GENERAL AGREEMENT ON
TARIFFS AND TRADE

Committee on Subsidies and Countervailing Measures

ORIGINAL: English

RESPONSES OF THE REPUBLIC OF KOREA
TO QUESTIONS SUBMITTED BY THE
EUROPEAN COMMUNITIES AND AUSTRALIA

I.

1. In case a complaint is filed by outside parties other than a producer or an association of whose members produce the like products, the Minister will ascertain their standing as legal petitioners according to the Subsidies and Countervailing Measures Code. That is, the Minister will specifically investigate whether the submitted petition has been made "by or on behalf of the industry affected" as provided by the Article 5:1 of the Code, and also take into account all relevant factors including various expert panels' views on the standing of petitioners, other signatories' general practices etc., in order to maintain consistency with GATT principles and interpretations therewithin.

Both unions of workers and wholesalers shall not be regarded as legal petitioners under this provision.

II.

1. The Customs and Tariff Deliberation Committee (hereinafter referred to as "CTDC") is a special standing body whose main function is to advise the Minister on all the important policies regarding customs and tariffs, including anti-dumping matters.

Article 4-5(1) of the Decree stipulate one of those designated advisory roles of the CTDC. Close attention should be paid to the point that some advice from the CTDC in the initial stage is mandatory under the present Customs Law. The Minister is required to consider the opinion of the CTDC for rejecting the submitted petition even before the initiation of the investigation, the Minister should hear the relevant opinion from the CTDC according to the Article 10(13) of the Customs Law.

2. In applying this provision, the CTDC is expected to find whether or not the evidence submitted by a complainant is sufficient for the initiation of the investigation, namely, whether or not there exists (a) suspicion of dumping, (b) likelihood of injury, and (c) any indication of a causal link between alleged dumping and alleged injury.

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III.

1. Affirmative findings of dumping, injury, and the causal link by the CTDC may in due course lead to the implementation of definite anti-dumping measures. Despite affirmative findings, when the Minister concludes that an anti-dumping measure would be undesirable or unnecessary in the light of consumer welfare, possible negative impacts on other industries, etc., he may reject the complaint from petitioners.

2. A provisional measure will be taken through a completely separate procedure under Article 10(7) of the Customs Law, not according to this particular provision, heading 4.5(12), in the Decree. If there is sufficient evidence leading to the conclusion of dumping and material injury, and if deemed necessary to prevent injury from occurring during the investigation period, a provisional measure may be taken before the completion of the investigation. However, in this regard, the Minister's intention is that he will preclude the possibility of any provisional measures before finishing the investigation unless he is specifically requested to do so from interested parties. On the other hand, there is a chance for the imposition of a provisional measure in case of sufficient evidence indicating a breach of an existing undertaking whose acceptance has resulted in the suspension of the investigation.

3. No specific expression such as "preliminary investigation" presently exists in the Korean Customs Law. If the EC infers by that expression the investigation procedure conducted from the initiation of the investigation until the point when a provisional measure may be imposed due to the request from interested parties etc., the answer is "It depends upon the case in question". As stated in the above paragraph III.2, the violation of an undertaking may mean immediate provisional measures without any steps as indicated in the EC's questions III.3.

However, in a normal case of imposing a provisional measure before the completion of the investigation, some essential steps including the dispatch of questionnaires and careful review of responses to them from interested parties, etc. may precede the provisional measure.

If the EC means the petition review process before the initiation of investigation, the answer is "No". However, an interested party who wants to defend himself during the process may submit in writing to the Minister the evidence against the alleged dumping and injury etc.