KIEP Working Paper No. 93-04 June 1993

A NOTE ON KOREA'S ANTI-DUMPING SYSTEM AND PRACTICES

Wook Chae

KIEP
Working Paper

KOREA INSTITUTE FOR INTERNATIONAL ECONOMIC POLICY

A NOTE ON KOREA'S ANTI-DUMPING SYSTEM AND PRACTICES

Wook Chae
Korea Institute for International Economic Policy

* This paper is an updated version of the one presented at the Korea-America Economic Association Seminar on Anti-dumping and Korean Industries, held in Anheim, California, on January 5~7, 1993. And it is to be presented at the seventh Trade Policy Forum under the Pacific Economic Cooperation Council, held in Puerto Vallarta, Mexico, on June 23~25, 1993. The views expressed in this paper are those of the author and do not necessarily represent the views of KIEP.

Table Of Contents

Ⅰ. Recent Economic Environments in Korea

Since Korea joined GATT in 1967, it successfully pursued strong export-oriented economic policies until the late 1970's. During this period, Korea maintained an unprecedentedly high economic growth rate under high tariffs and various non-tariff protective measures allowed to it because of its status as a developing country suffering from a large trade deficit.

Despite economic recession and spreading protectionism among developed countries during the early 1980's, Korea began to open its domestic market in order to become internationally competitive and structurally advanced through the promotion of competition and the efficient allocation of resources.

However, as Korea recorded substantially high trade growth which turned into a trade surplus during the period from 1986 to 1988, developed countries' pressures to open the Korean domestic market became intensified through both bilateral as well as multilateral trade negotiations. Not only in response to these pressures but also to promote competition and the reorganization of industrial structures, Korea has pursued active import-liberalization policies, lifting various import-restrictive measures and relaxing regulations on foreign trade to a substantial degree.

Deregulation on foreign trade becomes apparent if trends are examined in import-liberalization ratios and average tariff rates during

the period, 1983~1994. As shown in 〈Table 1〉, import-liberalization ratios have increased markedly from 80.3% in 1983 to 97.7% in 1992, expected to reach 98.5% in 1994. Since 273 out of 283 import-restricted items (by HS 10 units) are agricultural and fishery items which are internationally non-competitive for structural reasons including small-scale farming and inefficient management, it can be said that virtually all manufactured items are liberalized as of now. Along with the expansion of import-liberalization, average tariff rates have sharply decreased from 23.7% in 1983 to 10.1% in 1992, expected to reach 7.9% in 1994. This implies that the rates officially announced for 1994 will

〈Table 1〉 Trends in the Average Tariff Rates and Import-Liberalization Ratios in Korea (1983~1994)

Classification	1983	1985	1987	1988	1989
Average Tariff Rates	23.7	21.3	19.3	18.1	12.7
Import-Liberalization Ratios	80.3	87.7	93.6	94.8	95.5

Classification	1990	1991	1992	1993	1994
Average Tariff Rates	11.4	11.4	10.1	8.9*	7.9*
Import-Liberalization Ratios	96.4	97.2	97.7	98.1*	98.5*

Source: Ministry of Finance, Korea

Note: * indicates officially announced figures

match the level of those currently achieved in developed countries.

As a result of the active deregulation on foreign trade, a sharp increase in imports existed, and, consequently, Korea's trade balance turned from surplus to deficit in 1990. To make matters worse, the over-heated domestic economy not only caused inflationary pressures but also further accelerated imports. These factors, together with a rapid increase in wages, deteriorated the price competitiveness of Korean products in the international market.

Korea is now facing serious economic hardships both domestically and abroad; that is, Korean products are not competitive enough to deter the low-priced products rushing into the domestic market from both developing and developed countries, and to maintain the market share abroad.

However, as a country that became an IMF Article 8 country in November, 1988 and that decided not to invoke Article 18(B) of GATT in October, 1989, Korea can no longer depend on import barriers or subsidies to overcome current economic hardships. Furthermore, when the on-going Uruguay Round is successfully completed, the number of items and range of tariff rates over which the Korean government may have discrete control shall be sharply diminished as concessionary items expand and the concessionary rates diminish(See 〈Table 2〉).

Such reasons justify increasing concerns and the need for enforcing the industry injury-relief system, including anti-dumping and safe-

〈Table 2〉 **UR/Tariff Rates and Items Under Concession**

Classification	Pre - UR	Post - UR
Concessionary Rates	17.9 %	12.2 %
Concessionary Items	10 %	83 %

Source: Ministry of Finance, Korea

guard measures which may be applied in exceptional cases, as stipulated by GATT.

Ⅱ. Brief History of Korea's Anti-dumping Practices

Before we review the history of Korea's anti-dumping practices against foreign products, it seems worthwhile to examine how frequently Korean products have been targeted by foreign countries for anti-dumping practices.

