2 April 1993

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

*Report of the Panel*
*(ADP/92, and Corr.1*)*

## I. INTRODUCTION

1. In a letter dated 21 June 1991, the United States requested

6. The following are the factual aspects of this dispute.[2]

7. Until late 1988, the Korean market for PAR was served entirely by imports. Korea Engineering Plastics (hereinafter referred to as "KEP")[3] completed a 10,000 tons annual production facility in September 1988 and began producing PAR mainly for the domestic market.[4] In about a year, KEP increased production to nearly full capacity and its domestic market share for PAR increased from below 1 per cent in 1988 to 47.7 per cent in 1989, and to 60.8 per cent in first-quarter 1990. There was a concomitant decrease in the share of imports in the Korean PAR market, with the share of imports from three

10. On 30 September 1991, Korea's Ministry of Finance implemented a basic price system of relief under which anti-dumping duties

III.1 Findings Requested by the Parties

13. The United States requested the Panel to find that the KTC's Determination was not in conformity with the Agreement. The United States further requested the Panel to recommend to the Committee that the Committee request Korea to bring its law as applied into conformity with its obligations under the Agreement. Explaining its request, the United States said that in essence, it was requesting that the Panel confirm the violation or violations of the Agreement that had

to one of the fundamental goals of the Agreement mentioned in its preamble, namely "to provide for equitable and open procedures as the basis for a full examination of dumping cases."

18. The United States argued that the transcript was a post hoc attempt by Korea to supplement the Determination, and did not comport with Korea's obligations to provide public notice of its findings under Article 8:5 or to demonstrate that imports were causing injury under Article 3:4.

record document

if not all, of the United States' challenges to the Determination not being raised. The question for the Panel was whether the KTC should be penalized, through the Panel's disregard of the transcript, for failing to take either of the two simple options, and deciding to attempt to combine the reasoning of all four Commissioners in a single integrated document.

26. Korea stated that the United States International Trade Commission (hereinafter referred to as "USITC") also followed the exact same transcription procedure. Even for the USITC, the transcript became part of the record of the investigation, and it could be reviewed by a United States court in considering whether the USITC determination

attributing injury caused by other factors to dumped imports. Article 8:5, on the other hand, required an investigating authority to provide adequate notice to the public of the basis for its final determination. The concern expressed in Article 8:5 was not found in Article 3:4 or in any other paragraph of Article 3. Had the drafters of the Agreement intended the public notice requirement for Article 3:4, they would have said so. The transcript was also relevant in making the required demonstration, and nothing in the Agreement prohibited the Panel from considering it in this connection. The transcript was the most direct and contemporaneous evidence of the precise factors considered by each KTC Commissioner in reaching a conclusion on how to vote.

30. Korea said that if there was any defect in the amount of notice afforded in the KTC's Determination, it was merely the harmless omission of a statement that of the four Commissioners voting in the affirmative, one had voted affirmative on the basis of current material injury, two had voted on the basis of threat of material injury, and one had voted on the basis of material retardation. However, the public had not been denied notice of the three alternative bases for the determination, because the Determination quite clearly stated that all three had been found to exist. Also, the fact that the vote was four to three in favour of the affirmative finding had been released to the public.

31. Korea argued that since the KTC was required by its regulation to make a transcript of its voting session, the interested parties were aware of the existence of the document. These interested parties would have been allowed access to the public version of the transcript, i.e. with the names of the Commissioners deleted from the document, provided these parties had requested for the document. However, no interested party had requested for the transcript. Furthermore, had this case been appealed in a Korean court, the court would have considered the transcript in order to ascertain the basis of the Determination.

32. Regarding the United States' protest that Korea had never mentioned the transcript during consultations, Korea stated that the United States had not requested the transcript during either the consultation or conciliation phase of this proceeding even though the companies whose interests it was representing were aware that one existed. It was not Korea's fault that

of anti-dumping proceedings, the Committee on Anti-Dumping

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not considered material by the investigating authorities. For all these reasons, the Panel should assess the KTC's affirmative finding's consistency with the Agreement based on the Determination itself.

38. Regarding the provision of the transcript to the interested parties, the United States asked whether the interested parties had any notice about the availability of the transcript in any form, and whether a public version of the transcript had ever been created and put on the record. Since counsel for the United States and Japanese companies subject to investigation had no access to the confidential record, presumably they had no opportunity to view the document, since Korea deemed it confidential. Moreover, there were two flaws in Korea's argument that the interested parties could have simply requested a public version of the transcript, but none had done so. First, waiting for parties to request the secret transcript was not sufficient to discharge Korea's obligations under the Agreement. Article 8:5 required public notice -- which is an affirmative act by investigating authorities -- of reasons and bases for the investigation authorities' decision, and that the reasons and bases be affirmatively forwarded to the exporting Parties and to the interested exporters. Similarly, the requirement under Article 3:4 for "demonstration" that imports were causing injury within the meaning of the Agreement implied an overt, public act by the investigating authorities, not a passive wait for someone to ask for the transcript. Second, the argument that the transcript was "publicly available" strained credulity. Korea had not asserted that the KTC had actually informed any parties that the transcript was available, or even that it had been made. Korea had not shown that its regulations provided that a public version of the transcript would be created upon request. To the contrary, Korea had strenuously argued the opposite, i.e. that it had the right to keep the transcript confidential. The way in which Korea treated the transcript in the dispute settlement proceedings also contradicted its claim that the transcript was publicly available. The fact that Korea introduced the transcript at a late stage and only after the Determination had been challenged belied the notion that the transcript would have been made available to interested parties just for the asking. In addition, a notice of the decision, with reasons therefor, had been ultimately published when anti-dumping measures were imposed. In view of that, what reason did the interested parties have to expect that the reasons for the KTC determination might, in fact, be contained in the transcript of the KTC vote?

39. The United States said that Korea was not correct in contending that the United States' position regarding the transcript would imply that the investigating authorities had to reference publicly all information, even confidential information. This was not the United States' position, and Korea's statement had confused information with reasons. Under the Agreement, confidential business information need not publicly be disclosed: Article 6:3 provided that confidential information shall not be disclosed without the permission of the person submitting it. The Agreement's treatment of confidential "information" was in stark contrast to its provisions regarding the investigating authorities' "findings", "conclusions", "reasons" and "bases". Article 8:5 specifically provided that these be made public. Furthermore, Korea had not claimed that the transcript had been withheld on grounds that it had contained confidential business information submitted by the parties. Rather, Korea had claimed that the KTC had wished to protect the identities of the individual Commissioners.

