

1999. 12.

張 槿 鎬

序 言

不公正 貿易行爲 UR
WTO 1998 가
73 가 .
WTO 反 慣行委員會 迂回輸出 規制가 1999 WTO 新 協
商 , 例外
貿易自由化
選擇的 .
, 1963
1991 , 43 가 22
가 가 ,
12 가 .
가 反
需要가 實效性 制度運營
가
가
內 幼稚産業 斜陽産業 . 國
가
效率的 一貫 가
WTO
多者間 協議
政策的 示

峻点

，調查開始 威脅效果 輸入代替效果 迂回輸

出 價格戰略

가

國際規範

WTO

法的

制度的

政策的

制度的 改善案

效果

性格

競爭限制的

制度

特定產業

輸入規制的

入關稅

人爲的 資源配分

高率 輸

가

가

가 實效性

制裁手段

가

透明

一貫

運營

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究助員

本 報告書 內容

個人的 意見

公式見解가

1998 12

韓國租稅研究院

院長 柳 一 鎬

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[圖 VI- 7]	가	214
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I. 序 論

WTO 反 協定 正常價格 가
가 被害 , WTO
가 反 關稅 報復措
置 1).
가 (predatory pricing) 不公正 貿易行爲

WTO 履行協定
가 GATT 6
가 正常的 價格行爲

WTO
WTO
, 1985 15 WTO
1998 73 가 가
가 가
가 . 가
1998 69 IMF
24

TV 恣意的
, WTO (Committee on
Anti-dumping practices) 迂回輸出 規制가 WTO

1) 가 가 .

(New Round)

가 . ,
가 WTO

, 1963 不當廉賣 防止關稅 名稱下
1991

가 . , 1993 12 UR WTO
1998 12 6 防止關稅法 .
1996 1997 低價 21
가 가

, 12
43 (1998 9) 가 . ,

WTO 履行協定 母胎

貿易委員會가

. , 가

가

實效性 制度運營

가

가

가

國內 幼稚產業 斜陽產業 .

가 .

. II
 가 . WTO
 , III WTO 反 協定 가
 . IV 美國 反 制度 論議 美國 反
 法(URAA) 聯邦規程(19 CFR 301)
 . , , 1916
 , 가 .
 , 가 가
 . 通商政策
 的 次元 가 .
 V VI
 . , 調查開始 威脅效果
 輸入代替效果 가
 迂回輸出 價格戰略
 .
 資料 不足
 가 個別 事例 分
 析 政策的 示唆點 가
 가 . ,

反 制度 效果

輸入規制的
特定産業

性格 競爭制限的 制度 ,
高率 輸入關稅 人爲的 資源配分 가
가 實效性

制裁手段 國益

制度的 裝置가
透明 一貫 反 制度 運營

II. 理論 實際

“Antidumping law is not public policy, it is private policy. It is a harnessing of state power to serve a private interest: a means by which one competitor can use the power of the state to gain an edge over another competitors, (foreign producers)¹⁾”.

1. 概念

GATT 6 가 正常價格(normal value)
 가 가 , 가 가
 . , GATT 가
 가 , 가
 2). 가 同種 製品
 比較可能 價格 , 가 3 輸
 出價格 構成價格 (GATT 6
 1 (a)).
 GATT 6 가 ,
 GATT 가
 . GATT

1) Antidumping: How It Works and Who Gets Hurt, M. Finger 1993, p. 34

2) “is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retard the establishment of a domestic industry.”, GATT 6 1 .

GATT 가
 .
 가 가 가 시장
 分離 獨占的 價格差別行爲(monopolistic price discrimination) .
 가
 利潤極大化 國內 海外市場 需要 彈性
 價格 . , 獨寡占市場
 , 가 가 .
 , [圖 II-1]

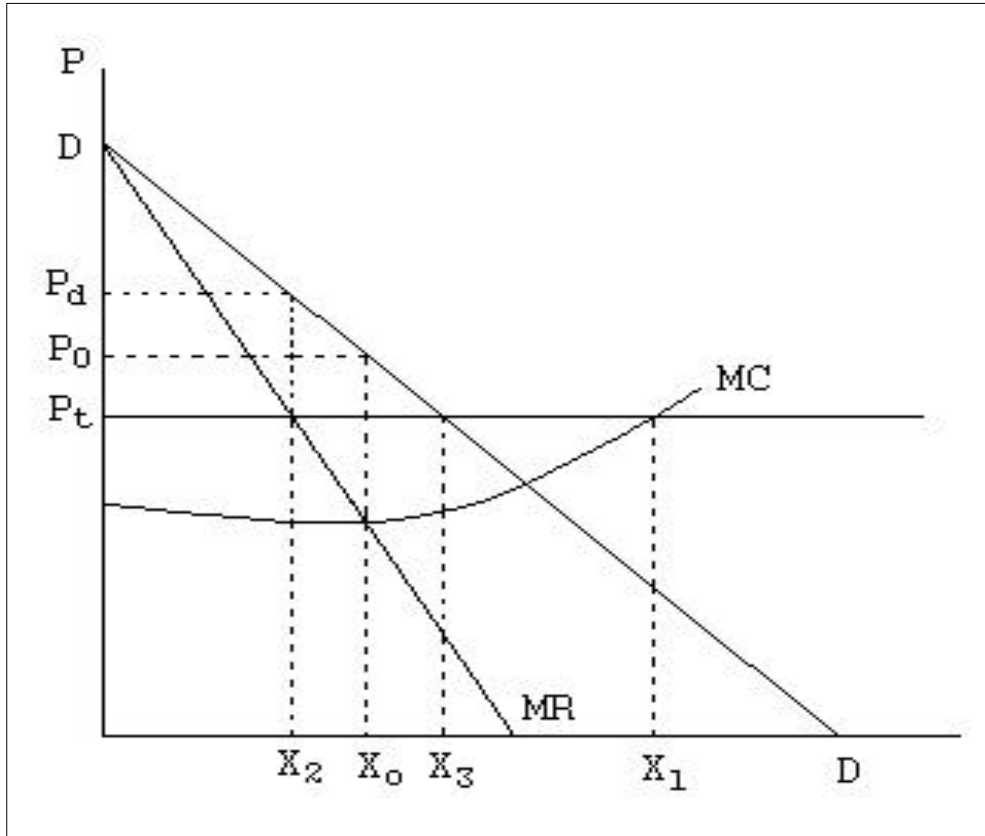
[圖 II-1] 限界費用曲線(MC) 限
 界收入曲線(MR) .

限界費用 限界收入 , X_0 P_0 가
 . P_t
 가 . , 가 P_t
 가 X_1
 가 .
 , P_t
 . [圖 II-1] P_t X_2
 P_t
 X_2 , $X_1 - X_2$ 3).

가
 가 (P_d) . ,
 3) , (AC) P_o D

가

[圖 II-1]



: Stephen W. Davies · Anthony J. McGuinness, "Dumping at less than Marginal Cost", 1982, p. 170.

가

가

가

가

가

가

GATT가

X₁

가

GATT 6

가 (P_d)

가

(AC- P_t)
 ($P_d - P_t$) 가
 , 가
 GATT
 가
 掠奪的 價格戰略(predatory pricing) 新貿易理
 論(New Trade theory) 가 가
 가 (J. Hartigan, 1995).
 가 限界費用 以下 가 固定費用
 (fixed cost) , 平均費用 以下
 平均可變費用(average variable cost) 以上 가 가
 . 가
 競爭法 公正去來法 가 가
 . , [圖 II- 1] 가
 가 가 (J.
 Tirole, 1993). 가 가
 가 (contestable market) 3
 가
 가 (collusion) (merger)
 가
 가 GATT 8 價格引上約束
 公的 가
 (T. Prusa, 1994).

, 가 , 需
 가 . , 需
 要 不確實性 短期的 調整費用(adjustment cost)
 . 가
 , 가 가
 가 가
 가 (industry-specific)
 가
 (W. Ethier, 1982).
 (transitional dumping) 規模 經濟
 (economy of scale) 가 가 .
 가 가 가
 가 (D. Weinstein, 1992).
 가 가
 가 産業被害 救濟措置(Safeguards or
 Escape Clause) 가 .
 ,
 (first mover) 教育效果(learning effect) (R. Clarida,
 1993, H. Gruenspecht, 1998). D
 .
 가
 가
 ,
 가 가
 가

UR

新技術開發

補助金政策

가
 , 가
 ,
 (market competition)

(Safeguards Clause)

가
 (potential competition),
 가 (J. Stiglitz, 1997).

가
 地代追求(rent seeking) 行爲
 (circumvention)

Anderson, N. Schmitt, and J. Thisse, 1995).

人爲的 比較優位
 가

次善 政策手段 競爭法 WTO 相計關稅協定
競爭 競爭者

가

4).

가

地代

追求(rent seeking)가

5).

2. 主要國 反 制度 運營實態

가.

GATT

特定 貿易相對國

特定 輸出業體

가

GATT

例外條項

法的 事項

精神

가

가

가

WTO

1980 ~1993

<

II-1>

1980

, EU

4) 美國 獨占禁止法

가

市場條件 變化

가

가

掠奪的 價格行爲

가

가 가

5)

WTO

가

, 相計關稅(countervailing duty)
 (494) (306) 가
 . 1998 EU가
 322 163 882 57.7%
 EU
 가 1980
 . 1998
 273 (31%) 가 4 69
 가 가
 交易障壁 WTO New Round 가
 , 가

< II-1> (1980~93)

			(EU)				
1980~95	319 (35%)	207 (23%)	169 (19%)	201 (22%)	6 (1%)	0	902
1985~90	156 (25%)	100 (16%)	114 (18%)	184 (29%)	33 (5%)	48 (8%)	635
1990~93	183 (27%)	64 (10%)	71 (11%)	192 (29%)	38 (6%)	118 (18%)	666

: GATT Secretariat; quoted in *The Financial Times*, 15 December 1992 and 25 November 1993.

가 , 가
 , 1980~
 1990 (7) 가 156 , 가 6
 가 174 , 가 41 , 156, 11

, EU 84, 150 EU 가

가 價格引上 約束

輸出 抑制 輸入規制效果

가 .

, , 6%

1980 ~1989 33.2%

(Morkre and Kelly, 1994) ,

, 23% (World Bank, 1992).

EU (MFN) 7.8%

1980 ~1988 37.4% 1980~1989

17.8% (Bourgeois and Messerlin, 1993,

Messerlin and Reed, 1995).

< II-2>

. 1980 383 265 ,

174 6). 45.4%

가 가

< II-2> (1980~96) (: , %)

1980~1989	383	311 (81.2)	265 (69.2)	174 (45.4)
1990~1996	308	274 (89.0)	235 (76.3)	140 (45.5)

: (, 가 1 가 1 1).

: International Trade Commission, 1998. 10.

6) < II-1> < II-2> 가 .

1990 273 14, 21 가 , 1980 가 1990 59 , 478 12.3% 564 67 (11.9%) 가 가 가 累積 1998 322 가 , EU 再審 가 延長・賦課 事例 < II-3> . 1998 , 73 (6) 가 가 12 (15) , , 가 , (15) (15) , (20) , (13) 73 가 가 15 (10) (34) , (9) , (8) , (8) (9) , (6) , 가 가 (specific duties)가 22 51 가 (ad valorem duties) 23.4% ~36.6% 가 .

< II-3> EU

(1998. 10.)

(: %,)

	21.2~45.0	31.5~31.6	25.8~33.7	24.3~37.8	15.4~29.1	23.4~36.6
가	15	9	8	10	9	51
	-	11	5	-	6	22
	0	2	7	0	3	12
	15	20	13	10	15	73
	2	-	7	6	-	15

: 가 .
: Swedish National Board of Trade (<http://www.kommers.se/adeng.htm#ad1>.)

. : EU

, EU 16 46

23 , EU,

4 () 가 33 (14) 가가 12

(14) 가 가 . ,

(ITC) 1989 ~1993

7.45% (3.61%),

(2.31%), (1.83%)

7). 가 EU , 1997 對EU

15% 21

가 .

1998 10

< II-4> . TV 16

7) “ ”, , 1998(<http://www.mocie.go.kr/new/review1>).

0.03% ~ 25.59% (5.2% ~ 9.7%) 가

1998 , ,

가 . 勞動組合

, TV, TV 4

가 .

經過規定(transitional rules) 1998 10 TV UR

再審 1999 11

D 가 가 .

, ,

((9) (4)

. , 1978 21

가

6 . , 1997 12 가

17 가 14 5

TV(15), (13), , TV

(12) 持續的

. , TV, TV , 8

GATT 微少 規定(2% rule)

(0.5% rule)

. , TV

3 (1985), 4 (1986) 6 7 (1996)

0.5% 3

1993

1995 .

() 1992 1996

2 年例再審

< II-4 >

(1998. 10.)

(: %)

		I	II
1983	TV	0~16	(1998) 0.03~16.57
1985	가	12.48	25.59
1986		0.75~12.14	1.06~2.95
		7.16	7.34
	TV	1.91	0.12~1.91
1988		13.4~15.85	1.39~2.86
1989		66.3	0.36
1990		3.88~5.38	0.07~11.62
1991		4.91~11.63	2.64
		2.55~7.75	2.67
1992		21.2	21.2
		1.51	0.04~13.79
	DRAM(1 가)	0.74~7.19	7.61~12.64
	(/)	4.64~24.95	0.39~5.72
1994		0.0~12.17	0.0~12.17
1997		3.18~28.44	

: II

: [http://www.mocie.go.kr.ktc/new/review1 / EU.HTM](http://www.mocie.go.kr.ktc/new/review1/EU.HTM)

D

1997 7 8

TV D

WTO

1998 9

狀況變化 再審

11 TV 2000 1 1
 , D 1998 12 WTO LG
 가 3 가

GATT

8).

1984 TV 가 1985

NAFTA

1991 TV

3

1997 12 TV

가

(9% ~ 15.8%)

(5.2% ~ 9.7%)

, 1998 10 EU 가 11

< II- 5> EU

4

9), , EU

, 17.4% ~ 26.2% (5.2% ~ 9.7%)

EU가 가

(< II- 6>)¹⁰⁾.

8) 가 , 가 (19 CFR 351.222(b)).
 1998 WTO 11 2 ,
 가 ,

9) TV , 1998 12 가
 1998 9 가

10) 가 가

< II- 5>

EU

(1998. 10.)

(: %)

1988	TV(16")	10.2~19.6 10.5()
		가 : 0.189ECU/Kg 0.129~0.28ECU/Kg(1996)
1990		1.6~4.8(1993) 12.3(1998)
1992		7.2~26.7
	(3.5")	8.1
	TV(17")	13.4~17.9
1993		3.3~29.0
		70.6
1996		24.0~26.7
		7.5~25.1
1998		10.5~12.3

: 1. 1998 10

: <http://www.mocie.go.kr.ktc/new/review1/> / EU.HTM

EU TV(10)

(8)

EU

, TV, , 7 17.2% ~28.1%

가

가

, 가 . 1985

가가 15

1998 73

3 ,

< II-6>

EU

(: %)

		4.0~10.2	66.3	5.8~13.9	-	3.9~5.4	9.0~15.8
		2.3~8.5	0.4	6.8~10.5	-	0.07~11.6	5.2~9.7
	EU	17.2~28.1	10.5~12.3	24.0~26.7	12.3	-	16.8~24.9

:
: [http://www.mocie.go.kr.ktc/new/review1 / EU.HTM](http://www.mocie.go.kr.ktc/new/review1/EU.HTM)

TV

WTO

가 .

WTO

2

WTO

가 .

WTO

가

III. WTO

1. 概要

1900 (1903) (1916) 가
, 1947 GATT 6
. GATT 6
GATT 1994 6 (Agreement on the
Implementation of Article VI of GATT 1994)

, GATT 6 ' 가

. GATT 1994 6

가 WTO
(New Round)

GATT 6

2. WTO

가. (GATT 1994 4~6 , 12 , 14)

1)

가
 同種 製品¹⁾ 國內産業
 .
 50% 가 가
 25% 가
 (5 4). 脚註 “ ”
 가
 労働組合 1967
 , 가 ,
 (5 6). 1
 18 .
 14 3 3
 가 가 .
 가 3
 3
 3
 3
 3
 (14 3)²⁾.

1) GATT (like product: *produit similaire*) :

("a product which is identical, i.e., alike in all respects to the product under consideration, or in absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration."

2 6).

2) the authorities of the importing country shall consider the effects of the alleged dumping

가 , (Council for Trade in Goods) .

2)

立證責任 申請人 (5 2) .
國內産業 被害 因果關係
가
(simple assertion) .

가 가 .
, , 가 가
, 가
가
輸入規制效果가 5 4 . 自體가

6 1 利害當事者³⁾
(30 가) . 書面申請書
全文 , ,

. 30

on the industry concerned as a whole in the third country; that is to say, the injury shall not be assessed in relation only to the effect of alleged dumping on the industry's exports to the importing country or even on the industry's total exports.

3) 가
, , 가
가 .

가 , 가

6 1 11 ,

가

가 (adverse interests)

(6 2

)4). 6 5

(6 3 , 4).

가

가

가

가 가 要約文 形態

1979

12

, 가 , , 가 ,

公告(public notice)

가

가 (essential facts)

가

가

(6 7). 6 12

4)

가

産業的 利用者
消費者團體가

6

6 8

가

利用可能 事實

(on the basis of facts available)

가 最善 情報(Best Information

Available, BIA)

가

2(ANNEX II)

가

2

가

利用可能 事實

가

가

(5).

가

가

, 가

公

表 (6).

間接的 出處

가

가

7

가

가

‘不利 結果’

6

가

6

14

6

가

當局 客觀性 가 違反事項

3)

GATT 가
'國內産業' 가
國內 總生産量 主要 部分(a major proportion)
가 特殊關係(related)
가 ,
가
가

가 . ' ' 5) 3 3 .
가
가 (4 1

(i).

4 3 가 1994 GATT 24
8 (a) 關稅同盟 規程

EU 4 1 (2) i)
ii) 가

5) 가

. , 가

. 가 輸入國 憲法上 가 , 輸出中斷約束 價格引
上約束 가
가 制限

(4 2).

EU 가 分離
가 가
EU 가
가 .

4)

個別

. 가
“ 가
” 利害當事者 製品 數
가 가 가 (6
10)6). 恣意的 選擇 가
가

6) may limit their examination either to a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to the authorities at the time of selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.

