

Committee on Anti-Dumping Practices

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

Report of the Panel

Corrigendum

The attached pages were inadvertently not included in document ADP/92 dated 2 April 1993. These pages should be treated as an integral part of that document, i.e. the Report of the Panel on "Korea - Anti-Dumping Duties on Imports of Polyacetal Resins from the United States".

* English only.

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

ADP/72

27 January 1992

Special Distribution

Committee on Anti-Dumping Practices

Original: English

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

Request by the United States for the Establishment of a Panel under Article 15:5 of the Agreement

The following communication, dated 21 January 1992, has been received by the Chairman of the Committee from the United States Trade Representative.

My authorities have instructed me to request that the Committee establish a panel pursuant to Article 15:5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (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.

On 19 June 1991, the United States requested consultations with the Government of Korea under Article 15:2, with a view to reaching a mutually satisfactory resolution of this matter. On 24 July, representatives of my Government met with Korean Government representatives in Geneva to discuss the determination. Representatives of the US and Korean governments held a second round of consultations in Geneva on 30 September. On 4 October, the Committee on Anti-Dumping Practices conducted a conciliation meeting.

Unfortunately, neither the consultations nor the conciliation by the Committee resulted in the United States and Korea arriving at a mutually agreed solution. Accordingly, it continues to be the view of my Government that, as a result of the Korean decision, benefits accruing to the United States under the Anti-Dumping Code are being nullified or impaired and that the achievement of the proper application of the Code is being impeded as a result of the Korean Government's decision in this case. 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 4 October 1991 conciliation meeting.

We request that the Committee establish a panel to consider this matter at the earliest opportunity.

GENERAL AGREEMENT ON

TARIFFS AND TRADE

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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:

. / .

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.

ANNEX 2

PROPRIETARY VERSION

DETERMINATION OF THE KOREAN TRADE COMMISSION

April 24, 1991

Decision No. 91-6

Investigation No.: Taemu 40-6-90-2

Subject: Determination on Injury to the Domestic Industry by Reason of Dumped Imports of Polyacetal Resin

With regard to the above subject matter, the Korean Trade Commission ("Commission"), after carefully reviewing the record, determines as follows:

DETERMINATION

The Commission hereby determines that dumped imports of polyacetal resin of middle viscosity, low viscosity and audio/video grades (HSK, 3907-10-0000) from Asahi Chemical Industry Co. Ltd. of Japan, and E.I. du Pont de Nemours, Inc. and Hoechst Celanese Corp. of the United States, caused material injury to the domestic industry as set forth in Article 10-1 of the Customs Act.

Basis for Determination

1. Like Product/Domestic Industry

Polyacetal resin, the product covered by this investigation, is a plastic substance used in manufacturing electronics, machinery and automobile parts. Polyacetal resin is generally

classified into Homo-Polymer or Co-Polymer types, depending on the processing method, and can further be categorized by grade as high viscosity, middle viscosity, low viscosity, audio/video, and special grades, depending on the degree of polymerization and types of additives used in the production process.

In deciding to initiate this investigation, the Ministry of Finance ("MOF"), after deliberation by the Customs Deliberation Committee ("CDC") in accordance with Article 4-5-(1) of the Presidential Decree of the Customs Act ("the Decree"), ruled that Homo-Polymer and Co-Polymer were to be considered as a like product for the purpose of this investigation.^{1/} the MOF further limited the scope of investigation to middle viscosity, low viscosity and audio/video grade resins, thus excluding from the investigation high viscosity and special grade resins, which are not manufactured by the domestic industry.^{2/}

The Commission examined whether it would be possible to differentiate the three grades of polyacetal resin covered by this investigation as separate categories. For the reasons stated below, however, the Commission determined that it would be difficult to do so. First, in order to conduct investigations for all three grades of polyacetal resins as separate categories of like product, information on imports and economic indicators must

^{1/} The term "like product" hereinafter shall refer to products that are the "same or similar to the dumped products", as set forth in Article 4-4-(1) of the Decree.