40. About not invoking Article 8:5 earlier in the proceedings, the United States said that it had not known that the transcript would be submitted by Korea; in fact, it had not even known about the existence of the transcript until after the first meeting of the Panel. The United States' raising of Article 8:5 in defence was appropriate and was done at the earliest opportunity. The United States argued that it was using Article 8:5 not as a basis for finding a violation but as a basis for directing the Panel to the relevant statement of reasons that it should consider in deciding the consistency of the KTC's determination with the Agreement. The effect of Article 8:5 was to preclude investigating authorities from justifying their actions under Article 3 on the basis of hidden or unofficial reasons. The Determination, and not the transcript, was properly the statement of reasons that the Panel had to be concerned with.

be squared with the biased view that it is normal or inevitable that imports will be substituted by domestic production. The reliance on the presumption of "import substitution" had meant that certain factors, such as the volume of imports, for which the Agreement mandated consideration, had not been given meaningful consideration. This was inconsistent with the Article 3:1 requirement that

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of the volume effect of dumped imports was set forth on page 9 of the Determination, where the KTC had expressly recognized that "dumped imports continued to account for a substantial share of the domestic market … [and therefore that] imports continued to have a real impact on the domestic price." These conclusions were positive evidence of the KTC's consideration of the volume of imports and subsequent conclusion that, regardless of the trend, they had a materially injurious effect on KEP's prices. The large dumping margins of the imports, the competition in the market being mainly in terms of price competition, and the intense price competition between dumped imports and domestic products which resulted in a substantial decline in prices, were seen as adequate basis for finding injury under the Agreement. Had the KEP not made the decision to compete on a price basis, the respondents in this case would have continued to enjoy complete control of the

of the Trade Policy Review of Korea, "lends financial support for import substitution". Funds under the localization programme had been made available to domestic firms which were seeking to develop

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expect to have seen it referenced in one of these three documents. Moreover,

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determination was rendered.[17] Nor would United States' law permit the USITC to find threat of material injury, and not discuss in any way the reasons for that finding.[18] Similarly, United States' law forbade introduction of a market view -- like Korea's import substitution theory -- that substituted for analysis of specific injury factors required by the United States statutes.[19] Furthermore, under United States law, a transcript of the USITC voting session would be considered part of the administrative record, but would in no way be part of the USITC determination. On judicial review, it was the determination itself that had to either stand or fall.

71. Korea said that the United States was wrong in contending that the Determination had to be attributed to all the Commissioners. The Determination was a consolidation of the views of all four Commissioners, and not an expression of a single viewpoint in which all concurred. If the transcript showed anything, it showed that they each had approached the case from a different perspective. N°single Commissioner should be deemed to subscribe to every opinion and conclusion expressed in the written determination. Rather, the Commissioners subscribed to the result reached.

72. Korea emphasized that the KTC, like the USITC, was an independent body which was insulated from politics. The deliberations of the KTC were not, and are not, influenced by other elements of the Korean Government. With hindsight, it was unfortunate that the KTC had used the phrase "import substitution" in the written final Determination when no KTC Commissioner had used it. The Determination should have made clear that the two Commissioners who referred to such substitution were describing an event, not analytical theory. However, the transcript laid to rest all concerns on this issue.

73. Korea argued that the cornerstone of the United States' complaint was that an import substitution theory or concept had been used by the KTC in this case. The transcript showed that this was not the case, and that the Commissioners had considered all the relevant factors. Thus, the remaining arguments of the United States constituted nothing more than a disagreement with the weights which each Commissioner had assigned to various pieces of evidence. Even the argument that the large increase in sales by the domestic producer and the corresponding decline in sales by the respondents somehow proved that the KTC had used an import substitution theory or concept was nothing more than a disguised argument that the KTC had incorrectly analyzed the significance of the sales volume data. However, the evaluation of data was a matter entrusted by the Agreement to the KTC's administrative discretion and expertise.

(b) "Import substitution", price effects, and causal link

74. The United States said that the KTC's view that "import substitution" was a "normal" process was also evident with regard to its findings on the subject import volume's causal link with price effects and injury. Hence, the Determination was inconsistent with Articles 3:2 and 3:4 of the Agreement. Article 3:2 required that the investigating authorities consider

"whether there has been a significant

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Article 3:4 required the investigating authorities to demonstrate that the dumped

79. Korea said that in an industry where the product was basically fungible (i.e. imported and domestic products competed mainly on a price basis), resolving the issue of who was the price leader was not particularly helpful in evaluating the issue of causation. More significant was the fact that imports were at their particular level due to dumping and dumping had allowed the respondents to continue to decrease their prices. Given that PAR was a fungible product, even a

83. Further, the United States said that the existence of dumping margins alone could not justify a finding of injury or significant price effects under the Agreement. This was because the Agreement required that, before taking anti-dumping measures, investigating autho71 422.16 732.72 Tm/F8 T1 0 0 1 320.88 73

87. The United States said that the only adverse price effect found by the KTC was that imports had depressed and suppressed prices, and a consideration of the Determination revealed that the KTC had cited little evidence in support of a causal link of import volume with price suppression or depression.

88. Regarding the Determination not containing any finding of underselling, Korea agreed that while this was the case, the underselling evidence had been relied upon by the KTC for a different proposition, namely that price depression had occurred. Thus, the evidence of price underselling had constituted positive evidence of price depression, and price depression[21] was an independent factor which would support an affirmative finding under the Agreement.

89. Regarding the United States' claim that the KTC should have substantiated the price effects of imports more than it did in the Determination, Korea said that even assuming that this was correct (though Korea contended that this was not correct), the KTC clearly had an evidentiary basis for finding those "price effects" in that it had evidence of fierce price competition and underselling by imports which had been enabled by the huge dumping margins. In fact, the record evidence

(c) "Import substitution" and impact on the domestic industry

94. The United States argued that by relying on the presumption of "import substitution", the KTC had also discounted those aspects of the domestic industry's performance which favoured a negative determination. Thus, the KTC had not conducted an objective examination based on positive evidence of the impact of imports on the domestic industry in accordance with the factors the listed in Article 3:3, and therefore, had failed to satisfy the requirements of Articles 3:1 and 3:3.