適時
(6 10 2).
가 9

4 가 ,
加重平均 , (適及適用)

正常價格 加重平均 正常價
輸出者 輸出價格間 差異 . ,
, 最小 (*de minimis*) 6 10
利用可能 情報 .

新規輸出者 特殊關係가 (not related),
個別的
(9 5).
暫定措置가 ,
適及適用 가

/ .

最高 反 關稅 . 가
‘業體’ EC

輸出國 (residual
duties)

WTO 가 ‘無視

(negligible) 水準' ,

7).

最小許容水準(*de minimis*: 가 2%)

輸入 規模 被害가 無視 水準

(5 8).

3%

7%

(GATT 1994 2)

1) 가

가) 가

GATT 6 1

가 , GATT가

(material injury)

가

(因果關係 要件)⁸⁾.

GATT 6 가 正常價格(normal value) 가
가 9). 가 正常去來

7) EU가 0.5%, 1.5% .

8) "dumping is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retard the establishment of a domestic industry."

9) 가 가 WTO 가 .

(in ordinary course of trade) 가

가 . 가 3

가 가 (the highest comparable price, export value), 販賣費用 利潤 生産原價(構成價格) (GATT VI:1). GATT 6 價格差別 (price discrimination) .

가 가

가 가 (3 가)

基準價格(surrogate or reference price) .

가

3 가

. EC 1980 ~85 68% 가 가 (Messerlin, 1989).

가 3 가

1980 ~89 54.4%가 最善 資料(BIA) 가 (Devault, 1990).

가

正常價格 가

. 輸出國 國內價格

가 10)

가 가 , 第3國(appropriate the third country) 가 가 가

가 , 構成價格 (2 2). 가 가

3 가 가 .

10) 가 가 5%

, 가

)

原價以下 國內販賣(sales below unit cost), 特殊關係人 販賣
 小量販賣 ‘ 가
 가 . GATT
 가
 가 가 가 .
 WTO ,
 2 2 1 가 가
 3 管理, 販賣 一般費用 生産單
 位費用(固定 可變費用) 以下 가 長期間 ‘ ’ 相當
 量 11) 가 合理的 期間內 가
 , 가 調查期間 가
 가 (2 2 1). 가
 가 가

< Ⅲ-1>	가	가	가
- 가	가	가	가
·1 (6)	가	가	가
·	가	가	가
·	가	가	가
- ,	가	가	가
			20%

11) 1 가 가 가 6 가
 가 가 가 20% 가

)

會計原則

가 輸出國

(2 2 1.1).

가

가 , 가

가 ,

一回性費用 生産開始費用 (start-up cost) 販賣價

가 原價 가

가

(2 2 1.1).

12)

가 (the most recent)

(2 2 1.1 6).

) 가

構成價格(constructed value) 固定費用(fixed cost) 變動費用(variable cost)

販賣, 一般 管理費用(sales, general and administrative

expense: SG&A) 利潤(profit) ‘ ,

가 . ,

(8%) (10%)

12) EU 가

(, 1995).

가 EU

가

(2 2 2). 가

, () (the same general category)

가 , 가

, (any other reasonable method)

, 가

2) 가

가 正常價格 輸出價格(export price)

가 가

3 (compensatory arrangement)

, 가 가

(on such reasonable basis) (構成輸出價格, constructed export value, 2 3).

3) 가 가

가 가 가
 가 가
 가 가 . 가 市場條件
 가 ,
 가
 가 .
 仲介國
 가 가 正常價格 ()
 가 .
 가 , 原產地價格 가 가
 (2 5).

4)

가 , 가 가
 가 GATT
 가 가 . 2 4 1 ,
 販賣日 , 13), ,
 가 先物市場 外換賣買 ,

60 가
 廉價輸出(exchange dumping)

13) , UR 5%

< Ⅲ-2> 가

가 :

1. 가 : 가 가
- , : 3 가 가
- : 5%

2. 3 가 : 가 3 가 가
- 가

3. 가 : 가
-
- ,

가 :

1. 가 : 가

2. 가 : 가 가 ,
- 3 가 가 .

가 :

1. 가 , , ,
- , , ,

2. 가 가 가 가 가 :
- 가 , , 가 가 가
가 가 가 가

(GATT 1994 3)

1)

“

”14)

가

(injury test).

“深刻 被害”가

“實質的 被害”가

가) 3

, 輸入 製品 規模 , 同
種商品 國內 市場價格 變化 ,
國內生産者 影響 (3

1)15). 3 2

(significant) 가

가 가

價格引下(significant undercutting)가

가

가

가

“相當 (significant)”

GATT

가

國內産業 影響 가

가

가

14) "...causes or threatens material injury to an established industry in the territory of a contracting party or materially retards establishment of a domestic industry."

15) "A determination of injury shall be based on positive evidence and involve an objective examination of both (a) the volume of dumped imports and their effect on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such imports"

가 가 가
 (coincidence), 가
 가 (Messerlin, 1989).

3 6

. , 가 ,
 가 ,
 , 가
 가 가
 (the narrowest group or range of products) 가 .

) 가

累積
 (aggregation)

problem). ,

市場進入 規制 . ,
 (newly developed countries: NICs)

3 3

2 累積的 評價가 ,
 最小限(*de minimis*) 17) 無視 程度(not negligible)가
 , 競爭條件 競爭條件
 가가 ,
 가 .

17) 5 8

가 2% GATT가
 0.5% , EU 1.5%

2)

GATT “ ” (threat of material injury) “ ” (materially retard the establishment of domestic industry)

3 7

“

가

(clearly foreseen and imminent) ”

i) 가 가 輸入 增加率, ii)

가

가 , 가 (sufficiently freely

disposable)

生産能力 增加, iii) 國內價格

가 가 가

, iv) 輸入品 在庫 . 가

가 臨迫 가

가

가

가

가

가

GATT

가 가

WTO

3 8

暫定措置(Provisional Measures)

60

가 4

6

6 9

가

가

가

가

(withholding of

appraisement)

2)

(GATT

價格引上約

6 2 , 9 1).

束

, 가

가

, 輸出國()

(9 2).

가

가

還給 (

10 3).

3) 가

GATT 6

價格引上約束 中
斷 , . 가
가 가
. 8 1 “ 가
가 가 가
.” .
가 8
2 가 “
肯定的 豫備判定 ” .
가 가
. 가
(8 4).
가 强要
가 가
가
가
現實性 ,
가 가
가
, 가 , 가

90

가 . (8 6).
가 關稅稅入

談合 . 가 合法的 價格
가 가

가 가 .
國內法 不法的 談合 國際法

4)

消費用

(10 1).

暫定措置가 가
最終判定 , 가
가 適及 .

(10 4).

例外的 , 가 以前 90
適及適用 가 . ,
前歷 가

가 認知
(and) ,

가 救濟效果
 가 , 短期間 大規模 輸入
 가 가 (10 6).
 가 . 가
 . 90
 調査開始 以前 .
 (10 8).

< Ⅲ- 4 >

-
- 1.
 2. : 가 가
 3. 가 90 :
 . ,
 . 가 가
 .
 . 가
-

. (GATT 1994 11~13)

1)

反 關稅 附課期間 GATT
 가 .

가 , 가 20
가 10% 가
가 가

가
EU 日沒規程(Sunset Clause)
가

가 18) 5
가 (11 3). 5

, 가
가 . 5
가 .

(11 1).
가

가
(11 2). 1979

GATT “
가 ” 가 19).

2)

18) "the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury".
19)

12

(public notice)

, 가 ,
가

가 가

가

가

1979

13

가

(procedure)

(GATT 1994 16~17)

1) DSU

WTO
(the Understanding on
Rules and Procedures Governing the Settlement of Dispute, DSU)

1)
2) 分爭解決機構(Dispute Settlement
Body, DSB)가
3) , DSB
가 가

4)
60
9
6 ,

가
(‘adopt’)
60
가

法律 問題(legal issue) 法的
解釋 가 30
가 ,

WTO 가 가
가 ,

20
가 ,
對象協定 義務 讓與

2) 17

17

, DSU 別途

2(Annex 2)

1 2

2(Appendix 2)

가

가

17 4 7

20).

17 ,

6

制限 審議基準

事

實確立

평가가 公正・客觀性

許容 反

協約 解析

가가

, GATT

가

WTO

合致

, WTO

17

(sympathetic consideration)

20) Annex 2: Appendix 2, Special or Additional Rules and Procedures Contained in the Covered Agreements.

가 가

가

가

WTO , 例外的 가

가 7 1

(

17 4).

.

17 6 가

가가

가 ("whether the establishment of the facts was proper and whether their evaluation of these facts was unbiased and objective", 17 6 (1)). (Terms of Reference: TOR)

“ 가가 . (

) 가가 ”21).

國際公法(public international law)

WTO 가

() 가 ,

가 (17 6 (ii))22).

17 WTO 가

21) “If the establishment of facts was proper and the evaluation was unbiased and objective, even though the panel might have reached a different conclusion, the evaluation shall not be overturned.”

22) “where the panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, the panel shall find the authorities' measures to be in conformity with the Agreement if it rests upon one of those permissible interpretations.”

6 14 WTO 適正 事實確立
 追加的 . . , 6
 가
 . 14 6 가
 WTO . , WTO
 6 14
 WTO
 가 .
 (Committee on Anti-Dumping Practices)
 1 2 (16).
 .
 (WTO)
 6
 가 , .

3. WTO

가. 가:

GATT 6

追加的 關稅 GATT 6 GATT
例外條項 . UR

UR

日沒條項

節次 客觀性

代表

, 輸入威脅效果

因果關係

가 . ,

가 , GATT 透明化 .

GATT .

(BIA) 가 가

가 가

가 不利 判定 .

新規輸出者 輸出國

許容 (2%) (0.5%) EU(1.5%) 最小

(3%, 가 7%) 具體化

가

9

가 遡及適用

가 正常價格 輸

出가 決定 客觀化 . , 가

調査 全期間 去來價格 單位費用

가 가 正常去來 基準

가 構成價格 算定

1)

GATT

가 II

. , 國內外 需要 彈力性
原價以下

가 差別的 價格戰略
平均可變費用(average variable cost) 以上

가

GATT 6 가 가
가

가

比較優位 貿易 製品

間 競爭

GATT 6

가

自律性

가 合法的

GATT 保
法

護手段

的 解析

主要 要因

部分的 要因

가

, ' 가 , ' 가 , 가 , 가 '

恣意的

紛爭解決機構(DSB)가 , WTO
가
, WTO
6 14
6 가 WTO
가 適正 事實確立
가
GATT
가 UR
without exception)가 가 例外 關稅化(tariffication
Export Restraint, VER) 自發的 輸出制限(Voluntary
가
가 ‘ 가 ’ 가 ‘ 가 ’
가 가 가 가
가
가
正常價格 過大計上 輸出價格 過小評價
가 가 ,
因果關係
가 가 가
市場占有率

가

가

2)

販賣 輸出價格 正常價格 以上 輸出 正常價格 原價以下
 < Ⅲ- 5> 24).
 가 50 ,
 100 , 150 가 가 100 가 . ,
 가 가 50
 2 2 1 가 100
 가 25). , 1 ~3
 가 가 125
 가 . , 가 100
 가 가

가 平均費用
 平均可變費用(average variable cost) 以下 가
 가
 가 가

24) *How the GATT Affects U.S. Antidumping and Countervailing-Duty Policy*, Congressional Budget Office, U.S. Congress, 1994.

25) 2 2 1 原價以下 去來가 相當量 長期間
 가 가 가 가 가
 가 20%
 正常去來

(Gruen Review Report, 1986)

가

< Ⅲ- 5> 가 가

	가	가	1)		
1	50	50	50	○	50
2	100	100	0	×	0
3	150	150	- 50	×	0
가	100	100	-	-	16.7% 2)

: 1) 가 100 가

2) 가 가 $50/300 \approx 16.7\%$.

: *How the GATT Affects U.S. Antidumping and Countervailing-Duty Policy*,
Congressional Budget Office, U.S. Congress, 1994.

, , , 가 가
가 가 例外條項(2 4 2)

가 . ,

가 가 가

, 陰

. < Ⅲ- 5>

, 가 가

. 3 가 150

가 100 가

가 가 가

16.7%

加重平均價格

價格 變化

가 가 26)

. 가 < Ⅲ- 6> 1 100 가
 1,000 2
 가 200 , 가 175 가 .
 , 가 1,000 가
 가 가 . 가 가
 가 150 100 가
 175 . ,
 2 가 ,
 14.3% (200- 175/175) 1 가 , 100 18.2%
 가 .

< Ⅲ- 6> 가 (1)

	가 ()	가 ()			
1	100(1,000)	100(1,000)	50	○	50
2	200(1,000)	175(1,000)	- 25	×	0
가	150	137.5	-	-	18.2% 1)

: 1) (가) 가 150 가 175
 , $[(150- 100) \times 1000 + 0 \times 1000] / (100 \times 1000 + 175 \times 1000) = 18.2\%$

가 2

가 . 가 가

166.7 $((100 \times 1000 + 200 \times 2000) / 3000)$ 100

66.7% . 18.2%

가 200

26) as nearly as possible at the same time

固定資本費用(fixed capital cost)

가 , 가
가 , 3 가
가 ,
가 .

3)

實質的 被害(material injury) 解析²⁸⁾

가 . 提訴企業
가 , ,
, , , 가 , ,
가 , 가 , 가 .
因果關係가 單純 相關關係
人爲的 算定
가
가 . 가
, 가
가 .
가
가

29).

28) (An Antidumping Authority, 1989) (material)

('material' should be considered in terms of its opposite: thus not material, insubstantial or insignificant: greater than that likely to occur in the normal ebb and flow of business).

29)

GATT 6 被害 威脅 産業確立 遲延

가 ()

(3 8)

累進的 評價

因果關係

가 被害

憂慮 累積的 評價條項 3

가

가

輸出國

(9 2) 가

가

價格引上約束 가

가 가

提訴 以後 長期間 人爲的 價格談合

가

() 가 .

國內外 寡占企業間 價格談合(collusion) 法的
가

競爭法 가 가

輸入品 消費者 産業 使用者가

가 가 原價引上
保護措置가 增幅 效果

가 (cascading effect).

被害 競爭條件 變化 法的
考慮事項 GATT 市場 獨寡占
私有化 가

, 特別輸入措置法(Special Import Measures Act of 1984)
(Canadian International Trade Tribunal, CIT)

가 (\$45). 反 關稅가
公益 , 公
益 最適 關稅가 ,
가 가

“(가)
” 30).

30) the statute "is to be applied on a exceptional basis, as for instance when the relief provided producers causes substantial and possibly unnecessary burden to users and consumers of the product"(Canadian Import Tribunal, 1987).

, 125 1 (the Competition Law subsection 125(1))
Department of Consumers and Corporate Affairs

CIT CIT ()

1984

(Refined Sugar Case of 1984)

CIT

가

가

, 1987

CIT

가

31).

CIT

가

(J. Syme and I.

Uhm, 1996).

EU

가

公益 EU 市場內 競爭狀況

가

競爭業體가 競爭 被害

WTO

가가

가 法理的 解析 WTO

3

가

(the

Grain Corn case, May, 1986)

가

31) Canadian Import Tribunal(1988), *Statement of Reasons*, pp. 10-11, the Korean Car (Hyundai Motor Company) Case, July 1987.

GATT

EU

UR

反 協約

()

4. (Circumvention)

가.

가

迂回輸出(circumvention) 防止가 UR

가 3

(screwdriver plant)

WTO

32).

比較優位 差等關稅 克服 生産基地 移轉

가

灰

色地帶(gray area)

32) G/ADP/IG/W/2, p. 2, Informal Group on Anti-Circumvention WTO, 1997.

33).

1)

受・委託貿易 規模 < Ⅲ-8>

가

< Ⅲ-8>

(: , %)

		1995	1996	1997	1998
	가	52.2 (4.2)	58.8 (4.5)	74.4 (5.5)	37.3 (5.5)
		35.8 (2.6)	40.6 (2.7)	55.3 (3.8)	26.6 (5.6)
		10.7 (0.9)	15.2 (1.2)	18.5 (1.4)	9.0 (1.3)
	가	3.7 (0.3)	6.2 (0.4)	7.3 (0.5)	2.7 (0.6)
		1,250.6	1,297.2	1,361.6	676.3
		1,351.2	1,503.4	1,446.2	475.7

: () ()
:

가 受託貿易 가 1997 74

33) TV 1984
NAFTA 1990 6 5
3

· 委託貿易 規模 1997

19 , 7 .

) 가 3 (.
가 .

2)

VI 가

社() 社()가

1991

가 가

가 34). , PS

24.5~38.2% 가

가 가

EU

PS

24.5~38.2%

4 7 1 가

3

가 가

가

1997

가 .

34)

가 .

, 가 (HS 9613.10.000) 가
 (HS 9613.20.000) ,
 가
 , .
 .
 EU 1987 , 가
 50% ,
 . 1990 GATT
 GATT 3 (National
 Treatment Clause, 內國民待遇 規程) . ,
 가 . UR
 EU 가 가 가
 , 가 가 가
 . 協商案 가 70%
 (Dunkel) ,
 .
 1993
 12 (Marrakesh Ministerial Decision) WTO
 (Committee on Anti-Dumping Practices)
 WTO (New Round)
 .
 가 .

1)

輸入國 國內
 ‘別途 調査 ’ 迂廻輸出
 部品 . , 1)
 國內外物品 同種 , 2)
 가 () 特殊關係(affiliated)
 , 3) 가 ()
 () 特殊關係者
 , 4) 가
 增加 , 5) 輸入部品 關聯 總費用
 70% (, 附加價值가
 가 25%), 6) 가 確定
 가 (or)
 () 組立部品 가 不可避 證據가
 .
 EU ,
 가 가 .
 , EU 3 新規生産
 增加 ,
 50% , ,
 가 가 가

(Council regulation No. 2423/88, Article 13 10(a)).

. EU

(Parts Amendments).

2)

가)

(Title VII, Sec. 781) 3

가 (downstream product)
 가 가 .
 美國 內 . ,
 가 (of same class or kind) ,
 (parts) (components)
 ,
 (minor) (insignificant) ,
 가 (significant portion) ,
 完製品
 部品 構成品 ((Sec. 781(a)(1))³⁵).
 美國 工程 5

- 1)
- 2)
- 3)
- 4)
- 5)

가가 가 가 .

, () 가 特殊關係
 (affiliated) ³⁶ ,

35) “ ... ,after taking into account any advice provided by the Commission under subsection (e) of this section, may include within the scope of such order or finding the imported parts or components refered in subparagraph (B) that are used in the completion or assembly of the merchandise in the United States... .”