It can certainly be said that Korea was one of the most seriously affected countries of foreign anti-dumping practices in the past. By 1992, a total of 146 complaints were made against Korean products by foreign countries. Out of 146 complaints, most of which were from four major developed countries, including the United States, the European Community, Canada, and Australia, anti-dumping actions have actually been applied to 69 cases, among which definitive duties have been imposed for 63 cases and price undertakings have been made for 6 cases. As of now, 14 cases are under investigation, while 37 cases are still under restriction (See 〈Table 3〉).

〈Table 3〉 **Foreign Anti-dumping Practices Against Korea**

(As of Dec. 31, 1992)

Countries / Classification	US	EC	Canada	Australia	Others	Total
Complaints	34	25	27	57	3	146
Definitive Anti-dumping Duties	13	8	19	23	-	63
Price-Undertakings	-	5	-	1	-	6
Others	17	7	7	29	3	63
Under Investigation	4	5	1	4	-	14
Under Restriction	12	12	6	7	-	37

Source: Korea Foreign Trade Association, 'Overview on Import Restrictions of Major Industrialized Countries,' April, 1993.

On the other hand, while Korea's anti-dumping system was originated under the Anti-dumping Tariff Act of 1963, it had not been utilized until the mid-1980's since Korea did not recognize the need for such a system, owing to relatively high trade barriers existing until then.

However, as the number of cases of industry-injuries caused by import-surges and dumping practices increased in the process of import-liberalization, Korea came to realize the need for the anti-dumping system established by GATT and, hence, joined the GATT Anti-dumping Agreement in 1986. Thereafter, the Tariff Act was revised three times, specifically in 1987, 1988, and 1990 in order to incorporate GATT rules. Additionally, the Korea Trade Commission(KTC) was

〈Table 4〉 **Anti-dumping Cases Initiated by Korea Against Foreign Products**

Product	Country	Type of Action	Data		
			Case Started	Restriction Started	Case Closed
Dicumyl Peroxide	Japan Taiwan	Price Undertaking	86.4	87.1	90.1
Acet Aldehyde	Japan	No Injury	86.4	-	86.12
Alginic Acid[1)]	Hong Kong	No Injury	-	-	-
Slide Fastner	Japan	No Injury	87.1	-	88.2
Alumina Cement	France	Price Undertaking	89.1	89.9	91.9
Organic Peroxides[2)]	Japan Holland	Petition Dropped	-	-	-
Polyacryl-Amid	U.K. France Germany	No Injury	90.2	-	91.1
Polyacetal Resin	U.S. Japan	Anti-dumping Duties	90.8	91.9	Current
H-Acid	China	Petition Dropped	92.8	-	-
Phosphoric Acid	Japan India China	Anti-dumping Duties	92.8	93.4	Current
Ball Bearing	Thailand	Anti-dumping Duties	92.8	93.4	Current
Sodium Carbonate	China	-	93.2	-	Under Investi gation
PS Printing Plate	Japan	-	93.4	-	Under Investi gation

Source: Ministry of Trade, Industry & Energy, Korea.
Note: 1) Investigation was not initiated due to the decision of 'no-injury' by the Korea Trade Commission.
2) Investigation was not initiated due to agreement among the interested Parties.

established under the Ministry of Trade, Industry & Energy in 1987 to examine and determine, pursuant to the Foreign Trade Act of 1986, whether domestic industries were injured by foreign imports.[1)]

Since 1986, anti-dumping investigations have been officially initiated for 11 cases out of 13 petitions. The two cases were left uninvestigated, resulted from either agreements between the interested parties or rejection by the KTC. Also, out of the 11 cases investigated, two cases were resolved by price-undertakings, four cases were found to be free of injury, three cases were put on restriction for definitive anti-dumping duties, and the remaining two cases were left for further investigation.

Ⅲ. Characteristics of Anti-dumping Related Industries

As mentioned above, due to the expanded concession level, the Korean government now has a limit in adjusting the tariff rates on items that are damaged by dumping practices or import-surges; hence, it may become necessary to reorganize the Korean injury-relief system so that the application of such a system can be internationally justified in terms of GATT rules.

When increasing concerns for the anti-dumping system and the increasing number of cases of industry injuries caused by dumping

1) The Ministry of Trade & Industry and the Ministry of Energy & Resources merged in 1993 to become the Ministry of Trade, Industry & Energy.

practices are considered, 13 petitions during seven years may reflect that the system has not been well utilized by the injured industries.[2)]

While numerous reasons may exist, the major causes will be discussed below.