95. The United States said that, to the extent consideration of any of the factors listed in Article 3:3 was marred by the import substitution rationale, the Determination was in violation of the Agreement. Article 3:3 was an elaboration of the general requirement of Article 3:1 that a determination of injury "shall … involve an objective examination of … the consequent impact of imports on domestic producers"; moreover, Article 3:3 began with the phrase "[t]he examination of …" (emphasis added by the United States). An "examination" of the impact of imports on domestic producers that was based on an expectation of domestic market share increases and sales gains was hardly objective; indeed, it was not an examination at all, and it assumed away the very thing that the Agreement required to be examined. In addition, Article 3:3 itself required an "evaluation" of all relevant economic factors and indices. An analysis based on an expectation of import substitution was not a meaningful evaluation as required by the Agreement.

96. The United States noted that the KTC's Determination stated explicitly that increases in market share and sales were normal occurrences because the market was in the process of import substitution. The KTC had viewed the domestic industry's capacity utilization in excess of 90 per cent, and the dramatic gains in its sales, market share and employment as indicating only "superficial" positive performance. In contrast to these remarkable gains, the KTC had cited only a few indicators that could conceivably support an affirmative finding of material injury, namely, increased inventories, lost sales revenue, and insufficient net profits. At least two of these factors, i.e. sales revenue and profits, reflected KTC's import substitution thinking.

97. The United States said that, by focusing on the price decline in the domestic market, the KTC had concluded that "there was substantial loss to the domestic industry's sales revenues during the period of investigation due to price

lowest possible profit margin. Moreover, this reflected the "import substitution" thinking of the KTC because, if the domestic industry was "normally" expected to "substitute" for imports, then expenses for this facility could be considered simply part of the process of substitution. Furthermore, the interest expenses considered to calculate net profits might have extended beyond the KEP's first production facility, i.e. the financial analysis might have included the interest payments for the second plant which was under construction during the investigation period. Including the second plant, KEP's capacity would exceed 100 per cent of the domestic PAR market. The logic of KTC's "import substitution" analysis suggested that expenses related to the second facility should also be factored into the analysis of KEP's performance because, taken to the extreme, import substitution envisaged total replacement of imports.

100. The United States said that the KTC had found that KEP had earned net profits of 1.6 per cent in 1989 which, according to the KTC, "cannot be regarded as sufficient to permit the domestic industry to maintain normal operations and development" on the basis that the domestic industry "requires enormous investments", "needs to continue R&D investments for product diversification and new product development", "requires considerable internal reserves for equipment replacements", and did not earn "the domestic chemical industry's 3.24 per cent average profit rate". The KTC's view that the domestic industry was entitled to a level of performance that provided for long-term development and the accumulation of "internal reserves" even in its first year of operation, reflected the KTC's stated expectation that the industry would replace imports. Also, the KTC's "sufficient profits" test, which compared the average profits of chemical industries with KEP's net profit, ignored KEP's status as a start-up firm and the fact that the industries included in the cited survey of chemical industries might have been established industries: it would not be surprising for a new firm to earn no profit at all for several years. Further, the cited survey of chemical industries covered a range of industries such as chemicals, oil, coal, rubber and plastic industries which could have had different profitability norms than would be expected

the prices required to recover costs under different assumptions.[23] Though 50 1 293.76 796.56 Tm/Fto

thus had a very material effect on

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111. Regarding Korea's assertion that "additional information" from the staff report supported the finding of the KTC Commissioners, the United States said that the mere existence of information in the KTC staff report did not mean that the Determination had found the information to support an affirmative determination. Only the Determination itself, entitled "Determination of the Korean Trade Commission", provided the KTC's explanation for the affirmative finding of injury, and additional information, whether or not it was "considered" by the Commissioners, did not represent KTC's basis for an affirmative finding in this case. The staff report, entitled "Information obtained in the Injury Determination", represented only a summary of the facts gathered in the investigation. Though the Determination relied on facts contained in the staff report, only the Determination itself discussed which facts the KTC had found to support an affirmative finding of injury, and wg9finding

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[redacted] required that findings [redacted] issue was not whether [redacted] record evidence was such that the [redacted] n all three bases; instead, the issue was whether the Determ [redacted] t base

whetherher

> "A determination of threat of injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent."

125. The United States said that, pursuant to Article 3:1, the focus of a determination of threat of material injury had to be on the volume of dumped imports, their effects on prices for like products, and the consequent impact of imports on domestic producers. However, unlike present injury, a determination of threat of material injury involved a prediction of what was likely to occur in the future, rather than a conclusion regarding what was presently occurring or what

a real and imminent threat of future injury. A threat determination

136. Thus, Korea argued that both Commissioners D and E had focused on positive evidence as required by Article 3:6, on the basis of factors enumerated in the Committee Recommendation. In the Committee Recommendation, in addition to enumerating certain factors relevant to a finding of threat, the Co

it not to be reasonable for the industry to continue to undercut prices in order to gain more than its 60 per cent market share, then it could not have found that imports were responsible for any resulting harm to the industry.

139. The United States added that, the KTC had not taken into account another crucial fact, i.e. the doubling of the KEP's production capacity. This fact, which the KTC itself had found, would have had a profound impact on the domestic industry's future fortunes. Nonetheless, KTC had conducted its analysis on the assumption that future industry profit requirements would be based on an annual production capacity of 10,000 tons. KEP had added a new plant with additional annual capacity

said that this did not lessen the requirements of Article 3:6 of the Agreement that the relevant change in circumstances supporting a threat finding had to be "clearly foreseen and imminent". Indeed, paragraph 9 of the Committee Recommendation specifically provided that administering authorities must pay "due regard to Article 3 of the Anti-Dumping Code." In this case, Commissioners D and E's analyses were based on assumptions about future behaviour, which were assumptions that were inconsistent with the KTC's own facts.

142. Furthermore, the United States argued that the findings of Commissioners D and E did not, in large part, correspond to the factors listed in paragraph 9 of the Committee Recommendation.[35] Of the four factors referred to in paragraph 9 of the Committee Recommendation, the first factor, i.e. increase in imports, had not existed in this case; in fact, the opposite situation had

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had no basis for assuming that the actions of the respondents in the past would not have continued in the future, l5BT1 0 0 1 269.52 744.2oF8 11 h52 744.24 Tm/ 44.24 Tm/ and depressed TjETBT1 0 0 1 85.0452 744.24 Tm/

the foreseen and imminent".