36) Sec 771(33) (affiliated person) :
 , , , , 가 가
 5% . , .
 (control) ,

가 가 ,
 美國 第3國
 ,
 3
 .
 3
 가 가 가 ,
 回避 가 ,
 , 3
 , 3
 가 가 (3), 3
 가 37).
 가 가 3
 가 , 가 (19 CFR
 351- 225(g), (h)), Sec. 773(f)(3)).

, , 同種 輸入品
 .
 가 70% 가 가
 가 25% 가 가 가
 , , 가 가
 가 가 特殊關
 係 가 ,

37) , 3 가 가 3
 가 .

가 . 가 가 가
 가
 가
 .
 被
 害 因果關係 獨立 調查 가
 . 가
 가 가 , (迂廻) 證據가
 (or) 가 不可避 證據가
 가 가 ,
 ,
 GATT 6 2 6(a) 部分的
 38), , 3
 가 가 .
 (original investigation) 가 (scope
 decision) 1
 39),
) (Downstream Product)

(later-developed merchandise) 工程過程

가 後方産業 製品(Downstream Product)

38) 가 1 18 1 1994 GATT

가

가

39) G/ADP/M/4 108., p 13, Committee on Anti-Dumping Practices WTO, 1996.

(minor alteration)
 (.i.e., Harmonized System)
 가 (Sec. 781(c)).
 가
 가
 (Sec. 781(d)).
 (expectation)
 (sales channel)
) 關稅分類品目(HS)
 () 가 除
 外 , 가
 가 가 가 가 가 가
 가 가 가 가 가 가 가
 가 가 가 가 가 가 가
 (downstream product) 輸出
 가
 (Sec. 780(a)).
 가 가 ,

가 , ()

(19

CFR Sec. 351.223(b)).

가 5 最小限 15%

合意가 15%

가 가 15%

主要 材料, 組立品, 構成品 部品 (Sec.

780(d)). ,

가 14 ,

가 가

가 ,

가

() 가 (

) 2

40).

가 가

,

(monitoring)

, 分期別 輸入 5% 가

40) 1984

of 1984, section 804)

804 (the Trade and Tariff Act

(Sec 780(a)(2)(B)(i), (781)(5)).

가

가 () 가 後方製品 輸出轉換
가

)

(antidumping order)

(scope ruling)

가

(Sec. 781(e)(1)(C)).

15

가 300

가 가

가

가 가 60

美國

勸告案

(taken as a whole) 가

輸入物品 變形 輸入國 轉換 迂回輸出
가

(scope ruling, 19 CFR Sec. 351.225).

가

45

(only)

範

圍對象目錄(scope service list)⁴¹⁾

20

10

有用 情報

3

가

300

120

42).

: WTO

1)

迂回輸出 規制

41)

(19 CFR 351.225(n)).

42)

가

가

WTO 가 .
閣僚會議 決定 WTO 가
(refer) 1997 4
(Informal Group on Anti-Circumvention)
가
43).
(Informal Working Group) (Consultative Group)
EU (i.e., formality) 가
가 ,
‘ , .
가
가
가 44).
, 3.5 EU
가가 45).
, EU 가 GATT/WTO
GATT 6 2 46)

43) G/ADP/W/404, Committee on Anti-Dumping Practices, WTO 1997.

44) “ 가 (specific text) (note)

가 (uniform rules)
45) , (refer) ” . EU EU
가 ,

46) GATT 6 2 “ 가 ” .
, only .

GATT 6 6(a)

(only)

47).

EU 가

1 18 1

48).

WTO

, 被害

因果關係 個別的 調査가

가 EU

5 2

가

18 4

49).

EU가

EU

效率的

3

가

EU

가

가 範圍 決定(scope ruling)

1 (original investigation)

가

EU 가

가

가

EU

가

가

EU

47) G/ADP/M/4 E, Committee on Anti-Dumping Practices WTO, 1996.

48) “ 1994 GATT 6

” “1994 GATT

”

49) EU 13

3 EU

()

가

가

가 GATT WTO

가 50). 1996 6

가

가

WTO ()

가

GATT WTO 가

EU

가

(i.e., took note of)

가

EU 가 WTO UR

가

1997 最惠國待遇

原則(MFN Principle)

가

가

1)

50) G/ADP/M/9 I, G/ADP/M/10 F, Committee on Anti-Dumping Practices WTO, 1996, 1997.

가 WTO
가
가
가) EU
EU 가 ,
51), WTO
가
1979 UR
WTO 가
EU 가
()

51) G/ADP/IG/W/1, 2, Informal Group on Anti-Circumvention WTO, 1997.

HS

. , 3
(가가)

3

3 , , 가가
가 . 3

, 가 .

)

EU

가 .

52).

가 特定 輸出者가

. 時機

貿易形態 變化

가

가

同種製品

가

가 .

가

3 ()

(screwdriver operation)

52) G/ADP/IG/W/3, Informal Group on Anti-Circumvention WTO, 1997.

(關稅分類)
).

가

原產地規程上 3

가 가 53). 3 ,

가

3

() 가

被害問題

가 産業

가 .

가

가 54).

WTO 55). ,

53) WCO (Technical Committee on Rules of Origin)

가

54) 詐欺行爲 . 가

, 가 가 가 가

GATT 1994

20 (d)

55) G/ADP/IG/W/5, 10, Informal Group on Anti-Circumvention WTO, 1998.

3 가
, 가
() , ()
() 가 가 ,
80% 가가 가
20% , 가
가 .
가
, 3
. .
가
가가 .
) ()
WTO 가
가 WTO
, 가
56).
, GATT 6 6(a)
3 1
18 1 1994
GATT
EU
WTO 57).

56) G/ADP/IG/W/4, 8, 9, Informal Group on Anti-Circumvention WTO, 1997, 1998.
57) “ 1994 GATT 6

가 1993

, UR

가

GATT

, 20 (d)

가 가

WTO

(Working Group on Trade and Competition policy)

가

WTO가

가

가

가

가

가

98.5%, 99%

1

가 가

”(1).

HS

가

1 가

가

3

가가

1

가

가

3

獨立 個別的 市場

가

가

3

(2 2)

WTO

(GATT 20 (d))

(circumvent)

가

3

基本關稅率 差異

比較優位 變化 (GSP benefits)	가	基本關稅率 差異	가
가	가	原產地規程	3
WTO	가	2 (a)	(incomplete)
HS(Harmonized System) (unfinished)	가		
			, HS
	가		
WTO		가	
	가 , 3	가	가 1995 , 7 1997
	, 11 가		

被害 因果關係 檢證

WTO

WTO .

가

輸入規制

效果

輸入國 部品 比率

免除 自國 製品 使用 投資増進

가 . , 3 가

가 . 가 (terrorem effect)

가

(New Round)

가

WTO

WTO

EU GATT WTO

가

HS GATT 20 (d)

가 가 WTO

WTO

가

IV. 美國 反 制度

1. 概要

GATT 6 WTO 가
1994 反 法 UR協約法(Uruguay Round Agreements Act, URAA)
掠奪的 價格戰略
獨占禁止法(antitrust law) 反
法 獨占禁止法 生產地 差別的
GATT 가
緊急救濟措置(Section 201, Escape Clause) 貿易調
整支援制度(Trade Adjustment Assistance)
8
深刻 被害 威脅
主要 原因 (substantial cause of serious injury or threat thereof), 構造調整費用
保護 誘發 費用
1970
1995 1 1 UR UR
1930 7 (Subtitle B of Title VII of the tariff
Act of 1930) 1916 (the Antidumping Act of 1916)

,
 故意性(intent of injury) ,
 . 1921 (the Antidumping
 Act, 1921)¹⁾
 被害調查(injury test)
 , 1954 關稅審議委員會(國
 際貿易委員會, International Trade Commission: ITC)
 , 1974 (the Trade Act of 1974)
 가 가
 , 1980 財務省
 가 商務省 . 1984
 , 가 . 1988 貿易 競爭總括法(the Omnibus Trade
 and Competitiveness Act of 1988) 迂廻輸出
 , 3 가
 (foreign dumping in third country),
 (short life-cycle merchandise)²⁾
 .
 商務省 調查開始 與否
 率 國際貿易委員會(ITC, 貿易委員會) 國
 內産業 被害 . 가
 가 가
 ,
 가
 ,
 關稅精算 停止(suspension of

1) 1947 GATT 6 가 .
 2) 가
 4 舊形 .
 100 가 .

liquidation)

國際貿易裁判所

(International Trade Commission, 1995).

, 利害關係人 公聽會

聯邦官報(*Federal*

Register)

(verbatim)

(Sec. 774).

輸入品 產

業的 利用者

小賣段階

消費團體

(Sec. 777(h), 19 CFR 351.312(c))³.

反 制度

가

가

WTO

가

가

UR協約法(URAA)

聯邦規程(CFR; Code of Federal Regulation)

立法沿革(Legislative History)

2. 美國 反 法 運營節次

가.

(Petition and Initiation of Investigation)

1)

3)

(may)

(shall)

同時

提訴適格

가 資料, 調查申請 正確性 適合性 4).
20 , 40
5). 가

被害 否定的 豫備判定

140

가

가

‘合理的 根據’가

6).

輸出價格 正常價格 與否 率 ,
擔保金 (dumping component).

4) , 가
25% , 가
50% (Sec.
732(c)(4)(A)).

가

(19 CFR

301.203(e)(5)).

1

(19 CFR 301.203(e)(3)).

가

(affiliated)

가

5)

40

6)

4

2

(19 CFR 351-204).

地域産業(Regional Industries)

. UR

가
(Sec. 771(4)(C)).

가

. , 가

(Sec. 736(d)(1)).

가 農·水産製品

, 持續的 生産段階(a single continous line of production)

가 7),

.

, 有用 事實

(Sec. 732(a)(1)).

가

가

迂回輸出

,

가 가

가 轉換

監

視體系(monoring program)

(a class or kind)

가

가 8)

,

7) 가 (legal relationship)

가가

가

8) 가

가

가

가

(commercial problem) , 1
가
가 ,
가 (Sec. 732(a)(2)).
14 WTO 3
가
, 美國 貿易代表部
(Sec. 783). ,
WTO 商品交易委員會 (Sec. 783).
가 가
, 가
, 가
(Sec. 783(c)). , 가
가

2)

, 國際貿易委員會 實質的 被害
威脅 (injury component). 9)

9)

3) 7) (Sec. 771(9)): 1)
, , 2)
3) , 4)
가 5) 가
6)3),4),5) 7)가 가 (grower)
가 (processor), 가 가

正常價格 以下(LTFV: less than fair value)

가 販賣 可能性
10), 實質的 被害 被害 威脅 ,
遲延 (Sec. 731(2)).
가 가 ,
가 (三年間
資料)가 .

(Preliminary Determination of Injury)

1) 가

가 45 11)

‘合理的 徵候’가

12). (negligible)

.13) , 가

가 7)

10) by reason of imports of that merchandise or by reason of sales(or the likelihood of sales) of that merchandise for importation.

11) 가 45 .

가 45 가 25 (Sec. 733 (a)(2)).

12) 'based on the information available to it, at the time of determination, whether there is a reasonable indication that an industry in the United States (i) is materially injured, or (ii) is threatened with material injury, or (B) the establishment of an industry in the United States is materially retarded, by reason of imports of the subject merchandise' (Sec. 733(a)(1)). (the subject merchandise)

(Sec. 771(25)).

13) (negligible import) 가

가
(imminently) 3% 가 (累積的 評價
7%) 가 가
(Sec. 771(24)(A)(iv)).
가
, 輸入量 價格效果
累進的 14). 1987 1 1
自由貿易地域(Free Trade Area) 協定 가
()
, 가 15).
2) 3
16) , 調查對象
輸入量 規模 , 美國 國內價格() 影響
가 가 가 12 가
(volume) 3% . 가 12
가 7%
. 가 (, Sec.
771(7)(G)(ii)).
14) 가 가
가 가 (Sec. 771(7)(G)(i)).
15) 가
(Sec 771(24)(A)(iii)).
16) 19 U.S.C. 1677(7)(A) (material injury)
: "as harm which is not inconsequential, immaterial, or unimportant."
(substantial cause of serious
injury)' '(substantial)
(important and not less than any other cause, 19 U.S.C. 2251)

, 同種 商品 國內 生産者 效果
 가

(Sec. 771(7)). 輸入規模 가
 가 (significant)

. 國內價格 (1) 가
 廉價販賣가 (2) 가
 抑制 (depress) () 價格
 引上

國內 生産者 影響 ,
 ,
 . , UR協約法 . 1)
 , , , , 가
 , 2) 가 , 3) , , ,
 , , 4)
 (derivatives) ,
 5) (Sec. 771(7)(C)(iii)).

(downstream article)
 (merchant market) , 專
 屬生産(captive production) (Sec. 771(7)(C)(iv)).

主要 中間材
 , 市場占有率 財政的 要因 (內部去來
) . 農産物 ,
 가 最小支持價格(minimum support price) 近接 以上
 가 ()
) 가 所得補助金 價格支持補助金 負擔
 (Sec. 771(7)(D)).

< IV-1 >

	· · · 가 ()	· · 가
가	· , · 가 (가) · 가 · 가	· 가 , · 가 · 가 ·
	· , · . . . · 가 () · 가 · · . . . () ·) · () · ()	· , · () · () (3) · · 3 가 · 가 () · , 가) · 가
	·	· 가 가

3)

가 (imminent), 가 ,
가 ((Sec. 771(7)(F)(i), (ii)).
' (actual injury)가 ' (real)'

錄 , 가 , 議會 法改定 記 가
 , 第3國
 美國 國內産業 被害 憂慮 ,
 () () () 가 3

(Sec. 771(7)(F)(iii)).

國內産業 被害 憂慮가
 : 1) 가
 가 , 2) 가
 (depress) (suppress) 가 가
 가 , 3) 相計關稅 對象補助金(countervailable subsidies)
 가 가 , 4) 가 3
 가 가 遊休 生産
 能力 , 5) , 6)
 3 代替生産
 , 7) 農産物 農加工品
 , 商品變更(product shifting)
 가 8) 新製品 派生製品(derivatives)
 , 9)
 가 가 가 .
 가 , 가 UR
 가 가 가
 가 實質的 遲延
 ,

(Preliminary Determination of Dumping)

1)

140 (, 190)

, 가

正常價格 以下(LTFV; 海外市場價格, foreign market value)

가 '合理的 根據'(reasonable basis)

가

가 가 ,

(Federal Register) 가

60

, 關稅 精算 中止 (suspension of liquidation).

가

가 UR

, 零 微小 無視 18),

17) 1980 ~1993 197

22%

18) 'In making a determination under this subsection, the admimistrating authority shall disregard any weighted dumping margin that is *de minimis*.'(Sec. 733(b)(3)).

聯邦關稅規程, CFR 肯定的 最終判定
零 微小 輸出者가 豫備判定
(Sec. 735(a)(4). 19 CFR 351.204(e)).

가

가

(19 CFR Sec. 351.204(e)).

微小 輸出者

利害關係人

2) 가

加重平均 率 個別 業體別

가

가

統計的

標本,

個別 輸出國

가

()

가

(Sec. 777A(c)).

가

, 製品價格

費用 差異 19)

(Sec. 777A(a)).

其他 率(all other rate)

가 2% 微少

(*de minimis margin*)

(Sec. 733(b)(3)).

零 微小

有用 事

實(Facts Available)

除外 ,

가

加重 平均值 20).

19) 가 가 0.33%

1% (19 CFR Sec. 351.413)).

20) (URAA) 가 UR

가 2% 舊 商務省 規制基準 0.5%

(19 CFR 351- 106(c)(1)).

最善 情報(best information available, BIA) 利用可能 事實

履行協定 第9條 第4項

全部
(any reasonable method) (Sec. 735(c)(5)(B)).

3) 가

가) 가 :

21) 輸出
價格(United States Price) 正常價格 加重平均
輸出國 國內價格 가 가
第3國價格 가 (Sec. 773(a)(1)(B)(i), (ii)).
第3國價格 構成價格(Constructed Price) 適用順位가
, UR , 關稅法 聯邦規程(CFR) 3 가
가 가 가 가 3 가
(19 CFR Sec. 351.404(f)). 上位法 UR Sec.
773(a)(4) 가 , 3 가
構成價格 가 가
, 原價 以下 販賣(sales below cost) 가 ,
가 가 3 가 가
가 (Sec. 773(b)(1)(B)).
가 가

(19 U.S.C. 1673b(d)).
21) 가 (toller)
(19 CFR 351.401(h)).

가 가 ,
 (Sec. 772 Sec. 773)
 , 正常價格 ‘ 22)
 가 가 가
 가 , () 가 가
 가 (Sec. 773(a)(B)(i))²³.
 () 가
 , 第3國 가
 가 .
 總販賣量 5% ,
 가 가 24).
 , 3 가 가 , 3 가
 輸出 總物量(額數) 5% .
 3 가 ,
 3 가 가 ,
 3 가 가 가 偽裝去來(pretended sales)
 架空市場(fictitious market) 가 25).

22) (foreign like product)
 : , 가 同一人
 (identical) , 가
 가 , 가
 (kind) (class) 가 가
 (Sec. 771(16)).

23) "the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price or constructed export price....".

24) 가
 25) 가 , 가
 , 가 , 가
 (Sec. 773 (a)(2)).

3 가 複數 , , 가 , , 3 가 (19 CFR Sec. 351.404(e)).

中繼國 國內價格 가 . () 가 , , 가 3 가 生產地價格 가 . 가 (Sec. 773(a)(3), (5))²⁶. 가 , 去來價格 가 , 獨立 價格 가 (comparable) . () 當該 市場 () 5% , 가 (19 CFR Sec. 351.403).

) 가 :

가 가 3 가 出發價格(starting price) 가 가 特殊關係人 去來 가 27). 가

26) 가 가

27) , 가 操作 (a single entity) 가 (19 CFR 351.401(f)). 가 , 가

가 , 가 (19 CFR
Sec. 351.401(g)). 가

가
가

28).
가 ‘販賣’
(가)

가 가
가

가 , 가
(Sec. 771(14))²⁹. 正常去來

原價
特殊關係人 가
(Sec. 771(15)).

가 3 가 가
美國 費用 出發價格
包含 , 買入者
上記 費用 原船積地(original place of shipment)
가 가 가 除外

28) (19 CFR Sec. 351.401(c)).

