Distinctive Aspects of Korean Anti-dumping Scheme and its Current Trend

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1. Distinctive aspects of Korean Anti-dumping Scheme

a) Roles of Two Government Authorities

1) The Korean Trade Commission ("KTC")

- Determination on whether to initiate an anti-dumping investigation
- Determination of dumping margin and industrial injury
- Recommendation to the Ministry of Finance and Economy("MOFE") regarding the imposition level and period of anti-dumping duty

2) The Ministry of Finance and Economy

- Determination on whether to impose the anti-dumping duty on the basis of the recommendation from KTC
- Determination on whether to initiate an anti-dumping review
- Determination on whether to accept price undertaking

b) Strong Criteria for the Initiation of Anti-dumping Investigation

1) A determination on whether to initiate an anti-dumping investigation is decided at the commissioner's meeting, where commissioners consider the application and additional information to the depth similar to the level applied at preliminary determination.

2) An anti-dumping investigation may be initiated only with the application from a domestic industry and no ex officio initiation is allowed.

2. Current Trend of Korean Anti-dumping Practice

a) Consideration of Public Interest
Even though Korean laws and regulations relating to anti-dumping investigation do not require the KTC to consider the public interest in the course of its determination, KTC's commissioners have a lot of interest in reflecting the public interest aspects of anti-dumping measure in their determination. Thus, a study on other countries' practices was performed and the probability of modification of the current laws and regulations is studied to reflect public interest aspect in their determination.

b) Change of the Investigation Policy for the Non-market Economy Countries

In 1999, KTC changed its anti-dumping investigation policy toward non-market economy countries. KTC's former policy was to use domestic prices of a surrogate country as normal value of a non-market economy country. However, in consideration of transition from non-market economy countries to market economy, the KTC prepared detailed criteria to determine whether the specific industry of a non-market economy country is operated under market economy principle. If the industry subject to anti-dumping investigation is classified as an industry operating under market economy principle, normal value will be determined using domestic sales prices of the non-market economy country. This principle was first applied to the anti-dumping review on non-refillable disposable pocket lighter from China, where the Chinese industry producing subject merchandise was regarded as an industry operating under the market economy principle and thus the 3rd country export price of a Chinese company was used for the determination of normal value. (Domestic sales prices could not be used because there was no domestic sales by the company subject to investigation)

c) Korea's Position in the New Round Negotiation

The Korean government has the following positions on the anti-dumping area in relation to the new round negotiation.

i) Strengthening provisions for review procedure
ii) Preparation of provisions for anti-circumvention
iii) Strengthening provisions relating to a causal relationship between dumping and
iv) Strengthening provisions relating to the initiation of anti-dumping investigation
v) Repeal of article 17.6 of Agreement on Implementation of Article VI of the GATT 1994("Anti-dumping Agreement"), which limits examination of WTO penal on the determination of investigation authority.

d) Korea's Position in Free Trade Agreement between Korea and Chile

Korean government is negotiating with Chilean government for making a Free Trade Agreement ("FTA") between two countries. It is expected that a concrete agreement is finalized until end of 2002. With regard to this negotiation, trade norm area including anti-dumping is one of important parts. Especially, it is known that Chilean government requested that Korea and Chile should reciprocally exclude the application of anti-dumping rule by the FTA and it suggested that the FTA with Chile and Canada might be an example, in which the reciprocal non-application of anti-dumping rule between two countries was stipulated. Korean government's final decision on this matter has yet to be made. However, it seems that the nullification of anti-dumping rule in the FTA is not easy in Korean government side because Korea is one of major victims of anti-dumping measure and also one of the countries that recently start making use of anti-dumping measure.
3. Korean Anti-dumping Investigation Procedure

- Application (related party or minister)
- Receipt of application (KTC)
- Determination of initiation (KTC)
- Public notice of initiation (KTC)
- Public hearing (KTC)
- Preliminary Investigation (KTC)
- On-the-spot verification (KTC)
- Questionnaire, response and analysis (KTC)
- Final determination (KTC)
- Recommendation of final measure (KTC)
- Preliminary determination (KTC)
- Final measure (MOFE)
- Price undertaking

Imposition of preliminary measure (MOFE) 5 m (6 m)
Initiation of final Investigation (KTC)
On-the-spot verification (KTC)
Public hearing (KTC)
Final determination (KTC)
Recommendation of final measure (KTC)

* The numbers in brackets represent the period allowing a maximum extension of investigation period.