148. Regarding the United States' allegation that the KTC had failed to consider the impact of the second plant of the KTC, Korea said that there was no reason to question the KTC's judgement that the addition of capacity would not diminish the threat presented by dumped imports. For example, with the KEP losing money with only one plant, the addition of capacity would imply that the KEP would lose more money under the reasonable assumption that the respondents would continue to dump and to undersell. Moreover, it was speculative to predict the effect on market conditions of a capacity expansion that had not even occurred during the period of investigation. The KTC, in these circumstances was amply justified in relying on known, observable, verifiable conditions which, in its judgement, were more reliable predictors of threat.

149. Korea said that the United States' arguments regarding the Committee Recommendation concerning threat should be rejected because they elevated certain aspects of the Committee Recommendation and diminished those aspects which the KTC had relied up1act

substantial "research and development" during 1989, in accordance with KEP's business plan and still earned a net profit.

facility). Under such circumstances, it was inappropriate for the United States to characterize KEP's construction of the second facility as a substantial investment and thereby imply that KEP's financial condition had not deteriorated during the investigation period.

156. Regarding inventories, Korea said that maintenance of a stable supply by the KEP and the decline in demand were not the only causes of KEP's increased inventories. Underselling by imports necessarily contributed to inventory growth, as well. Material injury could be due to a number of factors, and the existence of high inventories did not mean that imports, as well, could not be "a cause" of material injury, threat, and/or material retardation. Moreover, the presence of other causes did not prohibit the KTC from considering inventory growth as being relevant to the current condition of the domestic industry and the issue of whether that industry was materially injured. KEP's sales volume had declined substantially after the second quarter o

of operating profits because the issue was whether "the profit levels of the domestic industry under the market conditions established by the dumped imports and the price structure are reasonable levels necessary for the normal maintenance and development".

160. Korea said that Commissioner C had decided that the most important factors, given that KEP was a new entrant, were inventories, sales prices, and profit levels, and that factors such as production, sales, and market share, while important, should have lesser emphasis. He had recognized that, while in some cases, increases in production, sales and market share of the domestic industry would militate in favour of a negative determination, this was not necessarily so in the case of a new entrant. He had considered the decline in KEP's profitability and prices, and that KEP would have little possibility

164. Furthermore, the United States argued that a finding of non-establishment of the domestic industry only provided a threshold indication that material retardation was the appropriate standard, rather than present injury or threat. In addition to such a finding, the KTC had to find that the industry was in a retarded or stunted condition, and that imports had caused any such condition. However, the KTC Determination did not contain such findings.

165. The United States also pointed out that in the discussion of material retardation, the KTC Determination had stated that the "1990 financial statement" revealed a 464 million Won loss. However, the Determination had not indicated whether the KTC had relied on the 1990 data for the purposes of injury. It would be improper to rely upon a full-year 1990 statement because that period had not been covered by any other indicators in the KTC report (and had not even been encompassed by the KTC report).

166. Korea said that the Agreement and Article VI of the General Agreement were silent with respect to the circumstances which justified an affirmative finding that the domestic industry had been materially retarded. Thus, the investigating authorities necessarily possessed an extremely broad measure of administrative discretion which the Panel should be careful not to overturn. Given the lack of guidance in the Agreement, the KTC had looked at the precedents of other investigating authorities, particularly the USITC precedents. Korea also said that the Panel might look to decisions of various national investigation authorities for useful analogies. For example, in one particular case the USITC had stated that "[i]n material retardation

169. Korea said that there was no flaw in the KTC's finding of material retardation. The first inquiry in a material retardation situation was whether or not a domestic industry was established. In this regard, a break-even analysis had been particularly useful, and the text of the Determination revealed that the KTC had found that KEP had not yet reached "stable operations", i.e. a reasonable break-even point. Also supporting the finding of non-establishment were the facts that KEP was a new producer with a short operating history and it produced only a single product and thus was dependent solely on it for the generation of revenue and profits. The second part of the inquiry was whether or not a non-established industry was materially retarded. The facts supporting this aspect were discussed on pages 7 and 8 of the Determination which related specifically to the issue of material retardation as distinguished from the issues of present injury and threat of material injury. The discussion on causation appeared in the Determination from page 8 onwards. Regarding the net profit data for the full year 1990, Korea said that it was taken from the audited financial statement submitted by KEP to the KTC, and that this statement was part of the record in the investigation.

170. The United States clarified that the factors listed in the Determination were not per se irrelevant to a determination of material retardation of the establishment of an industry. Rather, the KTC's import substitution rationale was inconsistent with the Agreement's requirements regarding material retardation, and that the KTC's finding of material retardation had not been based on positive evidence and had not involved an objective examination, as required under the Agreement. The requirements of Article 3 with the exception of paragraphs six and seven applied equally to the determination of material retardation as to the other bases for injury. Moreover, there was no finding in the Determination that the KEP was in a stunted or retarded condition, nor was there any finding in the "causal link" section that imports were causing any such condition.

171. Korea said that the details in the transcript clearly showed that there was adequate basis for an affirmative finding of material retardation. One Commissioner (Commissioner B) had found that the domestic industry was materially retarded, and that the cause of this retardation was dumped imports. The KTC's staff memorandum to the Commission which had outlined the steps necessary for a material retardation finding, as well as for a current injury or threat of injury finding, was proof that an objective evaluation of all relevant factors had occurred. The staff had not suggested or encouraged the use of any type of presumption, theory, or assumption in substitution for an examination of each of the relevant factors identified in the Agreement, and the transcript made clear that Commissioner B had not relied on any presumption. Rather, Commissioner B had first noted the lack of any specific standards in the Agreement with regard to material retardation, and then had considered that while the KEP's market share and capacity utilization rate tended to indicate that the company was already established, the financial condition of the company indicated that it could not "truly be considered as having reached a secure stage" (Transcript, page 12). Moreover, on examining the overall data, Commissioner B had found that "the financial condition of the domestic industry will not improve in the future", and that though import volume had declined, if dumping continued, KEP's establishment would be retarded, particularly in view of the ability of the respondents to increase imports at any time.