29) 가 ,

(Sec. 771(19)).

30).
가
, 가 去來物量 價格割引, 가
同一製品(identical product) 同
種・同質製品 類似製品 價格差異, 販賣
狀況(circumstances of sales) () 가
가 差異 (Sec. 773(a)(6)(C)).
, 가 가
() 가
가 가 ,
가 가 20% ()
) 가 , 割引販賣
去來 正常價格 (19 CFR Sec. 351.409(b)).
包含 가 가 가
31).
物理的 特性
가
可變費用(variable cost) 差異 가
가 ,
(19 CFR Sec. 351.411).
, 販賣狀況 가

30) (19 CFR 351.401(b)(1)).
轉賣(reselling) ,

31) 가 , 가
가 가
(19 CFR Sec. 351.409(e)).
가

(assumed expense) ,
 直接 販賣費用(direct selling expense) 32).
 , 가
 , 其他 販賣費用(other
 selling costs) (reasonable allowance) ,

(19 CFR Sec. 351.410).

가
 가 가 .
 去來段階 差異 가
 가 가 가 가 .
 가 販賣活動 遂行 가 가
 가 一貫 去來段階別 價格樣相(price pattern)
 , 가 가 가 가
 (Sec. 773(a)(7)(A)). 構成 正常價格(constructed value)
 가 .
 가 가
 가 가 가 가
 . 가 가 , 가 가 (starting
 price) 33), 가 가 가 가 (19 CFR Sec. 351.412(c)
)34). 가
 가 商品範疇

32) Sec. 772(d)(1)

33) 가 Sec. 772(d)

34) 가 . 가
 , 가 가 (selling activity) 가 가
 가 가 가 가
 가 差異가 가 가 一貫 樣相 ,
 가 가 .

가 가 가 , , 가
가 가 가 , , 가
가
加重平均價格 . , 가 가 가
(가 가) 正常價格 가
(19 CFR Sec. 351.412(e))³⁵.
輸出價格 構成輸出價格 , 가
, 小賣段階 가 ,
가 가 가 가
가 가 . 가
其他 間接費用(Sec. 772(d)(1)(D))³⁶
, 가 가
가 (constructed export price offset).
가 가 가 가
(19 CFR Sec. 351.412(f)(3)).
가 가 原價 以下 價格
³⁷가 恒常
가 가 . 가 가 ‘長期間
相當 規模 ’ 가 合理的 期間 가
가 , 가
(Sec. 773(b)(1))³⁸. , 가

35) Sec. 773(a)(6) 19 CFR Sec. 351.412

36) 가
(19 CFR Sec. 351.412(f)(2)).

37) : 1)

가 가 가
가 가 , 2)

가

가 (Sec. 773(b)(2)(A)).

38) sales below cost must be disregarded in calculating domestic or third country price

가 (3
가) '構成 正常價格' (Sec. 773(b)(1)(B)).
가 가
: UR ' (over extended
period of time)' 가 가
가 가 .
1 , 6 가
賣買價格 加重平均 生産原價 ,
가 가 (Sec. 773(b)(1)(B), (D)).
가 가 가
20% 가 가 (unit price)
가 (unit cost) , 가 가
(Sec. 773(b)(1)(C))³⁹.
多國籍 企業 , 가
가
. , 가
. ,
가 . ,
Sec. 773(a)(1)(C) 가 가
, 가
가 , 가
, 가
(by reference to the normal value outside exporting country). ,

index if such sales have been made "*within* extended period of time and in substantial quantities, and are not at prices which permit recovery of all costs within a reasonable time in the normal course of trade".

39) UR 가 10% 가
(transitory dumping) 가

가 , (Sec. 773(d))⁴⁰.

< IV-2 > 가

·	가 :	
+	(,)	
-		
-		
±	(20%)	
±	(가 가)	
±	(, ,)	
±	(가)	
-	(가)	
-	(가)	

) 가 :

, ,

構成價格(Constructed Value) 正常價格 : , 3

(not viable) , 가 , , 가

가 가

, () 가 가 , 가

3 가 (19 CFR Sec. 351.405(a)) .

가 가 가

生産費用 概念 .

40) 가 가 , ,

가 , Sec. 773(a)

가 , 가
 가 , 가
 가 . 가
 (Sec. 773(e)). 가

42)

가 . Sec.
 773(a) 가 .
 가 가 (Sec.
 773(a)(8)). 生産原料 内國稅 内國稅 還給
 無視 .

43)

가 .
 가 ,

44).

41) 3 가 가 ,

42) 3 가 3 (19

CFR 351.405(b)(1)).

43) 가() (19 CFR 351.405(b)(1)).

44) , 가 가 ,
 UR 8% 10%

가 .

() 가

, 가 가

(Sec. 773(f)(1)).

가 가 費用配分, 가

,

가

) 가 :

一回性 經費

生産開始活動⁴⁵⁾ 費用(Start-up Cost)

가 , 商業的 生産⁴⁶⁾ 初期

가 ⁴⁷⁾.

45) 가 가

가 가 ()
(19 CFR Sec. 351.407(d)(2)). , 가 , , ,
가

(19 CFR Sec. 351.407(d)(4)).

46) 773(f)(1)(C)(ii) Sec. 가

47) (19 CFR Sec. 351.407(d)(3)).
(retooling),
(rebuilding)

가
(19 CFR Sec. 351.407(d)).
가

(Sec. 773(f)(1)(C)).

가 , , (Sec. 773(f)(1)(C)).
生産開始活動 時期 單位當 生産費用
代替 48).

가 가
가 固有
가 49).

< IV- 3 > 가

·	가:
+	,
+	(,)
±	,
±	,
·	, 가
·	
·	가 가
·	

가 生産要素 價格 特殊關係人

가
가 要素價格
主要 原材料가 가
가 가

48)

(19 CFR Sec. 351.407(d)(4)).

49) GATT 가 (start-up costs)

正常去來 市場價格 ,
가 가
(Sec. 773(f)(3))⁵⁰.

가
가 가 (major input rule).

4) 가

가 가
가 3 가 가 가
가 가 51);
가 構成價格 , 가 가
가 가
가 (surrogate price) . 가 ,
가

가 가 . 가 가
가 一人當 國內總生産 가
가 (Sec 773(c))⁵².

50) , 가 가 ,
가 가 (19
CFR Sec. 351.407).

51) 가 가 가 가 가
가 가 , 가 가 가
가 , 가 가 ,
(Sec. 771(18)). 가

52) 가 , 가가 가
가 가 .
가(surrogate country) ,
(manufacturing overhead) 가 가

가 , 가
가 가 .

< IV-4> 가

		- 가
가		. 가
3 가		- 3 가 . 3 가 : , 가 - 3 가
가		- , 가 . 가 , 3 , 가 , . 가 ,
가		- 가 가 가
3 가		.1 가 가 . 가 가 가
		- 가 가 가
		. 가 가

5) () 가

가) () 가 :

, 正常價格 가 ,
美國價格(United States price) . , 가 輸出價格(export price,
purchase price) 構成輸出價格(constructed export price, exporter's
sales price) . 가 가

가 回歸分析 資料
(19 CFR Sec. 351.408(d)).

獨立 購買者 輸入日 以前 ,
 가 Sec. 772 (b) 가 ,
 가 輸入日 前後 ‘
 , 獨立 購買者 () 가 , 特殊關係
 가 前後 가
 , 가 (Sec. 772(a), (b)).

) () 가 :

가 가 出發價格(starting price) 가
 가 가
 , ,
 가 添加 . 가
 輸入關稅
 相計關稅가 追加 . ,
 가 가
 美國 輸入關稅 가 削減 . ,
 가 가
 減少 (Sec. 772(c)). , 가
 가 控除
 公證書 關稅廳 53).
 가

(19 CFR Sec. 351.402(f)).

가 輸出價格 構成輸出價格
 . 가 가 가
 가 追加的 減少 . ,

53) ,

가

가

, , 特殊關係
 1) 2)
 3)
 가 4)
 , , 附加價值
 Sec. 772(e)가 , 가
 가 削減 ,
 가 가
 가 控除 (Sec. 772(d)).
 特殊關係人
 , 가 ,
 , 가
 (19 CFR Sec. 351.402(d)(3)).
 .
 Sec. 773(a)(6)(C)(iii)
 販賣與件 差異 가 () 가
 (19 CFR Sec. 351.402(b)).
 가
 가가 가 가 가 가
 (identical product) ,
 가
 가 가 (Sec. 772(e))⁵⁴.
 가 ,
 가 가
 獨立購買者 가 買入 價格 差

 54) 가 가

異 , 가가 가
 가 65% , 가
 (19 CFR Sec. 351.401(c)(2)).
 가 利潤 美國費用(United States
 expense) 總費用 比率 利益額 ,
 1)~4) .
 ,
 가
 (가) ,
 가 狹義
 , 가
 (Sec. 772(f)(2))⁵⁵.

< IV-5> () 가

가	. 가 : + (, ,) + . , - , , (가) -
가	. 가 : - 가 가 , - 가 가 (, , ,) - 가 가 - 가 . ,

55) 가 가
 (19 CFR 351.402(d)(1)).

, 가
 購買者, 地域 時差別 가 標的 (target dumping)
 가 가 ,
 平均 對比 個別價格 (19 CFR Sec. 351.414(f)1)).
 , 가 .
 가 가 가
 가 ,
 가 가 가
 , Sec. 776 有用 事實(Facts Available)
 가 ‘ ,
 가 (19 CFR Sec. 351.414(g)). , 負
 (negative dumping), 가 가 가
 .
 換率
 가 先物市場 外換賣買
 가 60
 가 (19 CFR Sec. 351.415) ,
 30
 公聽會
 59).

7)

20 , 가 危急狀況(critical circumstance)

(90 days back 60 days forward rule, Sec. 777A(d)(2)).
59) .

60) , 가
 , 가 (가
) 90 가
 關稅精算 中止 遡及 (preliminary finding).

, 被害 前歷
 , 가 가 가
 (knew or should have known)
 (massive import)
 (Sec. 735(a)(3)).

, 3個月
 , 以前 期間 15% 가
 大量輸入 (19 CFR Sec. 351.206(h)(1))⁶¹).

8)

, 調查 終了(terminate) .
 가 62). ,
 가

60) ,
 61) 가 訴訟 가 理由
 가 , ' 3個月 (19
 CFR Sec. 351.106(h)(2)(i)).
 62) (termination)
 (19 CFR 351.207(a)).

가 (i.e., expressed a lack of interest)

, 가

(Sec. 782(h)).

가

가

가

가

< IV- 6>

가

- :

·

· ()

· (85%)

- WTO :

·

·

·가

· (Extraordinary Circumstances)

WTO 約束(Undertaking) 가

가 , 輸入 關 規制合議(Quantitative Restriction

Agreement)가 公益(public interest) ,

· 公益 反 關稅

相對的 效果 가 , 가

, 國益 ,

産業的 使用者

가
 協議 .
 가 6
 中斷 가
 , 63. 輸出中斷約束 ,
 暫定期間
 (19 CFR 351-208(e)). , 特殊 狀況(Extraordinary Circumstances)
 가
 가 調整 가
 (被害 消滅 價格合議)⁶⁴. , 가 가
 가
 가 가 加重平均額 15%
 (Sec. 734 (a)(3)(c)(B))⁶⁵.
 가 公益
 가 監督 ,
 60 (Sec. 734(d)).
 . 20
 가 ,
 (Sec. 734(g)). 가 가

63) 85% , (19 CFR 351.208(c)). 15

64) 가 가 (complicated) 가 가

65) (novel) 가 가 가 가 가 가

約束 喪失 (19 CFR Sec. 351.208(h)(2)).
 30
 , 가
 (Sec. 734(e)).
 50
 ()
 (19 CFR Sec. 351.208(f)). 가 有
 效 가 :
 肯定的 豫備判定
 被害 消滅 價格合議 가 即刻的
 , 20
 (Sec. 734(h)(3)). 가 , 20
 , 75 가
 가
 가 終了
 가
 가
 66),
 90 以前

66) Sec. 734(c)(1)
 (Sec. 734 (i)(1)).

가
暫定措置
가
UR協約法 Sec.
592(a) 民事上 處罰(civil penalty)
(Sec. 734(i)(2)).

가 가
가 ,
가 ,
(19

CFR Sec. 351.209(c)). , 가
가 ‘ ,
가
가 , 가
가 가

(Final Determination and Anti-Dumping Duty)

1)

가)

75 , 商務省
가 가 最終判定

67).

調查 個別 企業 個別 國家別 加重平
均
金 證券 預置金 納付 否定的 現
關稅精算 中止 零
微少

(19 CFR Sec. 351.204(e)).

加

)

45

120

, 貿易委員會

最終決定

‘合理的

徵候’

68).

同數

事實關係 法的 結論

67)

135

(19 CFR 351.210(b)(2)).

68)

75

· , 被害 3 考慮要因
() (Sec.
771(7)(B)(ii)).
가 가 ,
가 가 (19 U.S.C. 1677 m(g)
Commission rule 207.29).

)
危急狀況
(被害) 矯正效果 深刻
沮害 . ,
, , 가, ,
(Sec. 735(b)(4)(A)(ii)).

가 . , 가 가
가 가 가
反 關稅 遡及適用 69).

遡及適用 . ,
, 90

69) UR 가 :
가 가 , 가
가 가 .

< IV-7>

	()	
		90
		90
	<ul style="list-style-type: none"> • • 	

)

，實質的 被害 憂慮(threat)가 ， 關稅
 清算 中止가
 가

國際貿易審判所(the U.S. Court of
 International Trade: CIT) 事實發見(factual findings) 法

的 結論(legal conclusion) 가 司
法的 再審(judicial review) (19 U.S.C. 1516a.)⁷⁰⁾.

日沒規程 異議

2)

가)

(Antidumping Order) 7) 가 確定
6 (assess)

關稅廳 72). , ()
現金

確定 反 關稅

70) NAFTA 1904 가

(not inconsistent)

가 . (Sec.

71) 779).

72) , 가 () 가

12 . , 가

가 12 .

(19 CFR Sec. 351.212(a))⁷³).

關稅精算 中止가

,

가

가

.

,

反 關稅 適及適用 가 (Sec. 736(b)).

,

가

現金

74). 最終判定

,

追懲金

利子

還給 (Sec.

737(b)).

가 豫備判定 精算 中止

WTO

,

.

)

週期的 行政再審

現金

.

73)

1

行政再審

適及附課體系(retrospective

assessment system)

가

確定

(

)

(19 CFR Sec. 351.212(b), (c)).

74)

(bond)

가

가

.

가 迅速 再審(expedited review)

90

(early determination of duty, Sec. 736(c)).

UR

(extraordinary circumstances)

가,

90

. , 實際 , 가 가

가 推定

가 가 가 가

가 가

가 가

가 . ,

가

)

國家別

個別 輸出者 , 가

가

個別的

(Sec. 782(a)).

shippers)가
가 新規輸出者 生産者(new
,
(Sec. 751(a)(2)(B)).

가
公證書 , , 가
가 75).
6
, 가 ,
. ,
180 90
, 300 , 150 가 (19 CFR
Sec. 351.214).

UR Sec. 771(4)(C) 地域産業
,
. , 가
가 ,
,
(19 CFR Sec. 351.212(f)).

[圖 IV- 1] .

75) 가 ,

(Review and Revocation of Anti-Dumping Order)

1)

가)

가 1 , 12 週期
행정再審(administrative review) (Subtitle C- Review of Determination; Other Actions Regarding Agreements)⁷⁶⁾. 特定 輸出者

12

가

: , , 가
245 (365)
가
120 ⁷⁷⁾ ,

12

가 2 4
, 國內 利害關係人 30
가 () 特殊關係

가 吸收·負擔

76)

77)

300

180

가
가

, 가 , 가
(Sec. 734(g)) 가

利害關係가
(Sec.

783(h)). 270
80).

2)

가 UR 가
가 5 ,
가 , 가
廢止 終結 (Sunset Review).

5 30
가

가 , ,

(Sec. 751(c))⁸¹⁾ ,

80)

45

(19 CFR Sec. 351.216(e)).

81)

가

(19 CFR 351-218(2)).

(Sec 751(e)).

90

, 120 , 150 有用
事實(Facts Available) (Sec. 751(c)(3)(B)).

, 240 最終 日沒判定(final sunset
determination) , 360 가
82).

가

가

(Sec. 751(c)(4)(B)).

, UR (URAA) 過渡期的 措置 UR 1995

1 1

經過命令(transitional order) (Transitional Rules, Sec.

751(c)(6)). 1995 1 1 42 1998

7 1 , 가

5 (1999 12 31)

18

, 2001 6 30 .

, 5

82) 30 , 90

120

가

가

가

가

WTO
(Sec 751(c)(5)(C), (D)).

(transitional action)

< IV- 8 >

·	· , 가 가 가 ,	· 90 가 가
·	· ,	·
·	· 1 (2	·
· 4)	· ,	·
·	· 가	·
·	· 5 가	·

3)

가)

· , 가 持續 再發 憂慮가
·
가
· 有用 資料
가 가 , 가 가

加重平均 推移 , 가 輸入量
 修整 現金預置金 .
 不在 終結 83). ,
 가 가 3年 가
 ,
 (19 CFR Sec. 351.222(b)).
 3 가 3 가 3

84). () 一部 ,

書面約束 .
 가 輸出者가 ,

가) :

UR 立法沿革(legislative history)
 가 85). ,
 83) WTO 가 (URAA Sec.
 129).
 84) 3 5 가 3 4
 ,
 가 가
 3
 ,
 (19 CFR 351.222(e)).

85) The Statement of Administrative Action(SAA), H.R. Doc. No. 103- 316, vol. 1(1994), the House Report, H.R. Rep. No. 103- 826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103- 412 (1994).

措置 注文(Statement of Administrative Action, SAA) , . 行政
 가 , 微小 ,
 , 가 持續 再發 ,
 . 가 86). , 市
 場占有率 가
 , 가
 가 가
 (SAA at 889-90).
 (good cause argument) 가 ,
 가 , 가,
 , , 가 , 가 ,
 , 가 ,
 가
 . , 零 0.5% 微少 가
 가
 가
 가
 最初調査時 最終判定
 變化 狀況 가
 豫備判定 . 가
 가

86) SAA at 889- 890, House Report at 63- 64, and the Senate Report at 52.

