

UNITED STATES - IMPOSITION OF ANTI-DUMPING DUTIES
ON IMPORTS OF COLOUR TELEVISION RECEIVERS FROM KOREA

Request for the Establishment of a Panel by Korea

The following communication, dated 6 November 1997, from the Permanent Mission of Korea to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 10 July 1997, Korea requested consultations with the United States pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and Article 17 of the 1994 Anti-Dumping Agreement (the Agreement) with respect to the continuing imposition of anti-dumping measures *sensu lato* on Korean Color Television Receivers (CTVs) (WT/DS89/1 and Corr.1).

Consultations were held on 7 August 1997 and on 8 October 1997. However, no mutually satisfactory solution was reached.

Korea therefore requests the establishment of a Panel, with standard terms of reference, to examine the matter, in accordance with Article XXIII:2 of GATT 1994, Article 6 of the DSU and Articles 17.4 and 17.5 of the Agreement.

Measures at Issue

On 30 April 1984, the United States imposed anti-dumping duties on CTVs exported from Korea to the United States. Samsung Electronics Co., Ltd. (SEC) is one of the Korean producers affected by this anti-dumping duty order which remains in force until this day.

Since issuance of the order, the United States has determined that SEC did not sell CTVs in the United States at dumped prices from 1 April 1985 through 31 March 1991. Since 1 April 1991, SEC has ceased to export CTVs from Korea to the United States.

Thus, for the past twelve years, the United States has maintained the anti-dumping duty order on CTVs with respect to SEC, despite the absence of dumping and the absence of exports, but has never examined whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. SEC's repeated requests for revocation based on its history of no dumping, made in four separate administrative review requests, were each time rejected on procedural rather than substantive grounds.

SEC most recently requested revocation on 20 July 1995. The United States eventually decided to initiate a review on 24 June 1996. A preliminary decision to revoke has still not been taken as of this day.

Before initiating the review, the United States initiated an anti-circumvention investigation on 19 January 1996, only five months after receiving the 10 August 1995 petition by several labour unions (i.e., the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, and the Industrial Union Department). No determination in this anti-circumvention investigation has yet been made, while the United States is taking the position that the review determination must await the outcome of the anti-circumvention investigation. The United States has improperly relied on the initiation and pendency of this investigation as a basis for refusing to revoke the anti-dumping duty order on CTVs with respect to SEC.

Legal Basis for the Complaint

1. Failure to revoke the anti-dumping duty order on CTVs applicable to SEC

Korea is of the opinion that the ongoing imposition by the United States of anti-dumping duties on Korean CTVs exported¹ by the Korean producer SEC constitutes a violation of the United States obligations under GATT 1994 and the Agreement, and accordingly a prima facie nullification or impairment of Korea's benefits under the Agreement.

(1) The failure of the United States to review, on their own initiative, dumping and injury respectively and to revoke the order under the above circumstances constitutes a violation of Article 11.1 combined with Article 11.2, as well as Article 5.8 of the Agreement.

(2) The United States' rejection of SEC's request for revocation review on the ground of the United States concern about lack of current data as a result of "no shipment" violates Article 11.2 of the Agreement, which does not provide such a standard.

(3) The failure of the United States to revoke the order, coupled with the United States position that the outcome of the revocation review is dependent on the outcome of the anti-circumvention investigation, is in violation of Article 11.1 combined with Article 11.2 and Article 11.4 of the Agreement because it introduces considerations not mentioned in Articles 11.1 and 11.2, and because the review exceeds the Article 11.4 time limit and the requirement that review investigations must be carried out expeditiously.

(4) The United States' requirement (19 CFR §353.25(b)) that applicants file revocation requests only in "the third and subsequent anniversary months" is in violation of Article 11.2, which stipulates no time limit whatsoever for such requests. Accordingly, Korea finds the United States' rejection of SEC's revocation requests also in violation of the aforementioned Article.

2. Anti-circumvention investigation

Korea is of the opinion that the anti-circumvention investigation initiated on 19 January 1996 is in violation of Article VI of GATT 1994 and several provisions of the Agreement.

¹The term "exported" is used in a technical sense because SEC has not exported CTVs from Korea to the United States since 1 April 1991.

As an exception to the most-favoured-nation principle, the national treatment principle and the tariff bindings, Article VI of GATT 1994 and the Agreement must be construed restrictively. In the absence of a multilateral agreement on the propriety of anti-circumvention legislation, the United States must follow the normal procedures of GATT 1994 and the Agreement and, if it so wishes, may initiate a normal anti-dumping proceeding against Mexico and Thailand.

In this regard, the initiation of the anti-circumvention proceeding violates Article VI of GATT 1994 and Articles 1, 2.1 and 3.1 of the Agreement, because it may lead to the imposition of anti-dumping duties on imports of CTVs from Mexico and Thailand without findings of dumping and resulting injury ever having been made.

The refusal by the United States to conduct a standing inquiry before initiating its anti-circumvention investigation violates Articles 3.1, 3.6, 4.1 and 5.4 of the Agreement.

Failure to make a determination in the anti-circumvention investigation for more than 22 months violates Article 5.10 of the Agreement.

3. Failure to conduct a proper and unbiased review/investigation

Korea is of the opinion that the conduct of the United States in the revocation review and the anti-circumvention investigation, when examined and compared, violates Article X.3 of GATT 1994 and Article 17.6(i) of the Agreement, because the United States has not established the facts properly nor has it evaluated the facts in an unbiased and objective manner.

(1) The United States initiated the anti-circumvention investigation requested by the domestic industry within five months. SEC, on the other hand, had to wait nearly one year before the United States initiated the revocation review.

(2) The United States cannot tenably take the position that the revocation review must await the outcome of the anti-circumvention investigation. There can only be circumvention if there is an anti-dumping duty order in place to be circumvented. Therefore, the United States must first determine whether there are grounds to revoke the anti-dumping duty order; only if the answer is negative can an anti-circumvention investigation, even if it were to be justified under Article VI of GATT 1994 and the Agreement, *quod non*, be initiated. Conversely, a decision by the United States to revoke the anti-dumping duty order with respect to SEC would remove the legal basis for the anti-circumvention investigation, as far as SEC is concerned, as a result of which the investigation would have to be terminated forthwith.

(3) The initiation of the anti-circumvention investigation was premised in a significant part on information pertaining to a time period preceding the effective date of the law under which the investigation was authorized. Accordingly, the United States had no lawful basis to rely on this information as support for its decision to initiate the investigation.

(4) SEC had sufficient special reasons to justify its delays in requesting revocation review, including, but not limited to, the United States' consistent and excessive delays in issuing results of the administrative reviews. The United States, however, determined that its untimeliness was excusable, while SEC's untimeliness was not.

(5) While Korea believes that initial investigation and review are proceedings for assessment of basically the same circumstances, the United States applies different standards for determining *de minimis* dumping margins and negligible imports in two proceedings.

Korea would appreciate this request for the establishment of a Panel being inscribed on the agenda of the meeting of the DSB scheduled to be held on 18 November 1997. Korea reserves the right to put forward additional claims regarding the preliminary and final decisions to be taken by the United States which should be addressed under the Panel.