First, since dumping cases involve so many technical concepts and languages, as well as complicated procedures, it may have been difficult for small and medium-sized (S & M) companies to effectively utilize the system; that is, in order to provide the investigative authority with the data and information relevant to investigation, S & M companies may have to hire legal and auditing experts to examine the validity of legal procedures, as well as to process and analyze the relevant statistics, which is all quite expensive. In addition, in order to pass the complicated procedures, personnel and time which can be fully committed to the case must exist. This may, however, be too burdensome to S & M companies that are usually short on personnel even during standard operations. The bureaucratic process of the investigative authority sometimes requires too much data, which is an additional burden on S & M companies.

Second, companies are often reluctant to disclose confidential information in the investigative process. No company is prepared to disclose confidential information or essential data concerning pricing or market shares in any public arena. Although such information or

2) In fact, 5 out of 13 petitions have been made since late 1992, implying that use of the anti-dumping system was only recently activated.

data may be protected under confidentiality provisions, the companies concerned may desire non-disclosure even to the investigative authorities.

Third, Korean companies that usually have a high external dependency on technology or essential parts tend to avoid any disputes with their supplying sources. It may be risky for the Korean companies to file an anti-dumping application against foreign companies transferring technology or supplying essential parts due to possible negative repercussions such as retaliation.

Fourth, even when a foreign company undersells a product which a Korean company has newly developed, the Korean company is often reluctant to file an anti-dumping application fearful of possible patent disputes. A foreign company with monopoly power in a particular Korean market tends to keep out new domestic producers by reducing prices to a substantial degree once a Korean company successfully develops a like product. Even though this type of predatory behavior is often practiced by foreign companies, domestic companies avoid filing anti-dumping applications because they are not sure whether the products were invented or imitated. If the products are simply imitated, then the case will be brought into a new patent dispute with foreign companies, which is very risky to the domestic S & M companies.

Now, it may be worthwhile to examine the characteristics of those Korean industries for which anti-dumping investigations have been initiated.

First, most of the injured industries are hi-tech industries that require a high level of investment for establishment.[3] Since these industries require high fixed costs, the existing companies, in general, have a much stronger price-competitiveness compared to those that are newly starting. This phenomenon is contrasted to that of developed countries where anti-dumping investigations are usually initiated for declining domestic industries.[4]

Second, only a few companies constitute an industry, hence, if they are driven out of the industry, foreign companies may easily exercise a monopoly power in the domestic market; that is, the structure of the industry makes it easier for foreign companies to practice predatory dumping. This phenomenon is also contrasted with that of developed countries where anti-dumping applications are filed by many associated companies.

Third, most of the items concerned were those with high price-elasticity. Therefore, a small change in pricing has a great effect on consumer demand, allowing dumping to be highly effective in securing market share.

Fourth, most of the complaints filed so far were by S & M manufacturing companies which were hiring less than 100 employees. This implies that even when injuries are clearly observed, the S & M companies tend to avoid filing anti-dumping applications due to the

3) Refer to items in the first column of 〈Table 4〉.

4) Refer to items in 〈Table 5〉.

shortfall of personnel dealing with petitioning procedures. In addition, S & M manufacturing companies developing high-tech commodities are easily injured by foreign dumping practices due to their high fixed

〈Table 5〉 **Anti-dumping Cases Under Restriction or Investigation By Major Industrialized Countries**

(As of Dec. 31, 1992)

Items / Countries	Under Restriction	Under Investigation
U.S.	Color TV, Nitrocellulose, Color Picture Tube, Welded Steel Wire Fabric Products, Brass S/S, Acrylic Sweater, Telephonic Switch Boards, Stainless Steel Pipe, Carbon Steel Pipe, Cookware of Iron & Steel(AD/CV), Polyester Film, Photo Album	Carbon Steel Wire Pipe, DRAM(1M, 4M), Stainless Steel Butt-Welding Pipe Fittings, Carbon Steel Flat Products
EC	Tube for Bicycle Tire, Oxalic Acid, CDP, VCR, Polyester Yarn, Videotape, Photo Albums, Color TV(small), Glutamic Acid & Salts, Non-refillable Gas Lighter, Audiotape, Car Radio	Synthetic Staple Fiber of Polyester, DRAM, Electric Weighing Scale, Floppy Disk, Color TV(large)
Canada	Waterproof Rubber Boots, Polypropylene & Nylon Rope, Carbon Steel Welded Pipe, Album Sheet, Oil & Gas Tubular Goods, Pocket Albums	Waterproof Footwear
Australia	Malleable Cast Iron Pipe Fittings, Automotive Battery, Sodium Cyanide, Diocthyl Phthalate, Polysterene, High-density Polysterene, Phthalic Anhydride	Electric Cable, Disposable Plastic Cutlery, Clear Float Glass, Polypropylene Homoploymer

Source: Korea Foreign Trade Association, 'Overview on Import Restrictions of Major Industrialized Countries,' April, 1993.

costs and their short experience in business.