172. Regarding causation, Korea said that Commissioner B had first observed that though "dumped imports need not be the only, or the principal cause of injury" (Transcript, page 13), they were here an important cause because the high dumping margins had had a significant adverse effect on KEP's prices and profits. Moreover, in a situation where the domestic producer was not yet established, the elements of price and profitability had to be "given a

[1] Thus, Commissioner B had amply described why he had thought that
hy its establishment was retarded, and what "a cause" of that retardation
o found that sales volumes of dumped imports could have an adverse effect
ven while declining.

ormation

d the KTC had not considered the data in a consistent manner because it
s when they weighed in favour of an affirmative finding, but not when they
ive finding. This violated the Article 3:1 requirement that the administering
ective examination".

ited States, examples of the KTC's inconsistency in this regard included
new entrant in the industry, the assessment of inventories, and the view
ad achieved normal operations. For example, the United States contended
d the domestic industry to be a new firm when such a consideration had
native finding, but not when it had tended to support a negative finding.
TC had: viewed KEP as a start-up firm in order to justify KEP's price
EP had not "attained stable operations" for the purpose of making a finding
l found that the KEP still had a weak industrial basis. On the other hand,
at KEP's profitability in its first year of operations -- 20 per cent operative
rofits -- were indicative of material injury without mentioning KEP's start-up
the
r firms generally would not be expected to show the same financial results
compared KEP's net profits to other industries that likely included mostly
und that the large gains in the KEP's sales and market share were not
rs had been delegated to it. Further, the United States contended that the
objective examination required underBT1 0 0 1 510.96 434.64 Tmua Tf(also) TjETBT.

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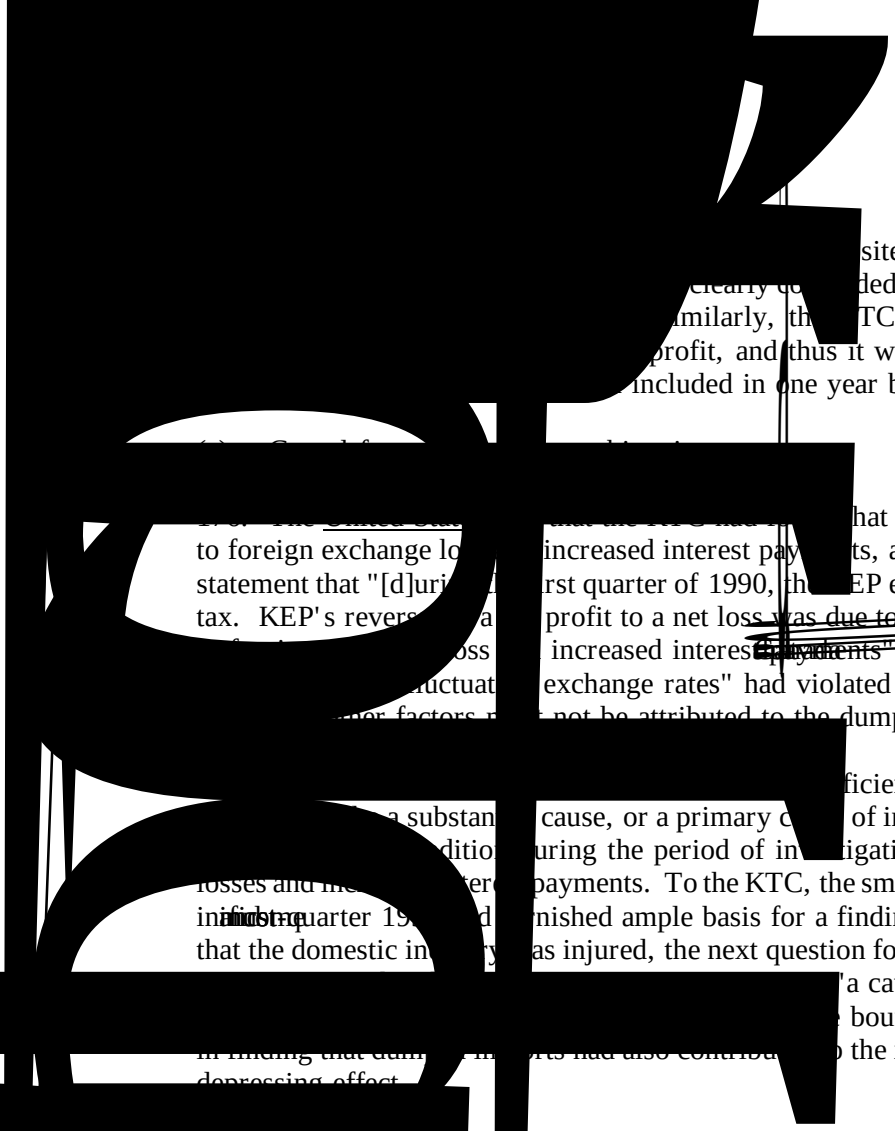

site appeared from an examination of the text
ded that profits including the foreign exchange
milarly, th TC had included foreign exchange losses in
profit, and thus it would be incorrect to conclude that foreign
included in one year but had been included in another year.

hat KEP's first-quarter 1990 net loss was due to foreign exchange lo increased interest pay ts, as acknowledged by the KTC staff report's statement that "[d]uri rst quarter of 1990, th EP experienced a … loss on net income before tax. KEP's revers a profit to a net loss was due to fluctuating exchange rates which resulted oss increased interest payments" (page 28). Attributing to imports a loss luctuat exchange rates" had violated the Article 3:4 requirement that "injuries her factors not be attributed to the dumped imports".[43]

ficient that imports be "a cause" of injury, and a substan cause, or a primary c of injury. A number of factors had influenced ditio uring the period of in igation, including foreign exchange gains and losses and ine ter payments. To the KTC, the small net profit in 1989 and the net loss posted in first quarter 19 nished ample basis for a finding of material injury. After having found that the domestic in y as injured, the next question for the KTC was whether any portion of that 'a cause" of mat . There were other bounds of its er the Agreement the injury suffe through their price depressing effect.