^{2/} See CDC Ref. 69 and the MOF Notice 90-25 (Aug. 25, 1990).

be available for each grade of resin. However, in the case of the domestic industry, middle viscosity, low viscosity, and audio/video grade resins are manufactured on the same production line, and it is easy to shift production from one grade to another. Accordingly, any production and inventory data on a grade-specific basis will have little relevance, and it is especially difficult to break down profit and other financial data on the basis of each grade. The Commission, therefore, decided not to differentiate the three grades of products under investigation -- middle viscosity, low viscosity, and audio/video grades -- and decided to investigate them as one like product. further, the Commission determined that there was one domestic industry consisting of one domestic producer, the Korean Engineering Plastic Co., Ltd. ("KEP").^{3/}

2. The Condition of Domestic Industry

The domestic industry can be considered as having achieved normal operations during the investigation period, as indicated by the fact that the domestic industry in 1989 maintained a capacity utilization rate of 90.1%, producing 10,005 tons out of a total production capacity of 11,000 tons (optimal production capacity of 10,000 tons).

^{3/} On the issue of excluding related producers from the definition of the domestic industry under Article 4-4-(1) of the Decree, the MOF, after the CDC's examination, decided to initiate a full investigation on the basis of its finding that KEP had standing to file an antidumping petition.

the average price continued to decline and by the first quarter of 1990, it decreased to [] Won per ton, a 6.3% decline compared to the same period of the previous year. The ex-factory price by each grade also showed a declining trend: middle viscosity grade by 13.7%, low viscosity grade by 14.3% and audio/video grade by 3.3%.

In light of these facts, the Commission recognized that there was a substantial loss to the domestic industry's sales revenue during the period of investigation due to price depression.

The domestic industry's 1989 financial statement records a net profit before tax of 205 million Won (i.e., a profit rate of 1.6%). However, the domestic industry is regarded in Korea as a "High-tech materials" and "capital intensive equipment" industry, which requires enormous investments. The domestic industry also needs to make continuous R&D investments for product diversification and new product development. Further, the domestic industry requires considerable internal reserves for equipment replacements. Therefore, the domestic industry's net profit (before tax) rate of 1.6%, which falls short of the domestic chemical industry's 3.24% average profit rate, cannot be regarded as sufficient to permit the domestic industry to maintain normal operations and development.

In addition, based on the domestic industry's 1989 operational results, the Commission also examined the domestic

industry's projected performance in terms of cuts in production costs, increases in revenues, etc.

Of the optimal production capacity of 10,000 tons, the domestic industry produced 10,005 tons. Therefore, it will be practically impossible to lower production costs and improve profitability by increasing its capacity utilization.

As the domestic industry shipped 89.1% of its production volume, improving sales revenue by increasing shipments will be difficult.

As the domestic industry elected to use the straight-line depreciation method, improving profit through the future reduction of depreciation costs is not possible.

Therefore, not taking into account favourable market forces that are beyond the domestic industry's control, such as falling material costs and interest rates, ameliorating the domestic industry's financial performance without increasing price appears to be difficult. As a result, under the present circumstances of stagnant domestic demand and depression of actual prices, the effect of price depression has not only worsened the domestic industry's financial condition, but has also made it considerably more difficult for the domestic industry, which still has a weak industrial basis, to secure the profits necessary in the future for normal operations and growth.

In addition to considering the issues related to material injury and a threat of injury to the domestic industry as noted

above, the Commission also considered the issues that relate to material retardation of the establishment of the domestic industry, in light of the domestic industry's additional production facility with a capacity of 10,000 tons, which was in the process of operational testing during the investigation period. The domestic industry began operating its first production facility in October 1988, and completed the construction of the second 10,000 ton production facility in June 1990. The domestic industry currently has a total production capacity of 20,000 tons.

Although, during the investigation period, certain economic indicators -- such as production, capacity utilization, shipments, and market share -- seemed to show a favourable situation, the inventory level increased sharply after the first quarter of 1990, and price has shown a downward trend. As to profit, although the domestic industry's 1989 financial statement records 205 million Won in net profit before tax, considering that 228 million Won in gain was from foreign currency exchange transactions, the domestic industry can be said to have suffered an actual loss.