In contrast to the foreign products that were under consideration of anti-dumping practices by the Korean authority, Korean products that are frequently targeted for anti-dumping practices by foreign government authorities usually involve those with quick sales and small profits such as iron and steel, textiles, and consumer electronic products (See 〈Table 5〉). It is generally perceived that Korea has a comparative advantage in the production of those items over so-called industrialized countries.

Ⅳ. Korea's Anti-dumping System

Since Korea joined the GATT Anti-dumping Agreement in 1986, its regulations are, in general, consistent with GATT rules. However, due not only to the problems of the GATT Anti-dumping Code itself such as ambiguities in criteria or terminologies but also to the lack of experience by the Korean government in implementation of the anti-dumping regulations, Korea has some practical problems in operating the anti-dumping system.

In this section, Korea's anti-dumping provisions are first outlined to provide basic ideas of how its anti-dumping system is being operated, and then the draft for revision of the regulations which will come into effect in 1994 is summarized.

1. Current Regulations

a. Initiation and Investigative Procedures

Initiation

The anti-dumping process begins by the filing with the Ministry of Finance of a complaint alleging injury to domestic industries in Korea caused by imports of dumped products. In cases where the importation of foreign products for sale at a price lower than the normal value causes or threatens to cause material injury to domestic industry or materially retards the establishment of domestic industry, any person having an interest in the case or the competent Minister having jurisdiction over the domestic industry in question may request the Minister of Finance to impose an anti-dumping duty on the product concerned. They must also present sufficient evidence of importation of the dumped product and of the material injury, thereof.

If requested to impose an anti-dumping duty, the Minister of Finance assesses the complaint to determine if sufficient evidence of dumping and injury exists to warrant the initiation of a formal investigation by the government. Once a complaint is determined to be properly documented, i.e. sufficient information exists upon which the Minister of Finance can decide to initiate a formal investigation, the Minister decides whether or not to initiate the investigation of dumping within 3

months from the filing of the complaint.

If the person who requested an imposition of an anti-dumping duty withdraws such a request, the Minister of Finance may, if deemed necessary, terminate the investigation. However, when the Minister of Finance has sufficient evidence concerning importation of the dumped product and material injury, the Minister may decide to initiate an investigation.

Procedures

When the Minister of Finance decides to investigate, he requests the Office of Customs Administration (OCA) to investigate dumping matters and the Korea Trade Commission(KTC) to investigate injury matters. The OCA and KTC then have 180 days to complete the investigation.

The investigation proceeds on the basis of the data submitted by the interested parties and the information collected by the investigative authority or through spot-surveillance. During the investigation, public hearings may be held by the request of the interested parties in order to provide an opportunity for them to express their opinions. Even before the completion of the investigation, the Minister of Finance may either order security deposits or may impose a provisional anti-dumping duty by an amount equal to or less than the provisionally estimated margin of dumping if sufficient evidence for dumping and

material injury is found. Additionally, the exporter of the product concerned may offer to raise the price to eliminate the injury resulting from dumping or to cease exporting the product concerned.

In cases where the result of the investigation shows that dumping or domestic injury does not exist, the Minister of Finance terminates, without imposition, the anti-dumping duty. On the other hand, if the result shows that dumping and material injury did take place, and if the necessity for relief is recognized, then the Minister of Finance may impose an anti-dumping duty by Presidential Decree. The entire procedure is to be terminated within a year of its initiation.

The Minister of Finance may review, if deemed necessary, the necessity for continuing anti-dumping actions after at least one year since such actions are enforced. However, the imposition of anti-dumping duties or the price-undertaking becomes invalid 3 years after the action is taken.

b. Determination of Dumping

Under Korean law, dumping is defined as a difference between the "normal value" and the "export price" of the product under investigation, where the normal value is determined in reference to home-market sales price, export price to a third country, or constructed cost.

As long as there exists a preponderant selling price, the home-market sales price is usually referred to as the normal value, and it is

established at the level where the exporter freely sells the like products in the ordinary course of trade over a specified period to customers in his home market who are at the same or substantially same trade level as the importer. In comparing the home-market sales price to export price at the ex-factory level, adjustments should be made to the home-market sales price in order to calibrate for differences in comparison of export price for such factors as trade level quantity, quality, transportation, and differences in terms of payment as well as taxes or duties not borne by the exported products. Sales between the exporter and persons associated with the exporter are excluded in determining the normal value.

In cases where the home-market sales of the like products are not acceptable for use in determining the normal value, for example, when the sufficient amount of sales to permit a proper comparison does not exist, the OCA may establish a normal value by referring either to the exporter's highest representative selling price to a third country or to the constructed cost which includes the cost of production as well as an amount for selling, general and administrative expenses in respect to the products being exported to Korea. However, exactly what constitutes the number of sales allowing for a proper comparison is not defined in the Tariff Act.

