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Committee on Anti-Dumping Practices

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KOREA - ANTI-DUMPING DUTIES ON IMPORTS OF POLYACETAL RESINS FROM THE UNITED STATES

Communication from the United States

Addendum

The following communication, dated 14 February 1992, has been received by the Chairman of the Committee from the United States Trade Representative.

This letter relates to the request of the United States for establishment of a panel under Article 15:5 of the Anti-Dumping Code to adjudicate US concerns relating to a determination by the Government of Korea concerning imports of polyacetal resins from, inter alia, the United States.

I have been advised that to avoid any possibility of misunderstanding as to the scope of the mandate of the panel (once it is established) it would be preferable to amplify the concerns of the United States in this proceeding.

In our request for a panel (ADP/72) we stated that:

"Our specific concerns in this regard were described in detail in our requests for conciliation (ADP/64 and ADP/64/Add.1) and in our statements at the Committee's October 4, 1991, conciliation meeting."

Drawing from those documents, let me state below the issues that the United States will ask the panel to address.

The United States contends that the affirmative determination of injury made by the Korean Trade Commission (KTC) in the anti-dumping investigation concerning polyacetal resin imported from the United States and Japan departed from the standards set forth in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, and was therefore, as a matter of law, inconsistent with Korea's obligations under the Agreement. The relevant standards in the Agreement which were not observed in this case were the following:

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1. Article 3:1, which requires that a determination of material injury "involve and objective examination of both (a) the volume of the dumped imports and their effect on prices in the domestic market for like products, and (b) the consequent impact of these import on domestic producers of such products."
2. Article 3:2, which requires "consider[ation of] whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing country" and requires that consideration be given to "whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product in the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree, or prevent price increases, which otherwise would have occurred, to a significant degree."

In particular, the failure to meet these Code requirements is demonstrated in the KTC's presumptions that it is "normal" for products of a new domestic producer to replace those of established importers and that imports exerted downward pressure on prices, despite the absence of evidence that this was the case.

3. Article 3:3, which requires that investigating authorities take into account "all relevant economic factors and indices having a bearing on the state of the industry, such as actual and potential decline in output, sales, market share, profits, productivity, return on investments or utilization of capacity, factors affecting domestic prices, actual and potential negative effects on cash flow, inventories, employment, wages growth, ability to raise capital or investments."

In particular, the KTC determination demonstrates that the KTC relied on a presumption of an adequate level of profitability for the domestic industry and that the industry could not increase its profitability through increased production and/or lower raw material costs. The KTC determination also relied on a materially erroneous production capacity figure in calculating industry break-even profit level; attributed injury to imports despite its recognition elsewhere that injury resulted from the industry's exchange rate losses, a factor that is unrelated to imports; and appears to rely on information, concerning, for example, domestic inventories and lost sales, that was not part of the investigation record.

The KTC's determination, in the opinion of the United States, was contrary to the above-cited legal requirements of the Agreement.

I trust that the above recitation will ensure that the scope of the complaint of the United States in this matter is properly understood.