In 1990, the domestic industry experienced a much larger loss (the 1990 financial statement shows 464 million Won in losses). Further, the prospect of the likelihood of improvements to the domestic industry's financial condition was poor.

Considering the domestic industry's financial condition and the fact that it is a new entrant which has been in operation for only a year and six months, the domestic industry does not seem to have attained stable operations (a reasonable break-even point). Although the volume of the dumped imports has fallen by almost one half since the domestic industry began production, if the dumped imports continue to depress the domestic price, it will be impossible for the domestic industry to secure a reasonable profit and, therefore, the domestic industry will continue to experience financial deterioration.

Conclusion

Having examined various economic factors and indicators which are relevant to the evaluation of the domestic industry's condition, the Commission hereby determines that the domestic industry has suffered material injury, etc. as defined in Article 10-1 of the Customs Act.

3. Causation

In order to render a final decision on the issue of injury to the domestic industry by reason of the dumped imports, the Commission examined causation between the injury to the domestic industry and the dumped imports.

In its decision to initiate this investigation, the MOF limited the foreign exporters that are subject to the investigation to Asahi, Hoechst and Du Pont.^{4/} This was

^{4/} See Kwan Hyup 22710-49 (Feb. 9, 1991).

reconfirmed by the MOF in response to the Commission's enquiry. As to the dumping margin, the Commission was informed by the MOF that, according to the Office of Customs Administration, which conducted the investigation of sales at less than normal value, the dumping margin rates for the three companies ranged from 20.6% to 107.6%.^{5/}

Based on the finding that during the investigation period the imports from the three respondent companies were competing with the domestic goods and that they were sold in the domestic market during the same period, the Commission decided to cumulate the imports from the three companies in examining causation.

The volume of the dumped imports continuously decreased and their market share also fell from 39.5% in the first quarter of 1989 to 23.7% in the first quarter of 1990. The decline in the volume of dumped imports is a normal occurrence because the domestic market is in the process of import substitution. However, the fact that the dumped imports continued to account for a substantial share of the domestic market demonstrates that notwithstanding the reduction in import volumes, imports continued to have a real impact on the domestic price.

The Commission analyzed the impact of the dumped imports on domestic prices by focusing on the two major distribution channels: direct sales to end-users and sales to distributors.

^{5/} Kwan Hyup 22710-145 (Apr. 16, 1991).

In the case of direct sales prices to end-users, the average dumped import price^{6/} was higher than the domestic price by 7.7% in the first quarter of 1989, but it continued to decline until the last quarter of 1989. The domestic price, on the other hand, showed an increasing trend from the first quarter of 1989 to the third quarter of that year, notwithstanding the declining trend in import price, but it continued to be slightly lower than the import price. However, since the fourth quarter of 1989, import and domestic prices have been at similar levels, and in the first quarter of 1990, the two prices have increased slightly.

In the case of sales prices to distributors, ^{7/} the domestic price was 3.6% higher than the import price in the first quarter of 1989. Thereafter, both import and domestic prices declined sharply. In comparison to corresponding prices in the first quarter of 1989, the import price in the first quarter of 1990 fell by 16.2%, and the domestic price by 20.9%.

The respondents argued that the price depression in the domestic market was caused by the petitioner, which took a leading role in setting the price, and that the import price was set at a level competitive to the petitioner's price in order to maintain their market shares. However, it is reasonable for a new entrant to sell at a price slightly below the established price in order

^{6/} The weighted average CIF import price of the three respondent companies.

^{7/} The weighted average sales price to the distributors of the two US companies, Hoechst Celanese and Du Pont.

to secure customers. Therefore, in examining the effect of dumped imports on the domestic price, the Commission carefully examined the presence of considerably low import prices and the issue of whether the domestic price was either suppressed or depressed by reason of dumped imports.

Conclusion

Based on the above analysis, although the import price does not appear to be considerably lower than the domestic price, the import price has nonetheless continued to decline in the course of price competition with the domestic product. Therefore, the Commission finds that the import price caused the domestic price to be suppressed and depressed. Accordingly, the Commission hereby concludes that there is a causal relationship between the dumped imports and the injury to the domestic industry.