The margin of dumping which is a difference between normal value and export price is expressed as a percentage of the normal value. Transactions with an export price higher than the normal value

are considered to have a zero margin of dumping, with the margin of dumping being averaged by weight, and the weight being the volume of each transaction.

c. Determination of Injury

At the stage of an investigation when injury is determined, the KTC ascertains whether there has been 'material injury' caused by the class of dumped products to a 'domestic industry' of 'like products.' 'Like products' are defined as products that are identical in all respects to the product concerned, or in the absence of such products, products whose characteristics closely resemble the product concerned.

In determining what constitutes the 'domestic industry,' the Tariff Act, as defined in the GATT Anti-dumping Code, defines the domestic industry as the domestic producers as a whole of the like products or those whose collective output of the products constitutes a major proportion of the total domestic production of those products.

Based upon the above definitions of 'like products' and 'domestic industry,' the KTC considers what constitutes 'material injury' or 'threat of material injury.' The statute's general guidelines for investigations in the Tariff Act direct the KTC to consider, among other factors, the volume of imports (whether the volume has significantly increased in absolute or relative terms in relation to domestic production or consumption of the like products), the effect of imports on prices in Korea

(whether there has been a significant price undercutting by the imports, resulting in domestic price depression or suppression), and the impact of imports on domestic producers. To assess the impact, the KTC considers all relevant economic factors that have a bearing on the state of the industry. These include production, capacity utilization, inventory levels, sales, market share, profits, return on investment, cash flow, employment, wages, productivity, and the ability to raise capital. The evaluation of these factors by the KTC must be made on clear evidence based on the actual data. As long as the threat of material injury is a possibility, an evaluation should be based on the imminence of the situation, excluding simple assertions, conjectures, or remote possibilities.

Once material injury is found, the KTC ascertains whether there is a causal relationship between the dumped imports and the injury suffered by the domestic industry. Even though the Tariff Act does not specify the detailed guidelines for the causal relationship, the KTC considers all factors specified in the GATT Anti-dumping Code, such as the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices and competition between foreign and domestic producers, developments in technology, export performance, and productivity of the domestic industry.

2. Procedural Regulations To Be Amended

Korea, as aforementioned, has actively liberalized its domestic market since the mid-1980's, and industry injuries caused by foreign dumping practices have markedly increased. As the Korean government realized that the injured industries were not effectively utilizing the current anti-dumping system, it provided a new amendment to the Tariff Act. Here, certain procedural regulations are to be revised in order to raise the efficiency of the system, maintaining a consistency with the current GATT Anti-dumping Code. These major revisions are listed below.

First, the procedural period for investigation is to be reduced in order to raise the effectiveness of the system. Under the current law, it usually takes one year from the date of filing the complaint to the date when action is taken against dumping. The one-year investigation period under the current law may not necessarily be long compared to those adopted by developed countries.[5] However, it cannot be denied that there exist unnecessary procedures which should be omitted or reduced not only to raise the effectiveness of the action but also to relieve the time- or resource-related burdens imposed on the interested parties. Taking these factors into account, the investigation period is to be reduced from one year to 180-240 days.

5) The maximum periods for statutory investigation for the US, EC, Canada, and Australia are 287 days, 365 days, 285 days, and 165 days, respectively.

Second, the authority to whom the complaints are filed is to be changed from the Ministry of Finance to the KTC in order to avoid the complainants' confusion in the petitioning procedures. Under the current law, petitions for the relief from an import-surge are to be made to the KTC, while those for the relief from dumping practices are to be made to the Minister of Finance. However, it is sometimes difficult for the complainants to decide which system among the two is more appropriate for certain cases. Considering these factors, the authority to whom the injury-relief petitions are made is to be incorporated into the KTC which will also decide whether or not to initiate the investigations.

Third, the procedure for preliminary determination is to be introduced into the system to provide a legitimate basis for provisional measures. Although a basis for provisional measures is provided under the current law, it can hardly be justified due to the absence of procedures for a preliminary determination which is specified in the GATT Anti-dumping Code.[6] As established in systems of developed countries, the procedure for preliminary determination is to be introduced so that provisional measures may be activated on a legitimate basis consistent with GATT rules.

Fourth, anti-dumping action is to be taken by the Minister of Finance within 30 days from the final determination of dumping and

6) See Paragraph 1 in Article 10 of the GATT Anti-dumping Code.

injury without recourse to the Cabinet Meeting and the Presidential Decree. Under the current law, anti-dumping action is to be taken by the Minister of Finance within 90 days from the final determination of dumping and injury with recourse to the Cabinet Meeting and the Presidential Decree. This makes the procedure unnecessarily longer and complicated. By reducing the time-period, as well as by simplifying the procedure for action after the final determination on injury and dumping, the effectiveness of the system may be enforced.