가
 , 例外的
 最近
 , 가 가 가 가 가
 , 가
 , 87).
 가
 가
 (BIA),
 (SAA at 890-91,
 889-90).
 () 가 ,
 가 (Duty Absorption), 가 ,
 가 代替負擔 가
 (SAA at
 885). , 4
 1998 ,

87) 'Policies Regarding the Conduct of Five-year('Sunset') Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin', International Trade Administration, April, 1998.

가

(SAA at 886).

)

貿易委員會

가

3

가

가

가

,

가

가

(Duty Absorption)

3

(Sec. 751(a)(1)).

輸入效果

,

,

가

가

,

가 가

가

,

3

,

3

가

· 國內價格

效果

,

가

相當

廉價販賣

可能性

가

가

國內産業

가

..

가

,

가

,

가

. 가 長期的
 (Sec. 751(a)(5)).
 地域的 分析 , 가 ,
 .
 (Sec.
 752(a)(8)).
 . (Provision of Information and Transparency)
 1)
 , 가
 (Sec.
 782(c)). , 中小企業
 . 가
 , 가
) , 가 (가
 가 가 가
 가
 가
 가 ,
 (Sec. 782(e)).
 個人情報(proprietary information)

匿名性

(Sec. 777(a)(4)).

가

詐欺行爲

. , 가

要約案

가

秘密維持命令(administrative protective order)

.

適時 利

害關係人 美國 政府機關

88).

事例概要文

(case brief)

가 5

(19 CFR Sec.

351.309(b)).

가

5

反駁文

(rebuttal brief).

가

(Sec. 782(h)).

2)

가

3 가 ,

88)

50

30

(19 CFR 351.309(c)(1)).

有用事實(Facts Available)

가
가
(Sec. 776(a)).

가
가 非協調的
不利推論(adverse inference)

가 獨立的
出處
가
(19 C.F.R. Sec. 351.308(d)).

3)

利害關係人 30 公聽會
89),

聯邦官報
(verbatim) (Sec. 774). 가

事例概要文(case brief) 反
駁文(rebuttal brief) (19
CFR 351.310(c)).

가
()
가

89)
(19 CFR 351.310(d)).

小賣段階
(Information)

輸入品 産業的 利用者,
消費團體()

(Sec. 777(h)).

(factual information)

(written argument)

(19 CFR 351.312(c)).

(Sec. 777(i)).

가

가

가

가

公告文

가

가

3.

GATT

:

“

가

據 , 90)”. 明確 證
 客觀的 因果關係 立證
 , 被害
 (3).
 가 가
 . ,
 16
 調查當局 主觀的 判斷
 가 .
 가 ,
 ,
 가 .
 가
 國內 產業的 利用者 消費者 .
 가 가
 . ,
 地代 行爲 .

90) “dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry.”(GATT VI.1)

輸入品 低價販賣 輸入增大가 . 國際
 貿易委員會(ITC) , 二
 段階 接近方式(bifurcated approach) 單一 接近方式(unitary approach)
 . 2 가 ()
 因果關係 ,
 . 가 . , 가
 91).
 가. 2 (bifurcated approach)
 2 , (material
 injury)가 , 가 , 因
 果關係(causation effect)가 , .
 , 1974年 貿易法 201條(Section 201
 of the Trade Act of 1974) 緊急救濟措置(escape clause)
 가 . ,
 ()
 (substantial)
 가 가 '弱 201條 方式'(weak 201 approach)
 92).

91) "Injury and Causation in USITC Antidumping determinations: Five Recent Approaches" by Seth Kaplan(in Policy Implications of Antidumping Measures, 1991)

92) Substantial cause means a cause which is imporant and not less than any other cause.

201 3 , 가 , , , 가 , 法的 要
 因(statutory factors) 狀態 趨勢 .
 가
 , 가
 가 가
 否定的 判決 .
 ()
 가 ,
 (significant) .
 2 가 .
 ‘ ,
 區
 分 가 93). , 代替財
 94).
 , “ 가
 ”95)
 201 輸入量
 : 가

93) GATT

“ ”
 (Sec. 771(7)(C)(iii)).

94) 2 가
 GATT 3 . ,

95) “whether the volume of imports of the merchandise, or any increase in that volume, either in asolute terms or relative to production or consumption in the United States is significant.”(Sec. 771(7)(C)(i)).

가 가

區別

가 趨勢分析(trend analysis) 96).
獨立的 (materially)

, , 法的 考慮要因 ,
, 가 가 廉價販賣
(margin of underselling) (lost sales)

趨勢

가 가 가 가
, 輸入製品 廉價販賣가 國內價格
國內製品 賣出 蠶食 가 가

97).

201 가

, 가 가 , 가

가 , 201

가 가 가

96) 가 가 가 가 201 가
97) 價格 差異 正常價格, 輸入國 (國內製品) 販賣價格 輸入
異 輸出國 國內價格 輸入價格 差

. 가 가 , , ,
 가 不完全 競爭財
 가 가 가
 的 價格差異 相對的 價格變化가 98). 가 絕對
 가 競爭 不在 . ,
 가 ,
 .
 3
 , 6
 . , 2
 說明 가
 .
 (unitary approach)
 ,
 2 .
 輸入品 가
 가 , 2 가
 輸入

98) , 가 가

率 ,

分析(margin analysis) () 廉價販賣
(the margin of underselling) 比較 .

, (正常價格- 輸入價格) 廉價販賣 (輸入國 國內價格- 輸入價格)
, 가 (가) 가
. 가

, 正常價格 輸入國 國內價格
가 가 .

, 가 가

.
, 가 , 가
가 (LTFV import)
, 가
가 .

透明性

.
가 가
. , 輸入價格 正常價格
, 輸出國 國內價格 가

가 가 . , 輸
入國 國內價格 가 . , 價格差別的
(discriminatory dumping) , 利潤極大化 原則 價格變化 가
가 가
가 가 가 .
, 가 가 가 .

가 가 가 .

比較分析(comparative analysis)

가 正常價格(가) 上昇
同種製品 代替財 가 .
正常價格(輸出國 國內價格) 輸入價格 가

· , , 國產價格 國內 生産量
가 가 ‘ , .
가 가
가 가
가 가 ,
99).

가 ,
가 가 . 輸入價
格 影響 , 가 가
가 , 가
가 (discriminatory pricing)

가 가
(predatory dumping) (promotional dumping)

- 가 .
- (1) 가 , 輸入價格 引上 國內製品 需要
- (2) (3)
- (4) 가 .

99) Richard Boltuck, "Assessing the Effects on the Domestic Industry of Price Dumping", Policy Implications of Antidumping Measures, P. Tharakan eds. 1991.

가 , 가

가 가

가

CADIC (Comparative Analysis of the Domestic Industry's Condition)

가

가 가

完全競爭體制 獨寡占 市場體制

不變 生產費用(constant cost production) 가

가

被害 檢證方式

反 制度 가 WTO

가

가 恣意的

, 被害 存在與否 因果關係 二段階 接近方式 因果關係

客觀的 分析

가

가

2

가

消費者가

斜陽産業

가

가

, 2

가

趨勢分析

歪曲

가 效率的 政策

2

가

가 斜陽産業

保護

2

GATT 6

單一 接近方式

輸入 被害 因果關係

가

WTO

3代 要因

가

輸入價格 引上
가

正常價格 下落

2

가 WTO

2

가

가

被害判定

單一 接近方式

가

가

가

比較分析

單一 接近方式 長點

被害判定 基準

廉價販賣

國產品 價格 正常價格

가

相對價格 變化가

代替財

가

가

가

가

가

V. 反 制度: 制度的 考察

1. 概要

1963 不當廉賣 防止關稅

1983

1985 . 1986 2 가 GATT

가

· , 1986 4 15 D.C.P.

() 3

1980 1991

· , 1993

12 UR 世界貿易機構(WTO) 設立協定 가 附

屬書 1 가

1998 12 6 .

·

貿易委員會 財政經濟部 法的

根據 關稅法 第10條, 法 施行令 第4條 2~15項 施行規則 第4條, 對外貿易

法 第35條 6項 . 10

, ,

가

大統領令

· 總理令

1987 貿易委員會가

1995 關稅廳

가 二元化 體制 1996

가

1). < V-1>

最終判定

가

關稅審議委員會 諮問

< V-1>

	,		
	,		
	,		
	:		
,	,	,	

: 『 , 』, , 1997. 8.

WTO

EC

가

1) 35 6, 4 4

가가
가 特定産業 高率 輸入關稅 人爲的
國家經濟次元 波及效果
가 實效性 制裁手段
가 , 가 12
43 (1998 9) 가 一
淺 가

2).

2. 防止關稅法

가.

1)

10 正常價格 以下 (“ ”
) 가
가
對象 物品 供給者 供給國 ‘ 가 ’ ‘ 가 ’
가 3). 4 2
利害關係가 者 主務長官 財政經濟部 長官(

2)

(anti-dumping measures)

3)

가 가
‘ 가 ’

會)

貿易委員
4).

3

< V-2> 8가

< V-2>

①

-
- 가 , 가
- 가 가 3 가

②

- 가 가

○

○

○

○

: 4 2 4

國內産業 ‘ 가 ’	同種物品 ⁵⁾	國內事業
全部 國內 總生産量 相當 部分	(4 2

4)

(4 2 3 , 4 4)

5)

(가) 가 (4 ①).

2).

6

(4 3)⁶⁷⁾.

가

가

特殊關係人 範圍

(4 2)⁸⁾.

2)

()

(4 8).

9).

6) 1996

가

가 6

H

가

7) 1997

가

豫備

判定 特殊關係人

가

가

本

調査 가

8)

가 1)

, 2)

3)

4)

5%

5)

3

3

6)

20

1

8

1

(가 3 7 1).

9)

가

가

가,

(4

5).

가

·
·

利用可能 資料

가

8 9

認知

4

가

(4 15).

公聽會

10).

輸入

認定

(4 8 9).

1)

가)

가

(4

10) 8 3).
가
4 5 2).

(

10
利害關係人 官報 . 가

(4 2 1).

,
: , 4 2 1
가 ,

輕微 “微小” 代表

(< V-3>) ,
가 가

(4 3 2).

< V-3>

“ ”	
1. 가 2/100	1.
2. 3/100	50/100
가	2.
7/100	25/100

: 4 2 2 .

, 가 撤回 書面
(4 5 1). 가

가
 協議
 通報
 가
 가
 가
 ,
 留保 (4 3 2).
)

貿易委員會가 (4 4 1). 3

가 豫備調査 財經部長官
 本調査 가 3
 11). , ,
 4 2 2 貿易委
 員會 (4 4 4).
 , 暫定措置 防止關稅 賦課 價格引上
 約束 提議 建議 (4 4 9).
 가 1 暫定措置 必要與否
 (4 4 3)¹²⁾.

가 ,

11) 가 (4 4 7).
 12) 1 , 20 .

가
 擔保 提供 13). 暫定 防止關稅
 價格引上約束
 利用可能 最善 情
 報 가 (10 2).
 60
 4 , 重要 比重
 供給者가 6 (4 10)¹⁴⁾. 措置日 以後 가
 (遡及) (10 5).

2)

가 (가) 가
 가 ()가 .
 가) 가 가

正常價格 當該 物品 供給國 同種物品 通常去來價格 .
 , 15) 가

13)

14)

15)

가 (4 10 3). 100 5 가
 가 .(4 4 2).

가 ,

가

(4 4 3)

10 ‘ 가 ’

가 , GATT上 輸出價格 . , 3

特殊關係 補償約定 가 가

가 : ,

獨立購買者 가 가 , ,

輸入價格

가 (4 6 4 ,

4 4 7) .

) 가 가

가 가 가 同一 時機 同一 去來段階(

) ‘原則的 ’ 가 가

(4 6 5 , 4 4 8).

物理的 特性, 販賣數量, 販賣條件, 課稅上 差異, 去來段階 差異, 換率變動 가

, 가 가

, 가

가 가가

. , 가

(4 4):

① : 가 가

, 가

② :

③ : 가 가

④ : .

3)

4 7 가 .

< V-4> .

, 가 < V-4>

가 (④), 가

. 가 實在的

潛在的 影響 . , ‘ ,

< V-4>

明白 豫見 .

< V-4> ‘ , ‘ ,

① : 가 ()	① 가 가 ,
② 가 : ()	② 가 가
③ 가 : 가	③ 가 가
④ .가	④ 가 가
.가	⑤ 가 가
. . . .	
⑤ ① ②	
: 4 7	

2 가
 < V-4> 微小水準
 累積的
 가 .
 (4 7 4)

本調査 結果 接受日 1
 18).
 가 1 6
 (4 4 9).
 가 1 7 10
 가 .

1)

供給者	供給國別	防止關稅率	基準輸入價格
措置日 以後		(4 9).	
가		가 加重平均	供給者別 輸出量
가		가 2%	
가		(4 6 2).	4 8
	個別的		.

18) 20 .

供給國
 新規輸出
 單一
 防止關稅率
 基準輸入價格
 ,
 가
 特殊關係
 가
 가

(4 6 3).

定率稅

課稅價格

$$= \frac{\text{가} - \text{가}}{\text{가}} \times 100$$

10 1 19) 産業被害 가 (lesser duty rule).

産業被害救濟水準

가 ,
 가 ,
 가 .
 가
 19) 10 1 “ 가 ”. GATT 9 1 ,
 가

適正 販賣價格 CIF 輸入價
 格 關稅 通關費用 :

$$= \frac{\text{가} - (\text{CIF 가} +)}{(\text{CIF 가})} \times 100$$

: 適正販賣價格

同種製品 가

가

品質 差異

産業被害救濟水準

同種製品(like product) 同一製品(identical product) 適正販賣價格
 가 .
 가 :

, 低價販賣 國産製品 販賣價格 上昇
 , 가 가 陰
 20). 가 價格引上 國産品

工場渡價格 代替 , 1998
 國産品 實際販賣價格 輸入價格
 가

20) 1996 1

가 .

21).

國內業體 適正 利益率

가 22):

$$= \frac{\text{가} - \text{가}}{\text{가}} \times 100$$

基準輸入價格

4 6 5

供給國 正常價格 輸入關聯費用 加算 課稅價格 差減

2)

措置日 以後

가

(遡及) (10 5

). 暫定措置가 가 遡及附課

: , 가

가 가 가

가

가 . , 短期間 大量 輸入 遡及附課 必要가 再發

21)

가 (1997 H) 가 (1997)

22)

가 .

가

暫定措置

90日前 以後

, 가

90

23),

(

4 12 1).

가

7

3)

가

가

()

가

가

(10 6).

가

()

가

가

(4 13).

23)

4)

輸出者 10 3 豫備調査 肯定判定 ,
財經部長官 中止 約束 約束 (4 11). 價格修整 輸出

24).

< V-5> 25).

月 中止 即時 價格 修整 6個
, 中止 價格 修整 ,
, 價格 價格 ,

가

(4 7 3).

가

가

가

가

가

(duty absorption)²⁶⁾.

가

가 가

24)

1

(

4 7 4).

25)

6

26)

IV

公正去來法
가

가 獨寡占體制

< V-5 >

① 가

②

③ . .

④ 3 3

⑤ 가

: 4 7 1

가

가

가

27).

가

(

10 4).

,

.

約束

가

가 最善 情報

迅速

(4 11 7).

27)

D.C.P

(1988)

-

(1997) 가

()

(1996),

, H

(1996),

,

(1997)

가

(, 1993)

(< 2 >).

가
(4 11 6).

5 . 가

5 (10 8)²⁸⁾.

, 再審査與否

29).

狀況變動

被害 憂慮가

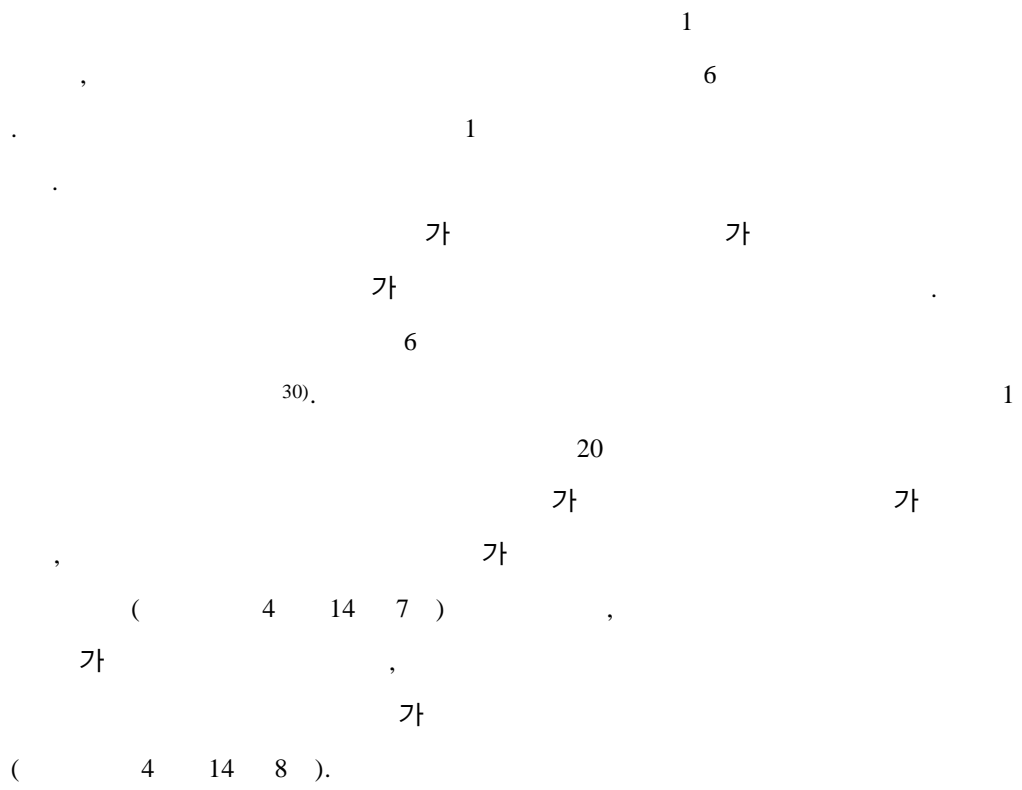
,
, 過多 (10 7 ,
4 14). 再審査 以外

每年 가

28) , 1 , , 2~3 가 .

2~3

29) , 가 ,
(4 8).



[圖 V-1]

30) , 4
 (4 14 5).