PR SENTED BY THIRD PARTIES

IV.1 Canada

basis on which the material injury determination d that the problem facing the Korean producers of competitiveness and eged dumping of imports. The KTC decision, which stated tha omestic market was in th s of "import substitution", was explicitly based on the assumption it was normal to expect duct of apcc7 Tf(loss) TjETBT1 0 0 1 496.08 trt4ewimport

179. Canada said that the KTC's determination of material injury did not take into account the factors mentioned by Article 3:3, namely, "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, profit, productivity …; factors affecting domestic prices; … inventories …". In its determination of material injury, the KTC did not take into account the question of KTC

narrowly.[45] When a party invoked an exception to the General Agreement, it had to demonstrate that it had complied with the requirements of doing so.[46]

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190. The United States disagreed with the following points: any implication in Japan's submission that it was appropriate for the Panel to reweigh the significance of the various factors considered by the KTC, or to consider the case as if it were the administering authority in the first instance; any implication that in Panel proceedings, the importing country bore the "burden of proof" to show consistency of its actions with the Agreement. Rather, in the United States' view, it was incumbent upon the party challenging the determination to point to areas of inconsistency with the Agreement (and the United States said that it had clearly done so in the PAR case presently before the Panel); Japan's characterization of Article VI as a "deviation" from the national treatment principles, to the extent that it implied that Article VI should be construed narrowly.[49] In referring to the sentence from the United States' first submission (page 16, note 15), Japan's "deviation" argument had taken the sentence wholly out of context and had misconstrued it. Properly read, there was nothing in the United States' submission to suggest that Article VI should be given any lesser weight than other provisions in the General Agreement; Japan's statement that injury from dumping could not be found under Article 3:1 if there was not a significant increase in imports. According to the United States, although the usual case might involve a significant increase in import volume, it was not an absolute prerequisite of an affirmative finding that there exist a significant increase in import volume; and, Japan's statement that without a significant degree of effect on prices, the requirement under Article 3:2 that the effect of dumped imports on prices be examined would not be satisfied, and hence injury from dumping could not be found under the Agreement. According to the United States, although the usual case might involve a significant effect on prices, it was not an

[redacted]

and should -- examine the underlying facts and their sufficiency.

192. Referring to the t Tfo22b(of)2 Tm/F8 11 Tf(and) Tj

[redacted]

Article 3:4 was inextricably linked to both a significant increase in volume and significant price effects. If there was no such linkage, as in the case under review,

198. Korea requested the Panel to find that the affirmative determination of injury made by the KTC in respect of imports of polyacetal resins satisfied the requirements of the Agreement. Korea's main arguments were the following:

(i) First, the KTC's injury determination had involved an objective examination and was based on positive evidence of the requisite factors under Articlm/F8 11 Tf(had) TjTjETBT1 0 0 1 502.8 m1 0 0 1 3

issues of fact and law considered material by the investigating authorities, and the reasons and basis therefor". Footnote 12 to Article 6:8 defined the term "finding" as a "formal decision or determination". The Panel concluded from the preceding observations that public notice within the meaning of Article 8 of an affirmative finding as defined in Article 6:8, and of the findings and conclusions reached o issues of fact and law considered material by the KTC, had been given in Decision 9 24 April 1991, subsequently incorporated in the Ministry of Finance public notice of 14 Septem Neither the KTC Decision nor the public notice of the Ministry of Finance made any refe availability of any further, publicly available statement of reasons underlying the determination.

206. The Panel noted that the transcript of the KTC's meeting held on 24 April 199 while Korea had referred to the possibility for interested parties to request access to version of this document, Article 8:5 contained an obligation of investigating author notice of the bases of their findings on their own initiative. This document there considered to be a public notice within the meaning of Article 8:5.

207. The Panel noted in this connection that Korea had referred to the transcript in explain the reasons upon which the determination of the KTC was based. Thus, Korea h the transcript as "a contemporaneous and reliable record of the reasons which Commissioner expressed as the basis for his vote" and had indicated that "the voting se was submitted to assist in interpreting and to provide an understanding of the context in statements in the written determination were made." On a number of specific issues in as the alleged reliance by the KTC on a presumption or theory of import substitutio explained passages in the text of the published determination by reference to the state individual Commissioners as recorded in the transcript.

208. The legal question raised by the references made by Korea to statements in the transc KTC's meeting was therefore whether the Panel could properly review the injury determi the KTC by reference to considerations in the transcript which were not included or referred t public statement of reasons given by the Korean authorities at the time of the imposition o anti-dumping duties.[53]

209. In analyzing this question, the Panel was guided by the provisions in Articles 3 and 8:5 of the Agreement. Article 3 of the Agreement required investigating authorities to consider certain factors and to make a determination based on positive evidence with regard to these factors. In the view of the Panel, effective review under Article 15 of an injury determination against the standards set forth in Article 3 required an adequate explanation by the investigating authorities of how they had considered and evaluated the evidence with regard to the factors provided for in that Article. Interpreted in conjunction with Article 8:5, such an explanation had to be provided in a public notice. An explanation of how in a given case investigating authorities had evaluated the factual evidence before them pertaining to the factors to be considered under Article 3 clearly fell within the scope of the requirement in Article 8:5 that authorities articulate in a public notice "the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities, and the reasons and basis therefor." This provision served the important purpose of transparency by requiring duly motivated public decisions as the basis for the imposition of anti-dumping duties. In the view of the Panel, the purpose of this provision would be frustrated if in a dispute settlement proceeding under Article 15 of the Agreement a Party were allowed to defend a challenged injury determination by reference to alleged reasons for such determination which were not part of a public statement of reasons accompanying that determination. The Panel therefore did not accept Korea's argument that the Agreement did not

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included

limit an investigating authority's ability to demonstrate that it considered all of the required factors, and to demonstrate that dumped imports caused material injury, to the text of the public notice which announced its determination.

210. Furthermore, for a panel to review a determination by reference to considerations not actually reflected in a public statement of reasons accompanying such determination would also be inconsistent with the requirements of an orderly and efficient conduct of the dispute settlement process under Article 15. A full and public statement of reasons underlying an affirmative determination at the time of that determination enabled Parties to the Agreement to assess whether recourse to the dispute settlement mechanism under Article 15 was appropriate and provided a

V.3 Alleged Failure of the KTC to State the Basis of its Determination

214. The Panel then proceeded to examine the specific grounds upon which the United States had alleged that the KTC's injury determination in respect of imports of polyacetal resin from the United States was inconsistent with the obligations of Korea under the Agreement.[56]

215. One of these grounds pertained to the alleged failure of the KTC to state whether its determination was based on a finding

218. As noted above, the injury determination which was the object of the Panel's review was contained in KTC Decision No. 91-6 of 24 April 1991. The first paragraph of this Decision read as follows:

> "The Commission hereby determines that dumped imports … caused material injury to the domestic industry as set forth in Article 10-1 of the Customs Act." (emphasis added)

Section 2 of this Decision, entitled "The Condition of the Domestic Industry" concluded with the following statement:

> "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." (emphasis added)

Finally, the section of the Decision dealing with the existence of a causal relationship between the allegedly dumped imports and injury to the domestic industry contained the following concluding sentence:

> "Accordingly, the Commission hereby concludes that there is a causal relationship between the dumped imports

KTC's injury determination before the Panel did not meet this requirement. The determination did not contain specific conclusions on each of the three standards of injury discussed in the determination nor did it explain the relationship between the analyses of these injury standards.

