the WTO AD Agreement states that the term 'domestic industry' shall be interpreted as referring to the domestic producers as a whole of the **like products** or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.

Article 2.6 of the WTO AD Agreement stipulates that the term 'like product' shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which although not alike in all respects, has characteristics closely resembling those of the product under consideration.

Comment: In the Korean AD legislation, the definition of 'similar product' does not follow the definition of 'like product' in the WTO AD Agreement. This may affect the constituents of the domestic industry.

Question: Would Korea provide more precise information on how a product will be regarded as substitute for an imported product? Would Korea explain any difference between 'like product' and 'similar product'?

Article 4-4 - Comparison between the Normal Value and the Dumping Price

8. Sub-para. 2 of Article 4-4(1) and Article 4-4(6) of the Regulation make reference to Article 3-6(1) of the Decree. However, Article 3-6(1) of the Decree is not available in the notified document. Could Korea provide further details about this article?

Key issues in the WTO AD Agreement which are found silent in the Korean AD legislation

Article 1 of the WTO AD Agreement stipulates that an anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of the Agreement.

Article 18.1 of the WTO AD Agreement states that no specific action against dumping of exports from another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by the Agreement.

The Korean legislation is silent on a number of key issues on which there are specific provisions in the WTO AD Agreement. This may lead to application of anti-dumping measures not in accordance with the provisions of the WTO AD Agreement, which would constitute violation of Article 1 and 18.1 of the WTO AD Agreement:

(I) Time-limit for completing questionnaires

Article 6.1.1 of the WTO AD Agreement provides that exporters shall be given **at least 30 days** for reply to questionnaires in an anti-dumping investigation.

There are no such provisions, however, in the Korean Customs Act and its sub-regulations.

(II) Industrial users and representative consumer organizations

Article 6.12 of the WTO AD Agreement provides opportunities for industrial users and representative consumer organizations to provide information which is relevant to the investigation regarding dumping, injury and causality.

The Korean Customs Act and its sub-regulations do not provide such provisions.

(III) On-site investigation

Annex I of the WTO AD Agreement sets out some specific procedures for carrying out on-site investigations.

Such procedures, however, are not specified in the Korean Customs Act and its sub-regulations.

Question:

9. Would Korea confirm that it would observe the relevant provisions of the WTO AD Agreement on these issues? Does Korea have any intentions to enact new provisions on these issues in conformity with the WTO AD Agreement?