These new regulations in the amendment to the Tariff Act will be enforced beginning on January 1, 1994. The summary of these revisions are shown in 〈Table 6〉.

〈Table 6〉 Korean Anti-dumping Procedures To Be Amended

	Current	To Be Amended
Determination of whether or not to investigate	90 days	30 days
Investigation	180 days	120~180 days -Preliminary : 60 days -Final : 120 days
Definitive Anti-dumping Duties	90 days	30 days

Ⅴ. Some Notes on Anti-dumping Regulations of GATT and Advanced Countries

International rules to restrain dumping practices are provided in Article VI and the Anti-dumping Code of GATT. GATT Article VI is the core international rule providing fundamental principles for utilizing antidumping duties to offset the dumping margin of dumped goods when such dumping materially injures or threatens to materially injure competing domestic industries. In addition, the GATT Anti-dumping Code, officially titled "Agreement on the Implementation of Article VI of the GATT," states a series of procedural and substantive rules regarding the application of antidumping duties.

However, the languages used in those GATT rules with regard to various concepts and criteria are in many parts so ambiguous that it was quite possible for individual countries to have considerable discretion and abuse antidumping measures. As a result, antidumping procedures are classified as non-tariff barriers in international trade in the sense that they are imposing restrictions and distortions on international trade flows through arbitrary calculation of dumping margins or inappropriate application of injury tests.

Having realized these problems, various issues have been discussed in the Uruguay Round to reduce the uncertainty of anti-dumping procedures.[7] Among many issues on antidumping procedures, the major ones that have been raised by developing countries against

advanced countries such as the United States, the EC, Canada and Australia are discussed below.

First, in comparing the export price and the home-market sales price to calculate the dumping margin, certain home-market sales made at prices below the cost of production are disregarded in determining the home-market sales price. It is, however, natural that such a method necessarily yields a higher dumping margin through a downward-biased estimate of the home-market sales price for a given export price. In fact, it should be noted that sales at below-cost may be an ordinary business practice especially for newly starting firms to ensure market share during their earlier stage of production.

Second, the dumping margin is also exaggerated even when the constructed value is used for the home-market sales price. It is allowed in GATT provisions to compare the constructed value with the export price when there are no home-market sales or when the export price to a third country is inadequate to be used for the home-market sales price. While it is reasonable that actual (realized) administrative costs and actual profits are added to material and fabrication costs to arrive at the constructed value comparable to the home-market sales price, they are often evaluated much higher than the actual amount, yielding an upward-biased estimate of the dumping margin as well as that of the constructed value. Especially in the case of the United States, the

7) See Chae (1992) for detailed issues on anti-dumping discussed in the Uruguay Round negotiations.

statute requires that the constructed costs include a minimum of 10 percent for administrative overhead, and 8 percent for profit as the established benchmark figures. However, when the profit margin of a firm is only 1 or 2 percent, which is quite possible in times of slack demand, the firm will automatically be found to be dumping. Therefore, it can be said that such establishment of benchmark figures for the constructed value may be quite unrealistic.

Third, in the course of calculating an average dumping margin, negative dumping margins are disregarded, yielding an upward-biased estimate of the average dumping margin. Since the average home-market sales price is, in general, compared with the export price of each entry and then the entries with an export-sales price higher than the average home-market price are disregarded in determining the dumping margin, it is natural that a positive dumping margin be necessarily yielded in any situation. Exceptions might be plausible only when every single transaction during the investigation period occurs at the same price and when exchange rates among the involved countries' currencies are constant.

Fourth, the lack of detailed criteria for determination of injuries in the GATT rules makes it easier for importing countries to make affirmative injury-determination on an arbitrary basis. In the GATT Anti-dumping Code, a very wide range of economic indices relevant to the conditions of the corresponding domestic industry are specified without any detailed criteria for injury determination ; that is, while the factors

to be considered are enumerated more than enough to determine the injury matters, there exist no detailed criteria or guidelines for those factors. Furthermore, since importing countries in general do not consider it important to prove the relationship between dumped imports and industrial injury, it is quite easy for them to make an affirmative injury-determination on an arbitrary basis. And, when dumping practices are done by many countries, the resulting injury is usually evaluated on the cumulative basis regardless of the amount of imports from individual countries, hence the countries exporting a small amount of the product are easily subject to the anti-dumping measures together with major exporters, ultimately losing their promising markets.

