

EMBASSY OF THE REPUBLIC OF KOREA
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November 7, 2003

Honorable James S. Jochum
Assistant Secretary for Import Administration
U.S. Department of Commerce
Pennsylvania Avenue and 14th Street, NW
Washington, DC 20230

Re: *Comments of the Government of the Republic of Korea on the
Appropriateness of Deducting CBD and Section 201 Duties in
Dumping Margin Calculations*

Dear Mr. Jochum:

By public notice in the Federal Register, the Department of Commerce ("DOC") is requesting rebuttal comments on the appropriateness of deducting countervailing duties and Section 201 duties from export price or constructed export price in dumping margin calculations. In response to the request, the Government of the Republic of Korea would like to offer the following comments.

For reasons elaborated below, the Government of Korea believes that the proposed change in dumping margin calculations would not be consistent with the relevant WTO Agreements and that there has been no development that can justify a departure from the DOC's existing practice. The Government of Korea, therefore, strongly requests the DOC not to revise its current dumping margin calculation method used for the past twenty years.

Primarily, the deduction of remedial duties other than anti-dumping duties from the export price would lead to excessive protection against the same products.

With the proposed deduction of CVD and Section 201 duties from the export price, it is foreseeable that dumping margins would either be inflated or created where no dumping margins would have been otherwise found. Any methodology that artificially increases or creates dumping margins would be inconsistent with Article 9.3 of the WTO Anti-Dumping Agreement, which mandates that "the duty collected must not exceed the margin of dumping."

Furthermore, the deduction of Section 201 duties from the export price would result in applying the 201 duties twice: firstly as 201 duties and then as anti-dumping

duties. This doubling effect of 201 duties would be against the WTO Safeguard Agreement requiring that a safeguard measure be applied only to the extent necessary. For this very reason, the DOC and United States International Trade Commission have consistently maintained that it would be inappropriate to make such deduction in calculating dumping margins.

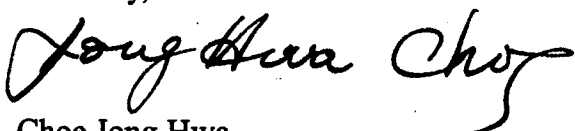
Secondly, there exists no new development that can justify a departure from DOC's longstanding practice that has also been endorsed by the U.S. courts.

Should the pertinent statute be interpreted correctly, the proposed change to the method of anti-dumping duty calculation must not be justified. The DOC is required to deduct "the amount, if any, included in such price, attributable to any additional costs, charges, or expense, and the United States import duties, which are incident to bringing the subject merchandise" to the United States. See 19 U.S.C. § 1677a(c)(2)(A) (emphasis added). Based on this statutory provision, the U.S. industry is now arguing that countervailing and Section 201 duties should be considered "the United States import duties" requiring deduction from export price.

Indeed, neither the statutes nor the DOC's regulations provide clear definition of the term, "the United States import duties." However, given that the DOC's longstanding practice is not to deduct any type of remedial duties, "the United States import duties" has been consistently interpreted as "normal import duties." In other words, remedial duties, whether countervailing or Section 201 duties, are not such "normal import duties" as to be deducted from export price. Rather, they are temporary and special duties introduced for specific goals to counteract unfair trade or to provide emergency remedial actions to an industry in severe and extraordinary circumstances. The DOC has taken this interpretation, which has repeatedly been endorsed by the U.S. courts, as its standard practice for the past twenty years.

In conclusion, the Government of Korea is of the view that DOC's proposed change in dumping margin calculations would lead the DOC not only to act inconsistently with its obligations under the WTO Agreements, but also to contravene its own practice, which has been consistently upheld by the U.S. courts.

Sincerely,



Choe Jong-Hwa
Minister for Economic Affairs