

WORLD TRADE ORGANIZATION

RESTRICTED

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Committee on Safeguards

Original: English

REPLIES TO QUESTIONS POSED BY JAPAN¹ CONCERNING THE NOTIFICATION OF LAWS AND REGULATIONS OF KOREA² UNDER ARTICLE 12.6 OF THE AGREEMENT

The following communication, dated 11 January 1996, has been received from the Permanent Mission of Korea.

Q1. Article 32

This Article anticipates possible causes for the damage to the domestic industry as follows:

- increase in the import of specified goods,
- increase in the trade of specified goods,
- increase in the supply of distribution services.

Q1. (1) What is the meaning of "trade"? What makes it different from "import" in this case?

A1. (1) Article 32.2 provides for safeguards on the service industry, particularly for trade-related service and distribution service. Therefore, the term "trade" means trade-related services. The English language version might have aroused some confusion.

Q1. (2) What is the meaning of "supply of distribution services"? How can you justify taking safeguard measures on the ground that the increase of such supply of distribution services specifically by foreigners causes or threatens to cause damages to the domestic industry under Article XIX of GATT of the Agreement on Safeguards (hereinafter referred to as SGA)?

A1. (2) The measure based on Subparagraph 2 is subject to the General Agreement on Trade in Services (GATS), and not to the Safeguards Agreement. So far, no measure has been implemented by invocation of this provision, and no detailed sub-rules or regulations have been enacted. We will arrange for detailed procedures based on this Article as the negotiation of service-related safeguards proceeds.

Q2. The Article 34(1) enumerates possible remedial measures (safeguard measures) which may be taken in the case where the Trade Commission has determined that there exists any damage to the domestic industry as a result of the investigation:

¹G/SG/W/47 + Corr.1 and G/SG/W/92.

²G/SG/N/1/KOR/2.

Q2. (1) One of those measures is suspension or prohibition of imports against specified goods or traders. Is such a measure consistent with the SGA, in particular, with paragraph 1 of Article 5 of the Agreement?

A2. (1) "Suspension or prohibition of imports" does not pertain to safeguards measures, but to measures against infringement of Intellectual Property Rights.

Q2. (2) What kind of effect does it have to designate a particular industry as an industry to be rationalized under the Industry Development Act? What do companies in that industry have to do under the Industry Development Act? Do those companies include those run by foreigners?

A2. (2) According to Article 5 of the Industrial Development Act, an industry is designated for rationalization "when it is recognized that securing international competitiveness is essential for industrial development and for development of the national economy, and when it is difficult to secure competitiveness by the efforts of the industry alone." Based on Article 10, there is usually financial assistance and tax credits.

According to Article 7, "enterprises subject to industry rationalization must make sincere efforts for technology development and productivity increase". Since the industry for rationalization is designated by the plans devised by the Minister of Trade, Industry and Energy, domestic firms will usually be subject to rationalization.

Q3. We have some questions concerning the relationship between the Foreign Trade Act and the Customs Act. For example:

Q3. (1) What is the difference between the adjustment of customs tariff under Article 34(1)2 of the Foreign Trade Act and the application of emergency duties under the Customs Act?

A3. (1) Following an investigation and recommendation of the Trade Commission based on Article 34 of the Foreign Trade Act, the Minister of Finance and Economy may impose emergency tariffs under Article 12 of the Customs Act.

Q3. (2) In order to impose the emergency duties under the Customs Act to the specified products, is the investigation by the Trade Commission under the Article 33 of the Foreign Trade Act prerequisite?

A3. (2) Yes.

Q3. (3) Are there any investigative procedures to be followed under the Customers Act in order to impose emergency duties as a safeguard measure which are different from the procedures under the Foreign Trade Act? If so, please explain them in detail. What is the name of the authorities competent to initiate and conduct such investigations?

A3. (3) No.

(Additional questions)**Q1. Article 68(2)**

Can the consultation held between (1) foreign producers or other interested parties and (2) requesting parties under this paragraph enjoy immunity from civil and criminal liability under the Korean legislation such as competition law? What sort of measures does the Trade Commission of Korea take so as to have the two parties consult with each other? In addition, please explain how this is consistent with paragraphs 1 and 3 of Article 11 of the Agreement on Safeguards (the "SGA").

A1. The Korean competition law (Monopoly Regulation and Fair Transaction Act) has no relation with the safeguards procedure.

The meaning of Article 68(2) of the Decree is that when the foreign producer's or exporter's proposition is directed to the Korean Government (the Commission), the Commission does not simply ignore the proposition, but rather delivers the proposition to the domestic producers in order to make the related parties consult with each other and avoids the governmental interference with their private consultation.

Thus, Article 68(2) of the Decree is different from the prohibited measures of the Article 11 of the Agreement.

Q2. Article 72(2)

Please explain the meaning of Article 72(2)2 of the Enforcement Decree. How does the Korean Government recommend this measure to its domestic industries and its domestic consumers? Please explain how this measure is consistent with Articles III and XI of GATT.

A2. A safeguards measure can suspend the GATT obligations or withdraw or modify the concessions, if it is taken under the conditions specified in GATT XIX and the Safeguards Agreement. Further, the measure of Article 72(2)2 does not violate GATT obligations of Articles of III and XI.