VI. 反 制度 運營現況

1. 概要

WTO
가 . 가
가 特定産業 高率 關稅
人爲的 國家經濟次元
가 . ,
가
가 12 43
가
가 < VI- 1 > 가
1996 . ,
가 國內産業 保護效果
가
1996 回歸分析方式 研究
가 .
가 HS 10
가 .
+ 가
가 가
가 가
가 事例分析 前章
가
回歸分析 事例分析

가 기본關稅 3~4倍 高率
 , 輸入代替效果가 , 가 輸入價格 引上
 需要 供給 彈力度 가
 . 가 가 가
 가 가 ,

2. 綜合的 評價

가.

1998 9 再審 < 1>
 < VI- 1> .
 43 8
 35 (5) (8)
 가 22 1). , 가
 18 51%
 가 1998 9 15 反 關
 稅, 1 輸出中止約束 1 價格約束 2).
 1986 , D.C.P. 4 가
 , 1991 4% 가
 . , 1996 ~97 18

1) 가 . 가 1993 , 1996
 가 1996 1997 2 가
 33 가 .
 2) 가 D.C.P. 가

가 2 輸出中止 價
 格引上約束 12 가 . , 1995
 17 申請撤回 不正判定 가 9
 18 反 關稅가 價格約束
 가 14 1996 .

< VI- 1> (1998. 9.) (:)

	86	87	88	89	90	91	92	93	94	95	96	97	981)	(%)
	4		1	1	1		3	4	2	1	7	11		35(100.0)
							1			1	1	2		5(14.3)
	3			1				1	2			1		8(22.9)
	1		1									2		4(11.4)
					1		2	3			6	6		18(51.4)
				1		1		1		1			1	5
			1							2	3		2	8
	4		2	1	1		3	4	2	3	10	11	2	43

: 1) , 2) ()

< VI- 2> 가 3).

< VI- 2> 가 . , < VI- 3>

가 (11) (11) (9

) 50% EU .

3 58%

EU 가

3) , , H 가 가

< VI- 2>

(1998. 9.)

1986		Acet Aldehyde (Alginic Acid) Slide Fastner()	D.C.P.	
1988			D.C.P.()1)	
1989				
1990				
1992	H-			
1993				PS
1994		가		
1995				()2 ()3
1996				1 ()4 PS ()3 ()5 H
1997		H-	-	

: 1. (2)

2. (1), (7), H (2), (1), ()

가 .

3. 1 : 1998 , PS : 1998

4.()

1)가 , 2) , 3) , 4) , 5)

2 가

< VI-3>

가

(: , %)

	7 (22.6)	2 (22.2)	2 (11.1)	-	11 (17.7)
	6 (19.4)	2 (22.2)	2 (11.1)	1 (25.0)	11 (17.7)
	5 (16.1)	1 (11.1)	3 (16.7)	-	9 (14.5)
	2 (6.5)	-	2 (11.1)	-	4 (6.5)
	1 (3.2)	-	2 (11.1)	1 (25.0)	4 (6.5)
	2 (6.5)	-	2 (11.1)	-	4 (6.5)
	2 (6.5)	-	-	1 (25.0)	3 (4.8)
	1 (3.2)	-	1 (5.6)	-	2 (3.2)
	5 (16.1)	4 (44.4)	4 (22.2)	1 (25.0)	14 (22.6)
	31	9	18	4	62

: 1) 14

2) 가

가 가 多國籍企業 輸出

: , () ()가

가

가 가 .

가 .

가 4).

, 1991 가

(Du Pont) 가

가 . , PS 1993 가

24.5~38.2% 正常輸入品 價格

多國籍 企業

4) , , 가 , .

가 輸出地 輸入代替效果가
 가 , 監視體系 가
 WTO

()
 < VI- 4>
 가 1993 14
 品目 基本關稅率 8% 5),
 3~4 가

< VI- 4> (1998. 9.)

	26.5	36.5	22.4	31.4
	25.6	41.4	21.4	35.1
	27.6	30.8	23.5	27.1

: 가 가 가 ,
 , 14 ()
).

V 産業被害 救濟 水準
 (injury margin) (lesser duty)

5) PS 1993 9% .

rule). < VI- 4>
가 5% 4% .
(25.6~41.4%)
(21.
4~35.1%) (27.6~30.8%)
(23.5~27.1%) .
3.7~4.1%
(4.2~6.3%) 6).

< VI- 5>

	2	,
	17	D.C.P., , , , PS , , H- , 가 , , , H-
	2	,
1	4	, , H ,
	3	1 , ,
	2	,
	2	,
	1	

가 , 輕工業
製品 5 重工業製品 33 28 (<
VI- 5>). 17 1
(4) (3)가 .
6) 가 가 (V).

8 , 1 2 3

가 幼稚産業
 新規産業 産業政策的 考慮가

가

가

製品 輸入規模 . < VI- 6> (‘ , ‘ 가) 提訴
 年度 가 (HS10)
 가

가

가

1988 , 가 D.C.P.
 2.6 1.4
 D.C.P. 0.3

1988
 3.9 가 0.3 ,
 가 2 5
 ‘ , ,

< VI- 6> 5
 H , , ,
 7).

7) < VI- 6> HS 10 가 HS 10 가

1997 .

0.35% EU 가

1.8%, 1.6% 8),

H 가 가

/ 가

潛在的 反 制度 效果 가

過小評價 9).

가 .

, 長期間 高率 反 關稅 價格引上約束

累積 가 個別 產

業 (accumulation effect). , 1988

0.01%

1997 1.5 0.11%

가 2.1 (0.15%) .

가 HS

, 10), ,

同種製品 가 (輸入代

替效果) 가 (威脅效果)가

가 , 1997

5 1997 0.35% . 1988~1997

7.9 , 가

. 21.9 .

8) 『 , http://www.mocie.go.kr/ktc/new/review1 , 1998.

9) H 가 1996 221 가 1997 가

94 85 , 8 가

10) 127 77 . 投資 生産 變化

〈표 VI-6〉 전체 수입액 대비 반덤핑관세 부과 및 조사, 약속대상국으로부터의 수입액 추이

(단위: 백만달러, %)

	'88년	'89년	'90년	'91년	'92년	'93년	'94년	'95년	'96년	'97년	누계
피 제 소 국	1.4 (0.003)	-	14.8 (0.021)	-	31.3 (0.038)	50.6 (0.060)	54.3 (0.053)	37.1 (0.027)	153.7 (0.102)	153.1 (0.106)	496.3 (0.052)
이 외 국 가	0.3 (0.001)	-	0.8 (0.001)	-	87.8 (0.107)	58.6 (0.070)	42.3 (0.041)	24.9 (0.018)	210.8 (0.140)	59.3 (0.041)	484.8 (0.050)
반 덤 핑 관 세	-	-	-	10.2 (0.013)	5.6 (0.007)	35.3 (0.042)	55.9 (0.055)	52.2 (0.039)	37.8 (0.025)	68.3 (0.047)	265.3 (0.028)
약 속	2.6 (0.005)	3.5 (0.006)	2.4 (0.003)	2.1 (0.003)	-	-	-	-	-	0.9 (0.001)	11.5 (0.001)
신 청 첩 회	-	-	-	-	13.4 (0.016)	-	-	37.1 (0.027)	0.2 (0.000)	36.1 (0.025)	86.8 (0.09)
부 정 판 정	-	-	4.4 (0.006)	-	-	-	11.2 (0.011)	47.3 (0.035)	-	7.7 (0.005)	70.6 (0.007)
조 사 및 조 치 ¹⁾	3.9 (0.008)	3.5 (0.006)	21.6 (0.031)	12.3 (0.015)	36.9 (0.045)	74.4 (0.089)	110.2 (0.108)	136.7 (0.101)	175.7 (0.117)	210.8 (0.146)	786.1 (0.082)
이 외 국 가 ²⁾	0.3 (0.001)	0.3 (0.001)	2.4 (0.003)	4.1 (0.005)	91.0 (0.111)	163.9 (0.196)	245.7 (0.240)	296.0 (0.219)	312.5 (0.208)	291.4 (0.202)	1,407.7 (0.146)
합 계	4.2 (0.008)	3.9 (0.006)	24.0 (0.034)	16.4 (0.020)	127.9 (0.156)	238.4 (0.284)	356.0 (0.348)	432.7 (0.320)	488.2 (0.325)	502.2 (0.347)	2,193.8 (0.228)
전 체 수 입 액	51,810.6	61,464.8	69,843.7	81,524.9	81,775.3	83,800.1	102,348.2	135,118.9	150,339.1	144,616.4	962,641.9

주: 1) ()안은 전체 수입액 대비 비율임.

2) 반덤핑관세 및 약속: 반덤핑조치 시행연도~종료연도기준, 신청철회: 철회연도기준, 부정판정: 판정연도기준.

3) 당해연도에 반덤핑조사 조치가 적용중인 수입품의 수입액은 모두 포함함.

자료: 한국무역협회 전산자료.

3. 反 制度 經濟的 效果

가
1996
基本關稅率 3~4 가
가
가
，累積效果 價格引上 가
自發的 輸入規制 가
(so-called terrorem effect).

國內資源 配分 差別的 效果
産業政策的 手段
가 ，資源配分 歪曲
恣意性

가.

33 가 76% < VI-2> 中間材
· 가

가

迂廻輸出

가 가 가

() ()가
 , 가 新規生産
 가 가 11), , 固定
 費用 가 가 , , 가
 가 가 , , 가
 , 가 獨占生産 가
 가 獨寡占市場 公的 ,
 가 輸入減少 價格談合 人爲的 價
 格引上 .
 가 12).
 , 大企業 中小企業 13).
 가 , 斜陽産業
 ,
 가 가 構造調整

11) (1986), PS (1989), ,
 , (1992), 1 (1993), (1995) .
 12) PS , , , , ,
 1 , , . , () ,
 3
 13) () (), (3),
 H () ,
 , LG OEM 가
 가

必要性 가 14).
 迂廻 變形輸出 가 15).
 , < VI- 7> 가 輸入占有率

가 가 / 가
 16). 가 , ,
 가 “(正常的) 國內價格 上昇 ”

< VI- 7> 3 産業別 輸入占有率 輸
 入額 基準 가
 가(, ‘ 가’) (52%)
 가 (65%) 가
 70% 가 1
 가 13% 가
 調査 威脅效果 64%

14) 1996 斜陽産業 1998 彈力關稅制度 15% 調整關稅가

15) 1993 26 가 1998 3
 1992 ~1995 9 가 6
 가

16) 1994 ~1996 가 42% , 가

〈표 VI-7〉 수입점유율과 수입가격의 변화 추이(평균치)

(단위: %, \$/kg)

		수입액 기준 점유율				수입물량 기준 점유율				수 입 가 격			
		t ₋₃	t ₋₂	t ₋₁	t ₀	t ₋₃	t ₋₂	t ₋₁	t ₀	t ₋₃	t ₋₂	t ₋₁	t ₀
반덤핑관세	피 제 소 국	56.9	59.8	69.6	64.2	62.5	65.0	75.9	69.7	13.7	12.5	13.0	11.4
	이 외 국 가	43.1	40.2	30.5	35.8	37.5	35.0	24.1	30.3	16.9	13.9	15.8	14.6
신 청 철 회	피 제 소 국	54.5	67.6	68.2	66.2	55.8	67.2	67.6	64.7	6.1	5.4	5.8	5.4
	이 외 국 가	45.5	32.4	31.8	33.8	44.2	32.9	32.4	35.3	8.1	8.0	7.5	7.5
부 정 판 정	피 제 소 국	28.1	29.5	41.3	64.4	28.6	31.3	47.7	71.4	2.1	2.2	2.1	2.1
	이 외 국 가	46.9	45.6	58.7	35.6	71.5	68.7	52.3	28.6	2.3	2.8	2.6	2.5
전 체	피 제 소 국	52.0	56.6	64.9	64.6	56.0	60.2	70.0	69.0	10.4	9.6	9.9	8.8
	이 외 국 가	44.2	39.5	35.1	35.4	44.0	39.8	30.1	31.0	12.9	11.0	12.1	11.3

주: 반덤핑관세 17개, 신청철회 5개, 부정판정 4개, 전체 26개 품목 각각의 평균치임.

< VI- 7> 輸入物量 輸入占有率
가 . 4~5% 被提訴國 輸出
價格 ‘ 가’ 가 . , 低價攻勢
, 持續的 低價 輸入
가 , 競爭 17).
輸入價格 列 ,
가 \$2/kg 가 가
價格隔差가 \$3/kg . 가 價格隔差가
, 價格變化가 . 가
, ‘ 가’ ()
) () 가 가 18).
, 新規生産 ()
) 斜陽化 () .
, 輸入占有率 海外企業 低價
가 가 가
가 , 가 가
가 .

17)

18)

市場

가

가

同種製品

가

가

. :
 GATT 6 가
 III WTO
 . 調査當局 恣意性
 가 가
 Prusa(1996) 가 가
 : , 가
 . ,
 (terrorem effect). , 3
 (import substitution effect) 가
 . , 輸入品價格 引上
 가
 .
 Prusa
 . , Prusa 235
 33
 2 가
 가 가 . , 가
 가 가
 . HS 10 가
 가 .

19).

HS 10

20).

HS 10

21).

가

Prusa

事例別

檢討

가

平均化 資料

가

1) :

< VI- 2>

1997

1996

10

9

輸入樣相

變化

22). [圖 VI- 1]

(t₀)

3

1

9

[圖 VI- 2]

[圖 VI- 1]

가

19)

가

Prusa

20)

1

가

가

가

1

HS 10

21)

Prusa

22) 9

, PS

H

1

가

가 (t- 1)

調查 威脅效果 가

(R. Staiger and F. Wolak, 1994).

가 (‘ 가)

가 1 (t+ 1)

[圖 VI- 1] Prusa

[圖 VI- 1] 가

1 가 輸

入代替效果 國內産業 保護效果

가 H 가

, t+ 1 39% [圖 VI- 1]

H 265

(t₀) 263

가 代替效果가 가 23).

H [圖 VI- 2]

市場占有率 가

가 가

[圖 VI- 1] 가

가 H

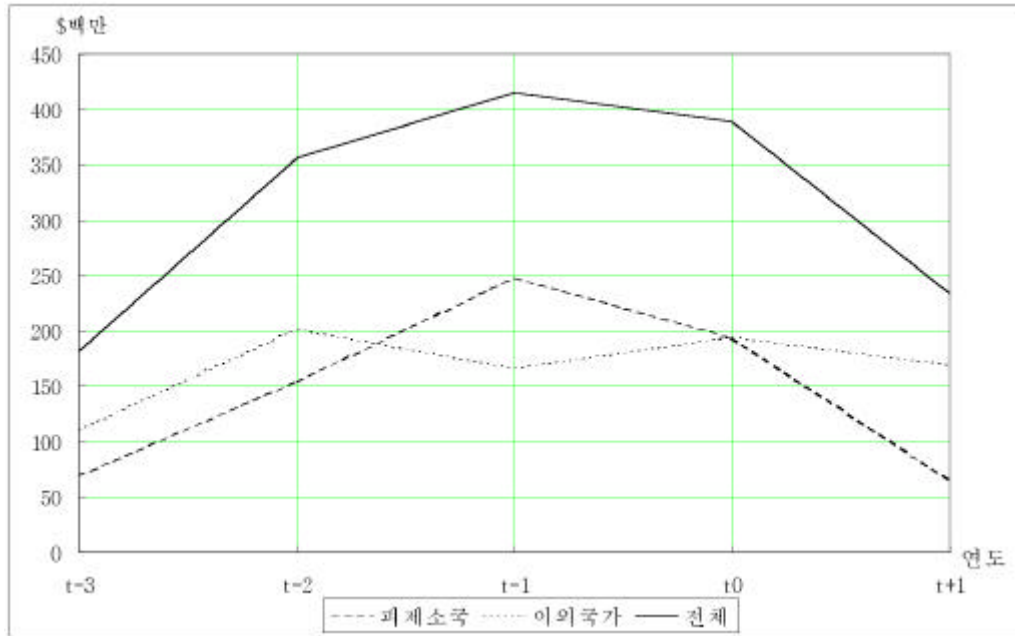
, 가 , (t+ 1) 40

가 輸入代替가 .

23) 가 가
가 .

