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

Request for Consultations by Korea

The following communication, dated 10 July 1997, from the Permanent Mission of Korea to the Permanent Mission of the United States and to the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of the United States pursuant to Article 17.3 of the Agreement on Implementation of Article VI of GATT 1994 (A-D Agreement), Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article XXII of GATT 1994, regarding the imposition of anti-dumping duties by the United States on imports of colour television receivers (CTVs) from the Republic of Korea.

Factual Summary

1. The United States has levied A-D duties on imports of Korean CTVs from April 1984 to the present. During this period, Korean CTV makers moved much of their production abroad and, since 1991, exports of Korean-made CTVs to the United States have ceased. Furthermore, a *de minimis* dumping margin of less than 0.5%, as defined in the US Tariff Act, had been assessed on CTVs made in Korea by Samsung Electronics Co. Ltd (Samsung) for the six year period from April 1985 until the time when the product ceased to be imported into the United States in early 1991.

2. Thus, for the past twelve years (from April 1985 to the present), the United States has maintained an A-D order on Samsung's CTVs despite the absence of dumping and the cessation of exports from Korea, but it has never examined the necessity of continuing to impose those duties. Samsung's four applications for revocation review based on its history of no dumping were all rejected on mere procedural, rather than substantive, grounds concerning the timing of such applications. The fifth application for revocation review filed by Samsung on 20 July 1995 was not acted upon for 11 months with no legitimate justification given for the delay. Since the United States' eventual decision on 24 June 1996 to initiate the review, over one year has elapsed without any definitive result. The Government of the United States has explained that the result of this review must await the outcome of circumvention proceedings initiated in 1996.

3. Apart from this failure to review the need for the continued imposition of the A-D duties, the United States decided, on 19 January 1996, to initiate a circumvention investigation by receiving a petition from certain US labour unions. Eighteen months have since passed without a determination on this matter.

A-D measures and reviews

4. In principle, maintaining A-D duties on imports which cause no material injury (in this case, due to the absence of dumping and the cessation of exports) contravenes Article VI.6(a) of GATT 1994 and Article 11.1 of the A-D Agreement. In addition, certain other actions by the United States violate various provisions of the A-D Agreement, including Articles 3.1, 3.2, 5.8 and 11.4.

5. Articles VI.1 and VI.6(a) of GATT 1994 and Articles 1 and 11.1 of the A-D Agreement stipulate that A-D measures shall be applied only if there is dumping and if it causes or threatens material injury. They also establish the important principle that A-D measures shall be applied to the minimum extent necessary, specifying that A-D duties shall remain in force only as long as and to the extent necessary.

6. Therefore, it is a contravention of Article VI of GATT 1994 and Article 11.1 of the A-D Agreement that the United States has maintained A-D duties for the past twelve years. The order should have been revoked in light of the absence of Samsung's dumping and its subsequent cessation of exports of CTVs to the United States from Korea. Under these circumstances, there is no conceivable possibility of dumping and material injury.

7. The lack of material injury is clear when the circumstances are assessed under the A-D Agreement's guidelines to determine the effect of imports on the domestic industry, provided for in Articles 3.1 and 3.2 of the Agreement. Article 3.1 states that a determination of injury shall involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices, and (b) the consequent impact on domestic producers of the like product. Article 3.2 provides that with regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports. Consequently, the absence of dumping for six years and the cessation of exports for the subsequent six years fully demonstrate that, under the standards set out in Articles 3.1 and 3.2, there can be no injury. In this regard, the United States is in violation of Articles 3.1 and 3.2 of the A-D Agreement.

8. With regard to CTVs manufactured by Samsung, the existence of dumping cannot be substantiated since the company has been assessed *di minimis* margins for six consecutive years through the US Department of Commerce's annual administrative reviews.

9. Article 5.8 of the A-D Agreement, which demands immediate termination of an investigation in the case of *de minimis* dumping margins, is relevant to the application of Article 11.2, which provides for revocation of an A-D order if it is no longer necessary to counteract dumping. Having found *de minimis* margins for Samsung for six consecutive years through its annual reviews, the United States should have immediately initiated a revocation review on its own initiative under Article 11.2 and, consequently, terminated its A-D order pursuant to Articles 5.8 and 11.2 upon the completion of this review.

10. The provision of the US Tariff Act which defines a *de minimis* margin of less than 0.5% as eligible for revocation is in contravention of Article 5.8 of the A-D Agreement which stipulates a *de minimis* margin of less than 2%.