224. The Panel therefore concluded that in this respect the KTC's determination was inconsistent with Korea's obligations under Articles 3 and 8:5 of the Agreement.

V.4 Sufficiency of the KTC's Determination as a Basis for Affirmative Findings of Present Material Injury, Threat of Material Injury, or Material Retardation of the Establishment of an Industry

225. The Panel noted that there appeared to be some overlap between the issues raised by the United States under the four other claims mentioned in paragraph 196. Thus, more than one claim of the United States focused on the KTC's treatment of factors such as net profits, sales revenue and inventories. Many of these issues pertained to whether the KTC had carried out an objective examination of the factors it was required to consider under Article 3 of the Agreement and had based its findings on positive evidence. The Panel was of the view that the most efficient way of proceeding was to begin its analysis by addressing the issues raised by the United States in support of its claim that the findings in the KTC's determination were deficient to serve as basis for an affirmative determination on the basis of any of the three possible standards of injury under Article 3 of the Agreement.

226. The Panel noted that the arguments of the United States in support of this claim involved to a certain extent the question of the sufficiency of the evidence to support the findings reached by the KTC and that there had been some discussion in the proceedings before the Panel as to the nature of a panel's task in reviewing an injury determination in light of the positive evidence requirement in Article 3:1. Thus, Korea had argued that there was positive evidence to support an affirmative finding under each standard of injury and that the arguments of the United States amounted to not more than a disagreement with the weight given by the KTC to certain factt

by the investigating authorities" within the meaning of Article 8:5. Therefore in reviewing the KTC's determination the relevant question before the Panel was not whether there was sufficient evidence in the record of the KTC which could

234. The Panel first examined the issues raised by the United States regarding the KTC's consideration of sales revenue of the domestic industry as an indication of the existence of present material injury.

235. In this connection, the Panel noted that the KTC had made the following observations in its determination:

> "The average ex-factory price of the domestic industry in the first quarter of 1989 was [ ] Won per ton. Since then, 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." (pages 4-5, emphasis added)

236. The United States had not contested the factual basis of the KTC's statements on the decline of the domestic price over the investigation period but had argued that the KTC's conclusion on the substantial loss of sales revenue was not based on positive evidence because the KTC had failed to take into account the impact of the increased volume of sales on the sales revenue of the domestic industry. According to the United States, had the KTC examined both elements of sales revenue, i.e. prices and volume of sales, it would have found a substantial gain in sales revenue. In the view of the United States, the KTC's disregard of the vo

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quarter of 1989 to 2,326 tons in the third quarter in 1989 as an element in its conclusion that there had been a substantial loss in sales revenue over the investigation period. In fact, the KTC on page 4 of its determination had referred to "the domestic industry's increases in sales and market share" which it considered to be "normal occurrences". On page 7 of its determination the KTC had in its discussion of material retardation stated that certain economic indicators, including shipments, "seemed to show a favourable situation".

240. The Panel noted that, although not specifically mentioned by Korea during the Panel's proceedings, the KTC staff report prepared in this investigation provided information on the evolution of sales revenue over the period of investigation.[61] During the investigation period an increase in sales revenue from 2,504 million Won to 3,497 million Won from the first to the second quarter of 1989 had been followed by a decline to 3,222 million Won in the first quarter of 1990. This data, according to which a rise in sales revenue of about 40 per cent over one quarter was followed by a total decline of about 8 per cent over three quarters, had not been discussed or referred to in the text of the KTC's determination. As written, the KTC's determination did not explain how the KTC had evaluated this data in finding a substantial loss of sales revenue.

241. The Panel noted that Korea had offered an alternative interpretation of the KTC's statement on the substantial loss of sales revenue during the period of investigation. Under this interpretation, this statement meant that without the price effects of the dumped imports, the industry's sales revenue would have been higher. However, also under this interpretation an examination of the volume of sales would have been required in order to substantiate this statement. In the view of the Panel, it was not sufficient for the KTC to have simply assumed that if domestic prices had not declined but had remained stable or had increased, this would not have affected the volume of sales realized by the domestic industry. The Panel did not find an indication in the KTC's determination explaining if and how such examination had taken place. The Panel therefore concluded that even if one interpreted that KTC's statement as referring to what the level of sales revenue would have been if prices had evolved differently, it could not be considered to have been adequately substantiated by positive evidence.

242. The Panel concluded, in light of its considerations in paragraphs 238-241, that the only factual basis discernible from the text of the KTC's determination of its finding on the loss of sales revenue factual

249. The Panel considered that it could reasonably be inferred from the

254. For the reasons set forth in the preceding paragraphs, the Panel was of the view that it was unable to ascertain from the text of the

necessarily led to an accumulation of inventories. The fact that there might also have been other factors contributing to this

(b) Threat of material injury

265. The Panel then proceeded to examine the claim of the United States that the KTC's determination did not provide an adequate basis for a finding of a threat of material injury and was in this respect inconsistent with the requirements of Articles 3:1, 3:2, 3:3 and 3:6 of the Agreement.

266. The essence of the claim of the United States with regard to the inadequacy of the analysis in the KTC's determination as a basis for a finding of a threat of material injury was that this analysis did not include a consideration of whether there was a clearly foreseen and imminent change of circumstances, as required under Article 3:6. The KTC had in particular failed to examine likely future developments with regard to the volume and price effects of the imports subject to investigation, the prices of these imports and the consequent impact of these imports on the domestic industry.

267. With regard to the impact of imports on domestic producers, the United States had also considered as inconsistent with Article 3 the fact that the KTC had explicitly excluded from its analysis "favourable market forces that are beyond the domestic industry's con[redacted]ch as fallin[redacted]rial costs and intere[redacted] rates".

268. Korea had argued that there was sufficient evidence to support a finding of a threat of material injury caused by the imports under investigation, based on the existence of large margins of dumping, the presence of a substantial volume of imports, the impact of those imports on domestic prices in terms of price suppression and price depression, the capacity of the producers in question to supply the Korean market, and the increase in inventories of the domestic producer. These factors, several of which were expressly identified in the relevant Recommendation adopted by the Committee on Anti-Dumping Practices[62], provided a proper basis for a finding of a threat of material injury consistent with the Agreement.