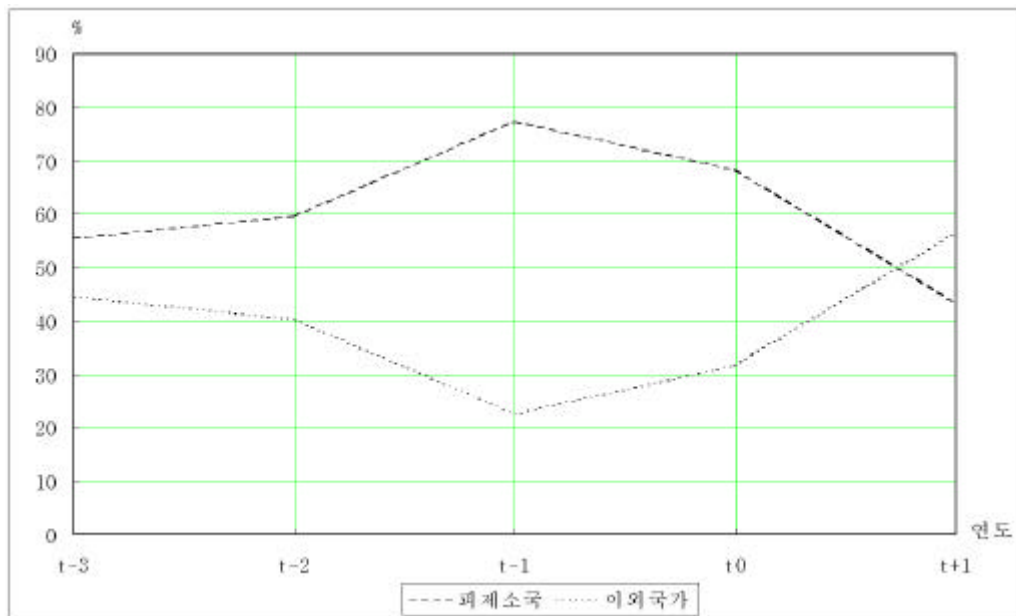
[圖 VI-1]

(9)



[圖 VI-2]

(9)



輸入代替效果가

가 [圖 VI-3]

1992~93

4

3

4

24)

[圖

VI-1]

가

가

(t_0)

(t_0)

가

($t+1$)

가

가

가

, 2

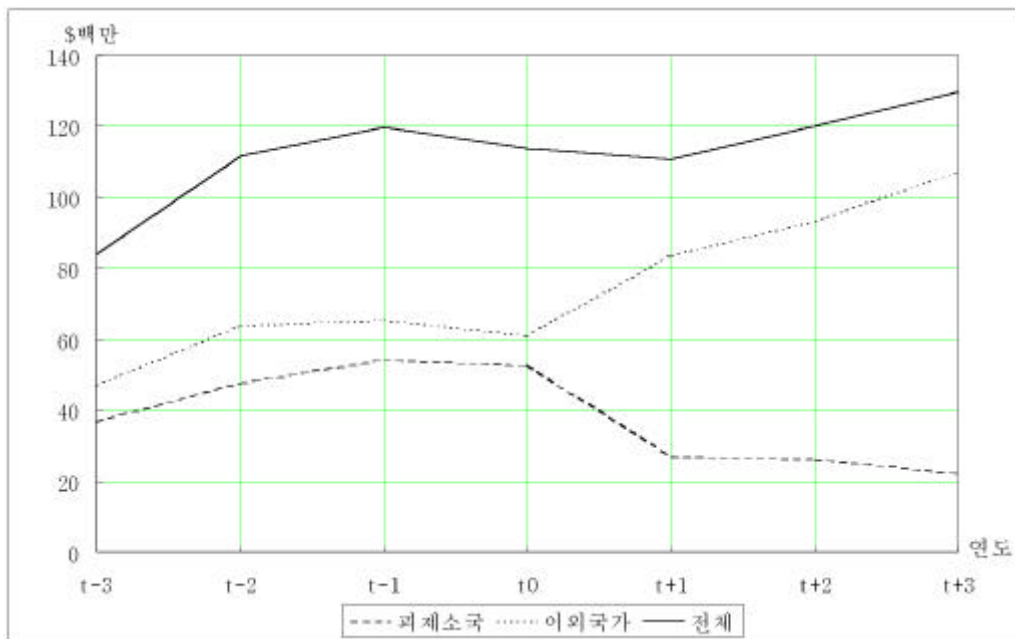
가

(t_0)

가

[圖 VI-3]

(4)



24)

PS

, 調査開始 威脅效果 輸入代替效果
 가 一般化 . , 가
 가 2~3 가 가
 가 가
 . 反 制度 輸入規制效果
 가
 , 輸入價格 引上 國內價格 上昇
 . , 完全競争材가
 가 , 가
 가 輸入抑制效果 別途
 25). 가
 가 幼稚産業 廉價
 構造調整 斜陽産業 ,
 가 .
 反永久化 補助金
 WTO 가 5
 가 . , 가
 , 死重損失
 (deadweight loss) 後方産業 가
 가
 , 가 (net effect)
 (R. Feinberg and S Kaplan, 1993).

25) 가

生産増大効果が
最小期間

地代追求

가

26).

2) :

가

가

가

가

가

가

가

가) PS ()

PS 1989

1993 12

國內産業 確立 遅延

5 24.5~38.2%

27).

가

: [圖 VI-4]

1993

PS

가

提訴年度

(; (93)).

가 1993

減少

1996

(1993 , 1996)

26) 가 HS

< 1> < 2>

27) (80.7~89.4%)

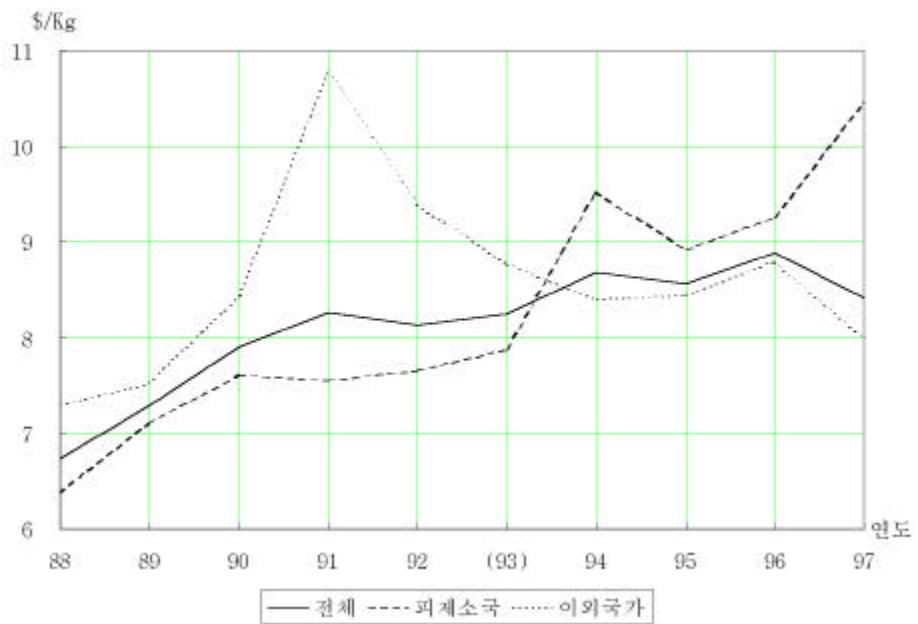
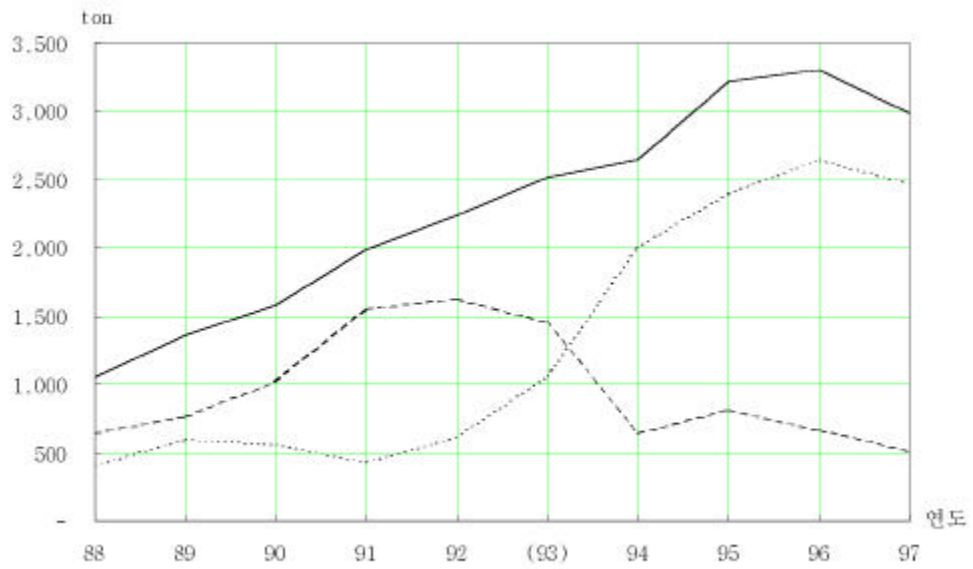
價格 引上 . , ' 가'
 가 1994 가 가
 가 가 . 가 가
 PS 가 가
 1991 28);
 가
 全體 輸入 가 .
 가 輸出地 轉換 . , 1992
 82% 1994
 65% 2 가
 迂回輸出 様相 .
 1992 31%
 1994 49% 1997
 54% 가 1992 60%
 . PS 1989
 가 가 가
 가 8kg/\$ 1993
 가 , PS
 가 迂廻輸出 輸入轉換
 가 .
 輸入價格 上向調整
 가 가

28) 가 가 가 가 가

가

[圖 VI-4] PS

가



, 1 가 威脅效果
 再審 業體 價格戰略 .
 가
 29).
 1996 가 ,
 WTO .
 가 ,
 3 PS .
 ,
 輕微 (negligible) 規模
 1997 2.2% .
 , 迂廻輸出 監督問題가 PS .
 가 迂廻輸出 規程 .
 PS EU 特殊關係
 24.5~38.2% .
 3 ,
 가 PS
 가 .
 가 가 .
 PS 10 .
 50% 가 .
 가 ,

29) PS 1992 50% ()
 가 .

國內産業 保護 10 幼稚産業
 가 . 60~70%
 高價 中間材 가
 後方産業 被害가
 PS 가 30).
)

가 가 가
 가 . 輸入代替가 가
 가 가 가
 가 獨占業體 가 가
 .
 1992 1993
 , 가 , 國內産業
 確立 遲延 1994 4 5
 10.3~37.4% , 24.8~58.7% 가 38.2~39.5%
 가 2.03\$/kg() 1.60\$/kg(
) 가 , [圖 VI-5]
 1991 가 1992
 가 1994 1/2, 1/3

30) , () .

가
 1993 가 가 1994
 가 3.32\$/kg 1992 가 (1.74\$/kg) 76%
 1/2 (가) 가
 가 1993 2 10% (2.04\$/kg→1.83\$/kg),
 가가
 가 1994 (1993 가 55%)
 31).
 PS 3 가
 , 價格
 引上約束 , 輸入價格 動向
 , 1994 最低價格 \$2/kg 1996
 가 가
 , 海
 外 生産費用 引上 가
 가
 1993 가 가
 PS 가 價格引上 反 關稅 早速 終了
 , 獨占企業 代
 替 國內業體 談合 가 가 가
 , 1995 1993
 가 3\$/kg

31) 가 가
 가 가

)

價格 變化

1988

1990

([圖 VI- 6]).

1991

13% 4%

1991 9 2

1991

價格 1991 1992 14%

([圖 VI- 6]). , 1990

1993

1993

1993

28%

(1991 ~1993)

1993

1994

1997

0.9\$/kg

1993

1991 1997

價格變化 輸入源 變

1990 4%

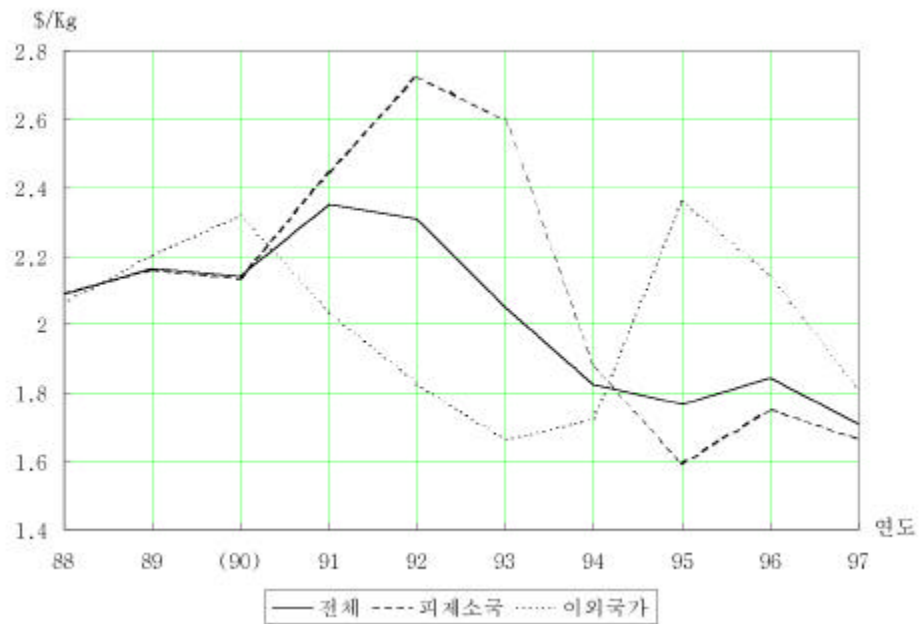
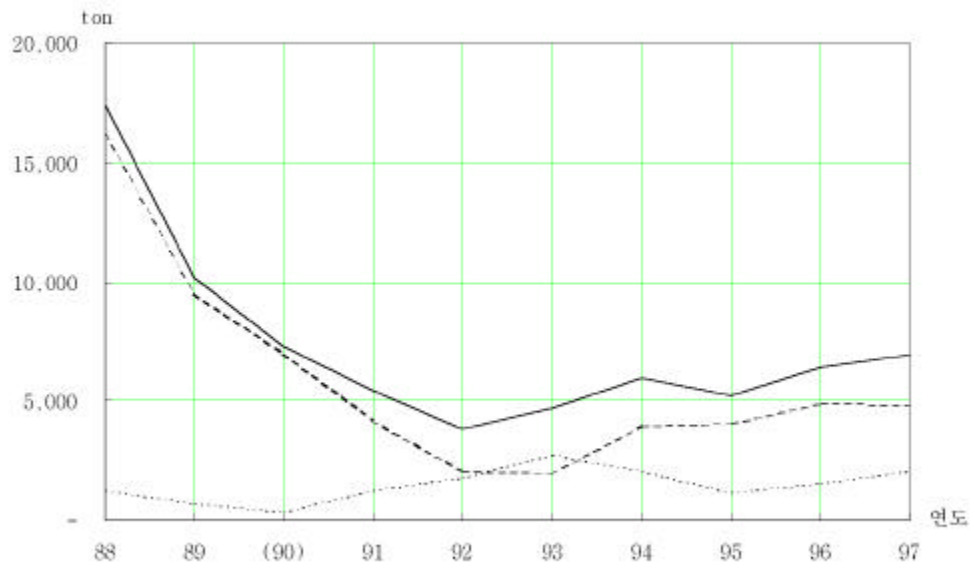
1993 59%

1997 30%

高價

가 가 가

[圖 VI-6] 가



1990 ~1992 가
 가
 . 1993 가 1997
 가 1991 , 가
 3
 가 , 가 4%
 가 1989
 가 ,
 가
 가
 가
 32).

)
 1996 가 가
 가 定型化 反 事例 . 輸入品
 獨占 1992 가
 가
 (< VI- 8>). [圖 VI- 7] 가
 가
 1992 가 ,
 1995 가
 가
 가
 가 ,
 가 ‘ ,

32)

가 가

< VI- 8>

(: , %)

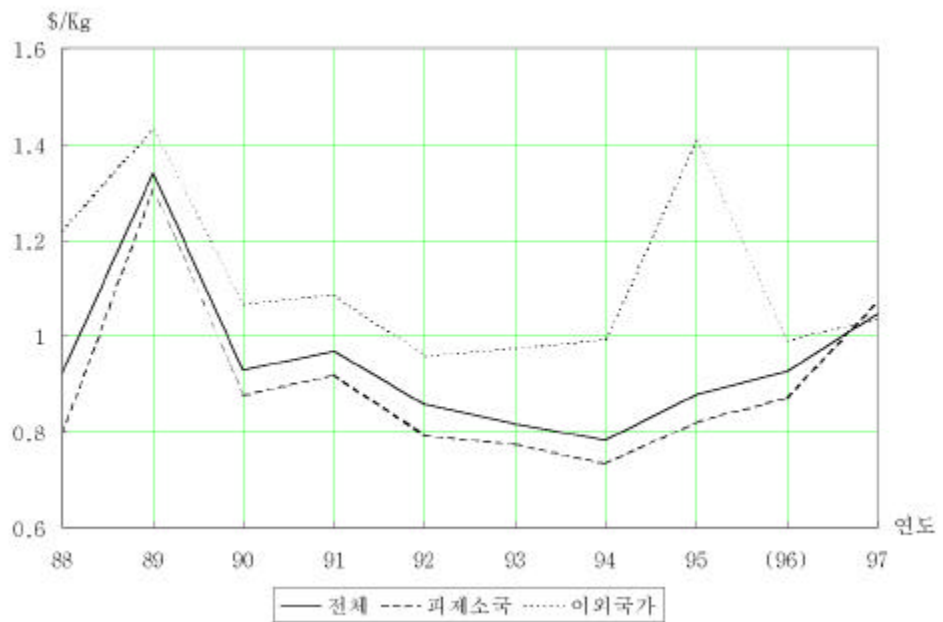
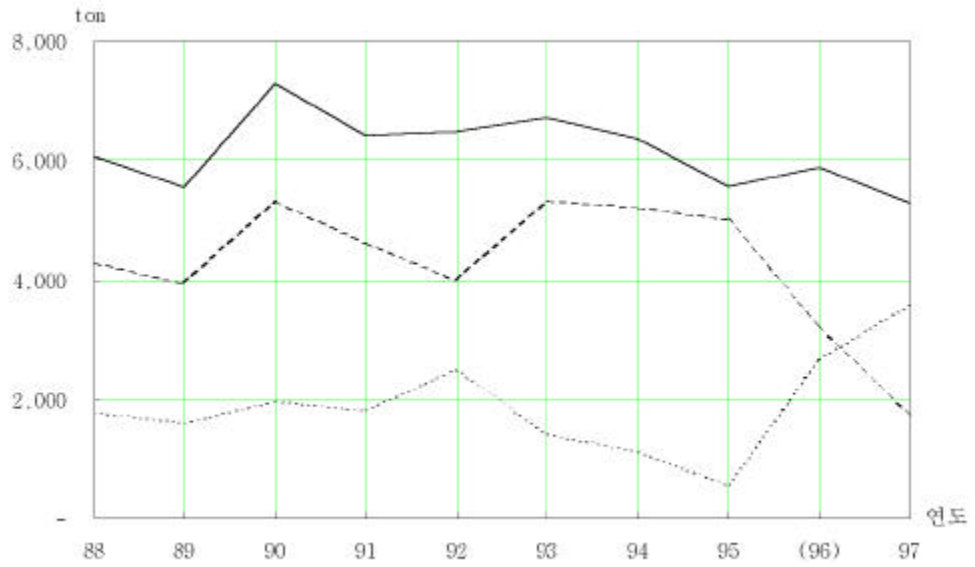
	1992	1993	1994	1995	1996
	1,484(7.4)	5,710(28.6)	10,499(52.5)	7,681(38.4)	-
	7,488	8,350	9,666	10,248	-
	1,009(13.5)	1,546(18.5)	3,318(34.3)	4,696(45.8)	-
	3,994(53.3)	5,318(63.7)	5,212(53.9)	5,004(48.8)	3,212
	2,486(33.2)	1,396(16.7)	1,136(11.7)	549(5.4)	2,666
	-	2,838	6,575	2,997	-

: () 가 .

1995 54% '國產製品 安定的
 供給' . , 가 1996
 가 . ,
 1996 3 가
 價格引上效果가
 , 國內 幼稚産業
 가 .
 가 1992 가
 가 가
 . , 가 1995
 가 . , 가 가
 가 , 輸入代替效果가
 . < VI- 8>
 가 .