11. In order to implement Article 11.1 of the A-D Agreement, Article 11.2 of the same agreement specifies that the authorities shall review the need for the continued imposition of A-D duties on their own initiative, or upon request by any interested party. Thus, despite the fact that there is no material injury and (in Samsung's case) no history of dumping, the United States has neglected its obligation to self-initiate a revocation review, as required in the first sentence of Article 11.2. Moreover, the

United States has refused to consider Samsung's repeated requests for revocation, insisting on strict adherence to procedural provisions of US domestic regulations (missing in the A-D Agreement), and has also failed to act on Samsung's request for a changed circumstances review for eleven months - acts that all violate the second sentence of Article 11.2 by unduly restricting the right of interested parties to request a review for the purpose of obtaining revocation.

12. By failing to self-initiate a revocation review and by restricting Samsung's right to request a review, the United States has evaded its Article 11.2 obligations. As a consequence, it still maintains A-D duties, which, if reviewed, should have been revoked pursuant to the third sentence of Article 11.2. All of these actions also constitute a violation of Article 11.1 of the A-D Agreement.

13. In addition, the failure to reach a determination thus far in the Commerce Department's revocation review initiated on 24 June 1996 also violates Article 11.4, which provides for expeditious conclusion of such reviews within the normal 12 months of their initiation.

Circumvention investigation

14. The circumvention investigation initiated on 19 January 1996 is in contravention of Article VI of GATT 1994 and Article 1 of the A-D Agreement, and should thus be immediately terminated.

15. Article VI.1 of GATT 1994 defines dumping as the introduction of products of one country into the commerce of another country at less than normal value, and Article 2.1 of the A-D Agreement defines it as a situation in which the export price of the product exported from one country to another is less than the comparable price for the like product in the exporting country.

16. It is clear from these provisions that if another country becomes the exporting country, dumping should be separately determined because this change would result in a consequent change of the two basic parameters in determining whether there is dumping: an export price and a normal price in the exporting country. Nonetheless, by effectively considering exports from Korea and exports from Mexico and Thailand as identical through its circumvention concept, the United States misinterpreted the basic concept of dumping established throughout the GATT and the A-D Agreement, thus apparently violating, in particular, Article VI.1 of GATT 1994 and Article 2 of the A-D Agreement.

17. It is, therefore a violation of Article VI of GATT 1994 and Article 1 of the A-D Agreement to initiate a circumvention investigation as an extension of existing A-D measures without initiating a new dumping (and injury) investigation under the GATT and the A-D Agreement.

18. Setting aside issues of principle, the US circumvention investigation violates many provisions of the A-D Agreement, including Articles 3.1, 3.6, 4.1, 5.4 and 5.10.

19. Labour unions such as the International Brotherhood of Electrical Workers and others, the petitioners of the circumvention investigation in question, are composed of employees of assemblers and producers of a diverse variety of electric or electronic products. Therefore, they cannot be said to represent employees of the domestic industry of the like product, namely, CTVs.

20. The US authorities neglected to examine the petitioners' representativeness of the domestic industry, and further refused Korean companies' request for such an examination, thus violating Articles 3.1, 3.6, 4.1 and 5.4 of the A-D Agreement.

21. Failure to make a determination in the ongoing investigation after 18 months also violates Article 5.10 of the A-D Agreement.

Link between the revocation review and the circumvention investigation

22. It was arbitrary and illogical for the United States to quickly respond to the request for a circumvention investigation while delaying for one year its response to Samsung's request for a revocation review. This action is all the more questionable, given that a circumvention investigation, even if it were to be justified under the WTO Agreement, can only be undertaken if there is an A-D order to circumvent.

23. Furthermore, the Korean Government believes that it is unreasonable for the United States to investigate the alleged circumvention without first verifying the justification of the A-D order. Similarly, the attempt to link the results of the circumvention investigation with the revocation determination constitutes a further breach of the proper procedural sequence. Indeed, a decision by the US authorities to revoke the A-D order against the Korean CTVs would remove the legal basis for the anti-circumvention investigation, which would need to be terminated forthwith.

24. Thus, extending the review period by making the above-mentioned linkage constitutes a violation of Article 11.1 of the A-D Agreement. This Article is interpreted to require the immediate termination of the A-D order in the absence of dumping which is causing injury.

In light of the above, the Government of Korea considers that the benefits accruing to it under GATT 1994 and the A-D Agreement are being nullified or impaired by the US actions regarding the A-D and related measures against imports of CTVs from Korea.

The Government of Korea reserves its rights to raise any additional factual or legal points concerning this issue during the consultations.

I look forward to receiving your reply to this request and to fixing a mutually convenient date for consultations.