Finally, in some advanced countries such as the United States and the European Community, anticircumvention provisions are applied to like products assembled or completed in the third country as well as those assembled or completed in the importing country. It is, however, noteworthy that there exist no anticircumvention provisions in the current GATT rules. Having realized the needs to prevent circumvention in the process of the Uruguay Round negotiations, GATT members agreed to provide in the draft Final Act (Dunkel Draft) that the existing definitive anti-dumping duties may be imposed on like products under certain conditions only when they are assembled or completed in the importing country.[8] Therefore, the anticircumvention provisions in the U.S. Trade Act and those in the EC Regulation may be considered

expanding the coverage of anti-dumping orders even when the rules provided in the draft Final Act are considered.

Ⅵ. Further Considerations for a Desirable Anti-dumping System

As mentioned before, the ultimate goal of the anti-dumping system is to correct unfair foreign trade practices and relieve the domestic industry's injury in cases where material injury or a threat of material injury is posed by foreign dumping practices. It is, however, noteworthy that the system is strictly restrained in its use under provisions approved by GATT, and, hence, the misuse of the system will certainly result in disputes with trading partners. In this regard, it is extremely important for all the countries to guarantee four basic requirements of the system—transparency, fairness, efficiency, and specialty—in enforcing the national anti-dumping practices.

1. Transparency

Transparency in operating the anti-dumping system implies not only that national anti-dumping regulations be consistent with GATT rules but also that the procedures be equipped with clear standards. In

8) See Article 12 in the draft Final Act(MTN.TNC/W/FA) on Anti-dumping.

order to ensure transparency of the system, procedures in each stage must conform to those of GATT rules, and the investigation and decisions made by the nation's investigative authority must be performed overtly. For this purpose, the relevant information and data must be collected through open and formal channels. Furthermore, in determining the margin of dumping and injury, the authority must provide a theoretical basis or judicial precedents detailing how the determination had been made. The assurance of transparency is important in the sense that not only can it reduce the possibility for trade-related disputes with trading partners, but, it can also provide an opportunity for other domestic industries to judge for themselves whether or not a petition is appropriate or reasonable for a certain case.

2. Fairness

Since anti-dumping investigations are initiated by one interested party filing a petition, it is natural that two parties with conflicting interests be involved in one case, hence a decision in favor of one party may be, in general, unfavorable to the other. This implies that a decision lacking fairness may cause a situation where the decision is denied by the adversely affected party, losing international or domestic trust in the anti-dumping system of the nation; that is, if a decision is made unfairly in favor of domestic industries, doubts may arise from

trading partners, which leads to trade-disputes. On the other hand, if the decision is made unfairly in favor of foreign companies, the allegedly injured domestic industries may lose confidence in utilizing the system even when they are actually injured. In order to ensure fairness of the system, it is necessary not only to proceed with the investigation or decision-making within the framework of international rules on the basis of actual data, but also to provide ample chances for the interested parties to exchange their views through formal channels such as public hearings. Furthermore, in order to prevent unreasonable decisions made under the administrative discretion, it is desirable to provide a procedure of judicial review after the investigative authority's decision is made.

3. Efficiency

Efficiency in terms of the anti-dumping system has some certain implications. First, easier availability of the system by the injured industries must be guaranteed. In many situations, the injured domestic industries tend to avoid using the system because of the heavy burden placed on the submission of relevant data or information to the investigative authority, which is both time-consuming and resource-consuming. This problem becomes more serious when S & M companies are involved. To solve this problem, it is desirable to simplify petitioning procedures and to clarify the requirements for the petition-

ing pursuant to GATT anti-dumping regulations. Furthermore, it is desirable for the authority to assist the petitioning party with legal advice at each stage of the investigation, taking the complexities of the system into account. Second, the effectiveness of the relief-measures should be strengthened to prevent acceleration of injury during a long investigative period. For this purpose, the investigative period should be shortened within the framework of GATT rules, and the basis for the provisional measures should be established within the system. Without these arrangements, the injured domestic industries may lose their confidence in using the system as a mechanism to relieve injuries caused by foreign unfair trade practices.

However, one other essential consideration must be made. An improvement in efficiency may reduce fairness of the system since those two factors are antinomic to each other. Therefore, a special attention should be given towards harmonizing those two factors in order to successfully operate the anti-dumping system.

4. Specialty

One final consideration to be made in operating the anti-dumping system is to ensure specialty. This implies that the system must be supported by professional knowledge and experiences in calculating the dumping margin as well as in deciding whether or not injury was caused by foreign dumping practices. To assure specialty, the investi-

gative authority should maintain various specialists who have specific training/knowledge relating to certain industries, accounting, statistics, and computer operations as well as legal expertise in domestic and foreign law. Assurance of specialty in operating the anti-dumping system is extremely important because it can complement both the fairness and efficiency of the system. In other words, the system can be run more fairly and efficiently when it is managed by such varied experts.