269. Korea had also argued that the KTC's findings on the current effect of the dumped imports on the domestic industry were pertinent as evidence in support of a finding of a threat of material injury. In the view of Korea, if imports had a current effect, this effect was by definition real and imminent and thereby sufficient as positive evidence of a threat of material injury.

270. With regard to the evidence

It followed from the text of Article 3:6 that a proper examination of whether a threat of material injury was caused by dumped imports necessitated a prospective analysis of a present situation with a view to determining whether a "change in circumstances" was "clearly foreseen and imminent". Interpreted in conjunction with Article 3:1, a determination of the existence of a threat of material injury under Article 3:6 required an analysis of relevant future developments with regard to the volume, and price effects of the dumped imports and their consequent impact on the domestic industry.

272. In this connection, the Panel noted Korea's argument that if imports had a current effect on the domestic industry, that effect by definition was real and imminent and thereby sufficient evidence of a threat of material injury. However, Korea had also argued that in this case the finding of a threat of material injury was separate from findings of present material injury and material retardation of the establishment of an industry. This logically meant that the Panel had to review this finding as a finding that, while no present material injury was caused by the dumped imports under investigation, such imports caused a threat of material injury. Such a finding of threat of material injury necessitated an examination of

276. In this connection, the Panel noted that Article 3:3 of the Agreement provided that:

> "The examination of the impact on the industry concerned shall include an evaluation of 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. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance."

While the relative weight to be accorded to each of these factors depended upon the circumstances of each particular case, the overall context of an analysis of the specific factors mentioned in Article 3:3 was that of "an evaluation of all relevant economic factors and indices having a bearing on the state of the industry". The wording of Article 3:3 did not support the view that factors which were beyond the industry's control were, by definition, not "relevant economic factors and indices having a bearing on the state of the industry". The Panel

found that, in view of the substantial market share of the dumped imports, the imports continued to have a real impact on domestic prices. The Panel considered that market share of imports and the capacity of foreign producers to supply the Korean market were distinct concepts and that the statement in the KTC's determination on the presence of a substantial market share of the imports therefore could not be said to reflect a consideration of available capacity of foreign producers to supply the Korean market.

281. The Panel noted, however, that had the text of the determination reflected a reliance by the KTC on foreign producers' capacity to supply the Korean market, it would have been necessary to decide whether a reference to the capacity of foreign producers to supply the Korean market, rather than the likelihood that such capacity would actually be used to increase supplies to that market, was consistent with Article 3:6 of the Agreement. While Korea had argued that reliance on capacity of foreign producers to supply the Korean market was consistent with the Recommendation of the Committee on Anti-Dumping Practices, this Recommendation provided for the consider

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." (pages 9-11, footnotes omitted)

As in the case of the KTC's analysis of the volume of dumped imports, this analysis of the price effects of the imports was clearly retrospective in nature. Based on an examination of price developments over the investigation period, the KTC had concluded that "the import price caused the domestic price to be suppressed and depressed". The Panel found nothing in this analysis indicating how the KTC had considered the likely future price effects of the imports under consideration as part of an analysis of a threat of material injury caused by the imports under investigation.

283. The Panel also noted the KTC's statement that:

> "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." (page 8)

This observation identified what would be the expected effect on the domestic industry if imports continued to depress the domestic price but did not explain why it was considered likely that the imports would continue to depress the domestic price. Moreover, this observation was made in a section of the determination discussing material retardation of the establishment of an industry, not the existence of a threat of material injury caused by the dumped imports.

284. The Panel noted that there was a discussion of data pertaining to the likely future price effects of the imports under investigation in the sections of the KTC staff report which provided information relevant to the KTC's evaluation of whether a threat of material injury was caused by the imports under investigation and whether the establishment of a domestic industry was materially retarded by the imports. Because this information on future price effects of the imports had not been discussed or referred to in the KTC's determination, the Panel could not satisfy itself that this information had in fact been a factor in the KTC's finding of a threat of material injury.

285. The Panel concluded that, by reason of the lack of any prospective analysis of developments regarding the volume and price effects of the imports under consideration, the KTC's injury determination, to t1 0 0 1 324.48 486.48 TmTf(any1 451.92 330.96 Tm/F8 11 Tfderation,) TjETBT1.24 Tm/F8 1

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287. From the preceding analysis of the text of the KTC's determination, the Panel drew the following conclusions. First, the KTC's examination of the projected

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

capacity of 20,000 tons. Read in this manner, this statement was not in contradiction with the statement earlier in the determination that the industry had reached "normal operations" and with information in the KTC staff report. The Panel noted in this respect the following statement in the KTC staff report:

> "Therefore, if a 10,000 ton production facility is regarded as standard, then the company has reached its break-even point. But if a 20,000 ton production facility is regarded as standard, then the company should produce and sell approximately 15,000 tons yearly in order to reach the break-even point." (page 46, emphasis added)

296. The Panel then turned to the argument of the United States that in its discussion of material retardation the KTC had relied upon data regarding the financial condition of the industry in the full year 1990 whereas for other indicators the KTC had only examined data for the period 1 January 1989-31 March 1990. The Panel noted that with regard to the financial losses incurred by the industry as an indication of material retardation the KTC had stated:

> "In 1990, the domestic industry experienced a much larger loss (the 1990 financial statement shows 464 million Won in losses)." (page 7)

This was not the only instance in which the KTC had referred to data beyond the period

the

299. The Panel concluded that, to the extent the KTC's determination was based on a finding of material retardation of the establishment of a domestic industry, this determination was inconsistent with Korea's obligations under Articles 3:4 of the Agreement.

## VI. CONCLUSIONS AND RECOMMENDATION

300. The Panel's conclusions, based on a review of the KTC's injury determination as written, can be summarized as follows:

(i) The KTC's determination of injury in respect of imports of polyacetal resins from the United States was inconsistent with Articles 3 and 8:5 of the

302. The Panel therefore recommends to the Committee on Anti-Dumping Practices that it request Korea to bring its measure (the imposition of anti-dumping duties on 14 September 1991 on polyacetal resins from the United

ANNEX 1

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
(ADP/72)

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

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My authorities have

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

Communication from the United States

Addendum
(ADP/72/Add.1)

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

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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 obGETBT1 0 0 1 484.5

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In particular,

ANNEX

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 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

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 per cent). However, the domestic industry is

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

In the case of sales prices to distributors,[7] the domestic price was 3.6 per cent