It is, however, noteworthy that the assurance of specialty can be achieved when the function and status of the investigative authority are strengthened; that is, the personnel administration as well as operation of the system by the investigative authority should be performed autonomously and independently. Otherwise, the system may lose its specialty due not only to interference from other administrative authorities but also to the high mobility of manpower within the entire governmental structure.

Ⅶ. Concluding Remarks

Korea has actively pursued import-liberalization policies since the mid-1980's not only to respond to foreign countries' pressures for market openings but also to become internationally competitive and structurally advanced through the promotion of competition and efficient allocation of resources. It is now expected that the levels of

import-liberalization ratios and average tariff rates will almost reach those of the industrialized countries by 1994.

However, as the result of such active deregulation on foreign trade during this relatively short period, some Korean domestic industries, which are not yet considered to be internationally competitive, became seriously or materially injured by foreign imports.

Among various types of industry injuries, those caused by predatory dumping practices of foreign companies have become more problematic in recent years. Especially when the characteristics of the Korean industries that have been frequently injured by foreign dumping practices are examined, the necessity and validity for enforcing the Korea's anti-dumping system can be justified. For example, it is well perceived that hi-tech industries mostly composed of small and medium-sized companies may be easily injured by foreign dumping practices due not only to high investment costs at an earlier stage of operation, but also to a short experience in business. Without an efficient system quickly reacting to foreign unfair trade practices, such industries can hardly survive in an environment where predatory dumping practices of foreign companies are prevalent.

Considering these factors, the Korea's anti-dumping system is to be amended and enforced beginning on January 1, 1994. The procedural period as a whole will be reduced, and the preliminary determination stage, on the basis of which provisional measures can be taken, will be introduced into the procedures to make the system more effective.

However, it should be noted that too much emphasis on efficiency of the system may undermine the transparency and fairness of the system. Since the Korean economy has a high dependency on foreign trade, it is essential that the anti-dumping system should ensure transparency and fairness in its operational activities. At the same time, it seems so important that the advanced countries having had a leading role in the provision and enforcement of international anti-dumping regulations should improve their own system by removing /amending unreasonable parts of their national regulations.

To ensure transparency, the anti-dumping system should be operated within the framework of GATT regulations. Even though Korea's anti-dumping regulations have been mostly consistent with GATT rules since it joined the GATT Anti-dumping Agreement in 1986, they should be further amended to incorporate the results of the Uruguay Round negotiations and to provide clear standards at each stage of the investigation. To ensure fairness, it is necessary to provide the interested parties with enough chances to express and exchange their views through formal channels. Furthermore, it is desirable to provide a procedure of judicial review after the final decision is made by the investigative authority.

It is also noteworthy that both efficiency and fairness can be improved if the whole system is operated by an investigative authority who employs many experts in various fields, such as industries, accounting, statistics, domestic and international laws, and internation-

al trade, etc. To achieve this, it is necessary to strengthen the function and status of the investigative authority so that personnel administration, as well as the operation of the system, can be performed autonomously and independently.

Therefore, it should be noted that only when these four basic factors, such as transparency, fairness, efficiency, and specialty are established in the anti-dumping system, can Korea effectively relieve the domestic industry's injuries without causing trade disputes with her trading partners.

References

Chae, Wook. 1992, "Anti-Dumping," *Trade Related Policies and Institutions in Korea : Current Conditions and Directions for Improvements* (in Korean), Korea Institute for International Economic Policy, February.

———, 1992. "Anti-Dumping," *Overall Review on the Uruguay Round : Sectoral Assessment and Korea's Policy Response* (in Korean), Korea Institute for International Economic Policy, October.

———, 1993. *Anti-dumping System of GATT & Major Industrialized Countries and Direction for Improvement in the Korean Anti-dumping System* (in Korean), Korea Institute for International Economic Policy, January.

Jackson, John H. 1989. "Dumping in International Trade : Its Meaning and Context," *Anti-dumping Law and Practice : A Comparative Study,* edited by John H. Jackson and Edwin A. Vermulst, University of Michigan Press : 1~22.

———, 1989. "Unfair Trade and the Rules on Dumping," *The World Trading System : Law and Policy of International Economic Relations,* The MIT Press : 217~247.

Kang, Seok-In. 1992. "The Anti-Dumping System in The Era of Liberalization," *Seminar on The Anti-dumping System* (in Korean), Ministry of Finance & Korea Foreign Trade Association, July : 3~13.

Korea Foreign Trade Association. 1993. *Overview on Import Restriction of Major Industrialized Countries* (in Korean), April.

Palmeter, N. David. 1991. "The Antidumping Law : A Legal and Administrative Nontariff Barrier," *Down in the Dumps,* edited by Richard Boltuck and Robert E. Litan.