가 가 가

[圖 VI-7] 가



: ()

)

1997

3 7.02~33.11%

가

不當 判定

, [圖 VI- 8]

1994

가

1993 14.5%

1996

3%

調査가

1997 ,

31%

47% 가

,

1994

가

가

가

가

가

1994

低價

가

, 1997

가

가

가

, ,

, 1997

0.9%

輸入

增價 '可能性'

가

1992

가

가

3

가

가

, ,

가

[圖 VI- 8]

同一

1993 ~1994

' 가'

가

,

廉價

1997

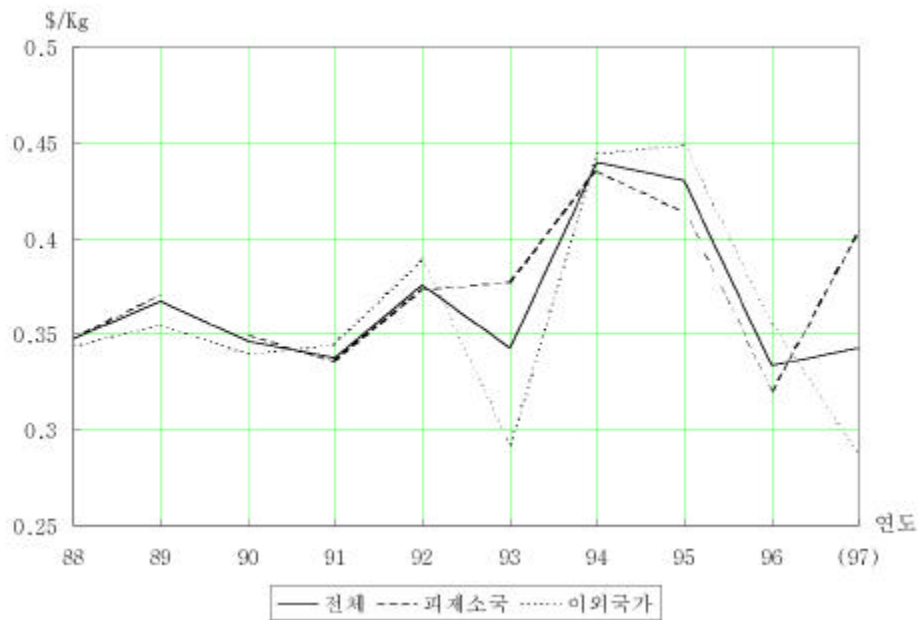
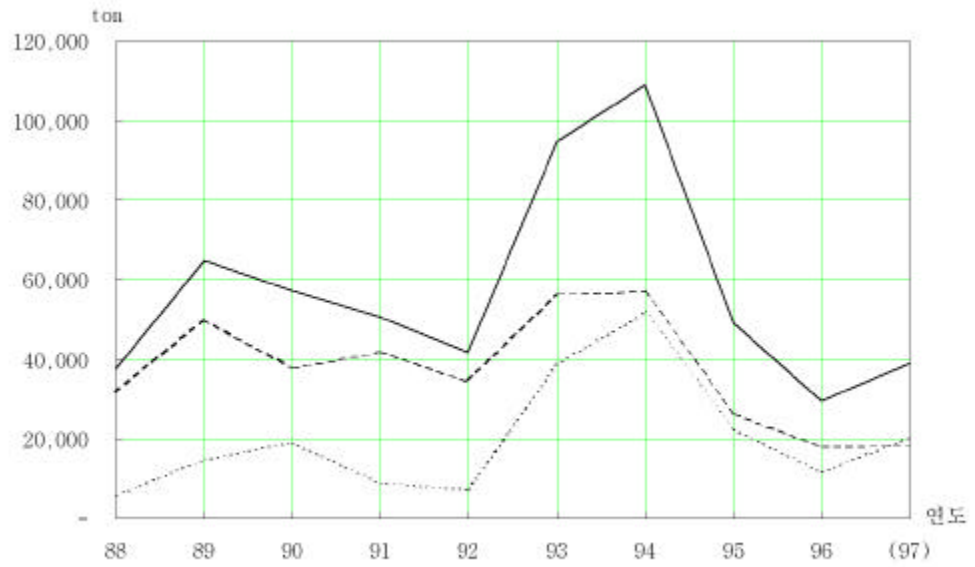
威脅效果

製品 價格引上

가

[圖 VI- 8]

가



3.37~37.04%
 0.9%(1997) 가 가 ,
 1994~1996 40% 94%
 1997 가
 2.1%

(< VI- 10>).
 가 , D
 WTO 履行協定 33).

< VI- 9> 가

(: m³, %)

	1993	1994	1995	1996	1997()
	-	20.7(28.1)	15.0(45.0)	10.4(48.3)	8.7(69.5)
	72.9(100)	52.9(71.9)	18.3(55.0)	11.1(51.7)	3.8(30.5)

: () 가 .

4 7 3

累積的 評價

. 1994 1995
 20%
 (1996 28%) 가가 가
 가가 (W. Hansen and T. Prusa, 1996).
 , 가 : < VI
 - 10> 1994 가 가 가
 : , 1993 가

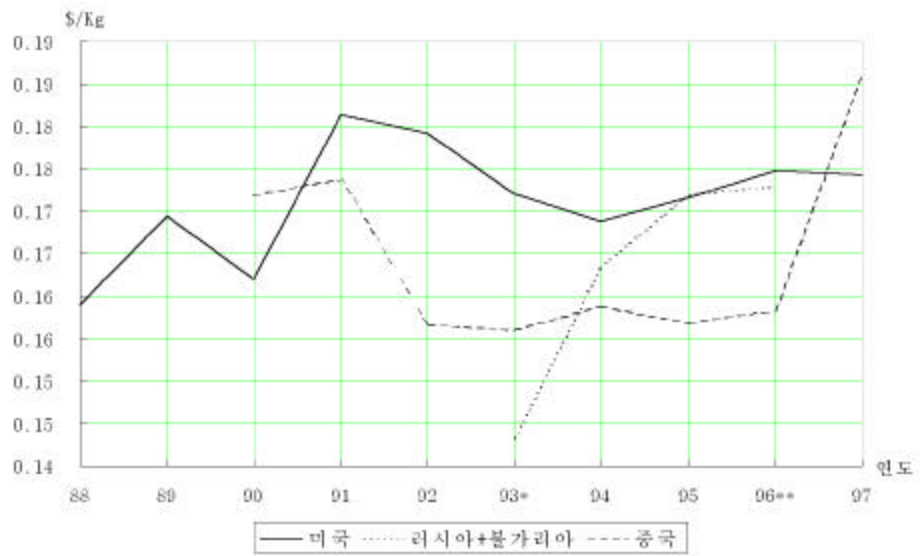
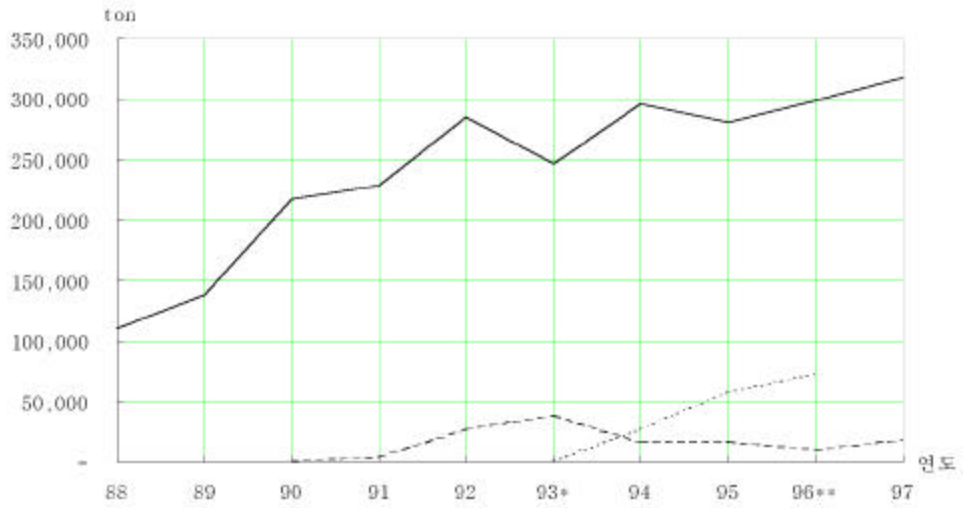
33)

7)” 가 .

“ 가 (3

36)

[圖 VI-9] 가



: *
** , 가

36)

가

美國業體
 : 1994
)
 90) 가 .
 59 가
 가
 가 37).

< VI- 11>
 26 가
 가 ([圖 VI- 9])
 가 < VI- 11>
 20 (1996 15
 가()
 . 1995
 1994

< VI- 11> 가 (: , %)

	1993	1994	1995	1996(1~6)
	565.4	655.8	667.3	358.2
	256.2(45.3)	282.1(43.0)	286.2(42.9)	150.7(42.1)
가	-	15.0(2.3)	47.4(7.1)	36.6(10.2)
	0.6(0.1)	12.6(1.9)	10.8(1.6)	12.5(3.5)
	38.5(6.8)	16.7(2.6)	17.1(2.6)	2.0(0.6)
	270.0(47.8)	329.4(50.2)	305.8(45.8)	156.4(43.7)

: ()

, 가 6 가
 製品 競争關係
 輸入規制 代替效果가
 . 가
 가 가
 . , 人

37) 92~94% 가 10% 가

爲的 最低價格 가 .
 가 2 1994
 가 가 가 가 가 .
 , , 가 3 가 (가
) 가 가
 가 . 1995 1996 가 가 가
 가 가 , , 가
 가 1993 1995 3%
 , , 4 2 2

獨寡占的 國內市場 가

最低價格 寡占市場

負擔

가

惠澤

가 가

38).

3) 가 :

Prusa(1992)

38) 가 가

가 가

申請撤回가

가

Noerr- Pennington 原則³⁹⁾

獨占禁止法

가

, 가

가

가

가

(1997) 第3 輸入源

가

調査

가 被提訴國

價格

販賣戰略

威脅效果

가

가

가

私的 價格談合

政府

價格引上

가

가 競爭的

市場

가

, 가

輸入轉換效果

規模

가

低價

가

寡占體系 形成

가

40). , 가

輸出價格 引下

反

關稅

吸收(duty

absortion) 通商摩擦

迂回輸出

禁止

輸出量

價格

報告

, 가

가

彈力的

生産

39)

(Noerr case)

(Pennington case)

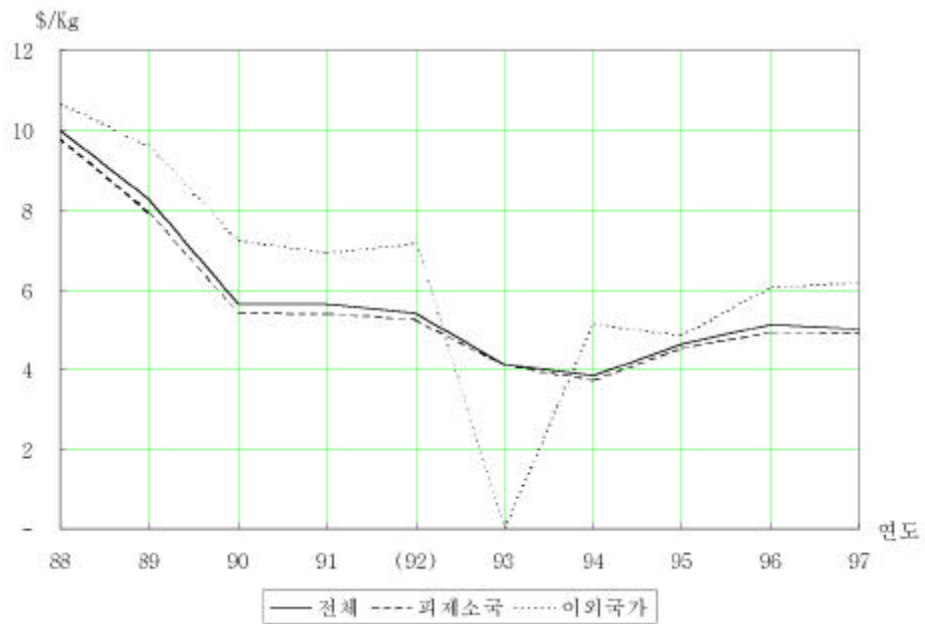
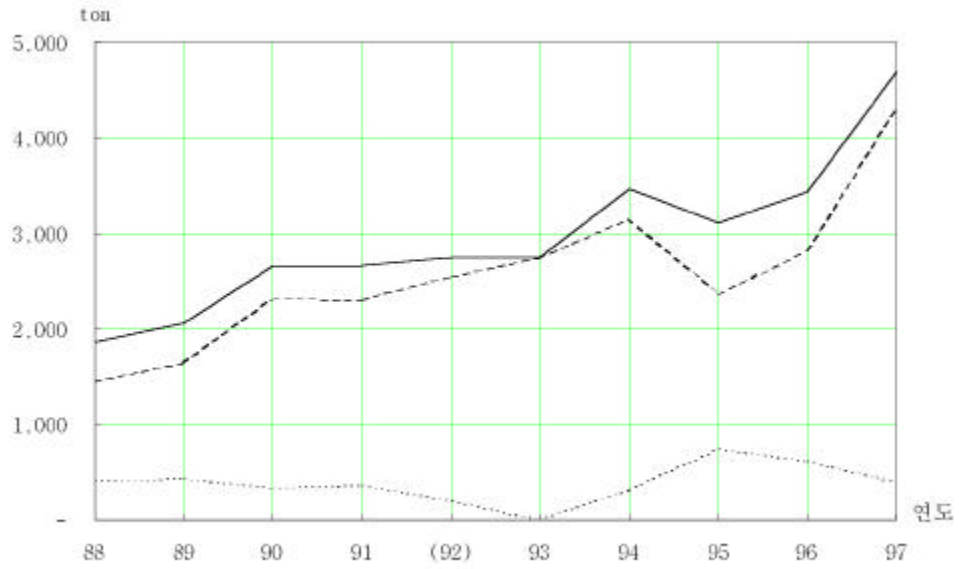
()

가

40)

가 가

[圖 VI- 10] H- 가



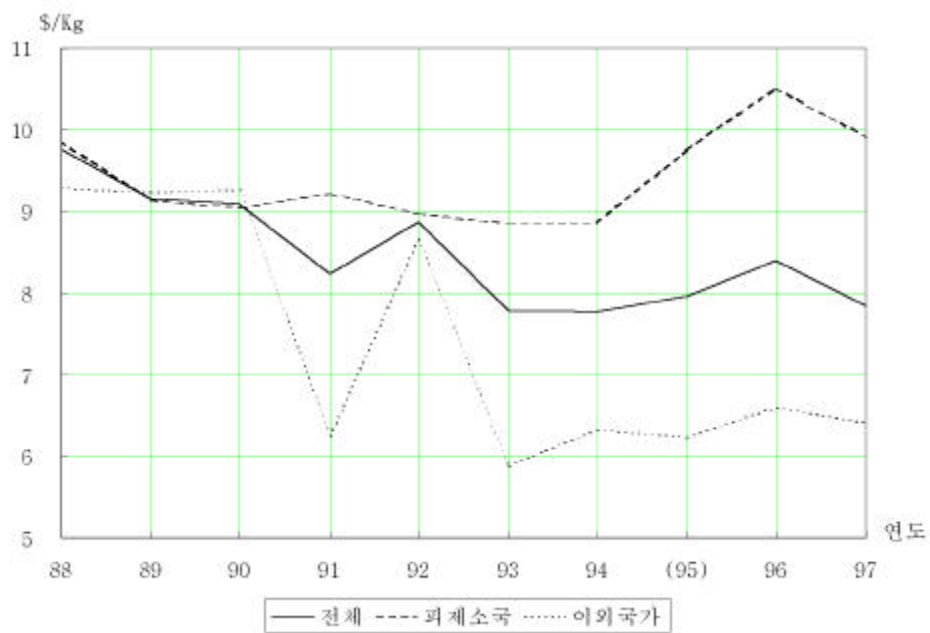
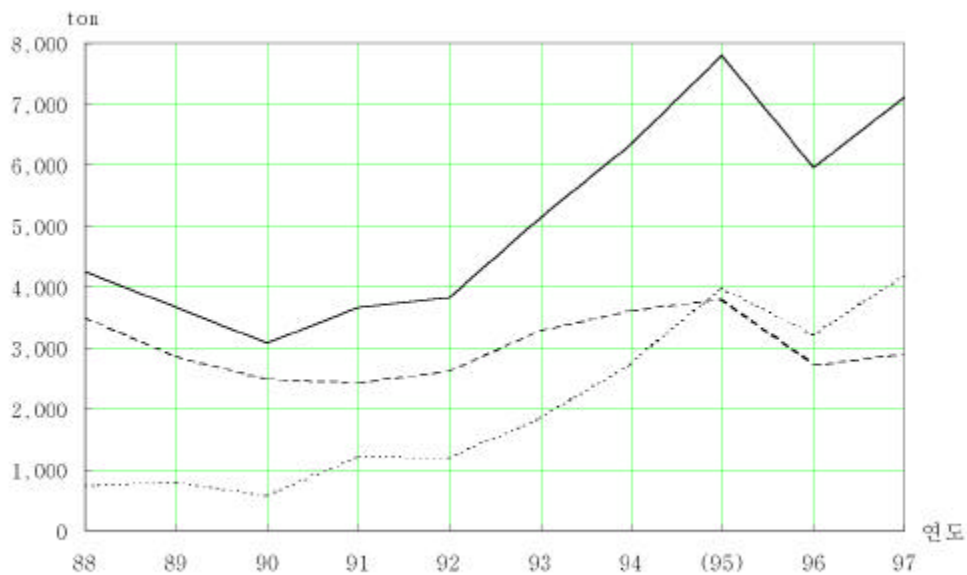
(가) 가 1990
 가 19% , 1990
 가
 [圖 VI- 11]
 가 ,
 1995 가 1996
 裏面 合意 가
 1997 가 가
 가 59% 1995 3
 가 가
 가 가
 가 가
 가 가
 , 正式 價格引上約束 1988 D.C.P. 2 1997 1
 가
 , 가 1989 ~1991 가 400\$/
 1990 가 338.7\$/
 가 1991
 가 가
 . D.C.P. 가 가
 가 D.C.P. 가
 가

가
가 () 가 가
(H-)
. .
1994 가 가
가 가
가 가 . 4
1992 (1991) 가 (199
1~92) 가 1993
가 0.31\$/kg 0.08\$/kg 43).
1992 가 94% 1993 가 가
92% () 85%
가 .
가 1992 13% 78%
1% 10% 가 가
. 가
가 [圖 VI-13] 가 가
가 . , 1993
가 가 가 1996
, 가 (0.14\$/kg)
가 , 가 가 가
가 가 가
가 가
가 가

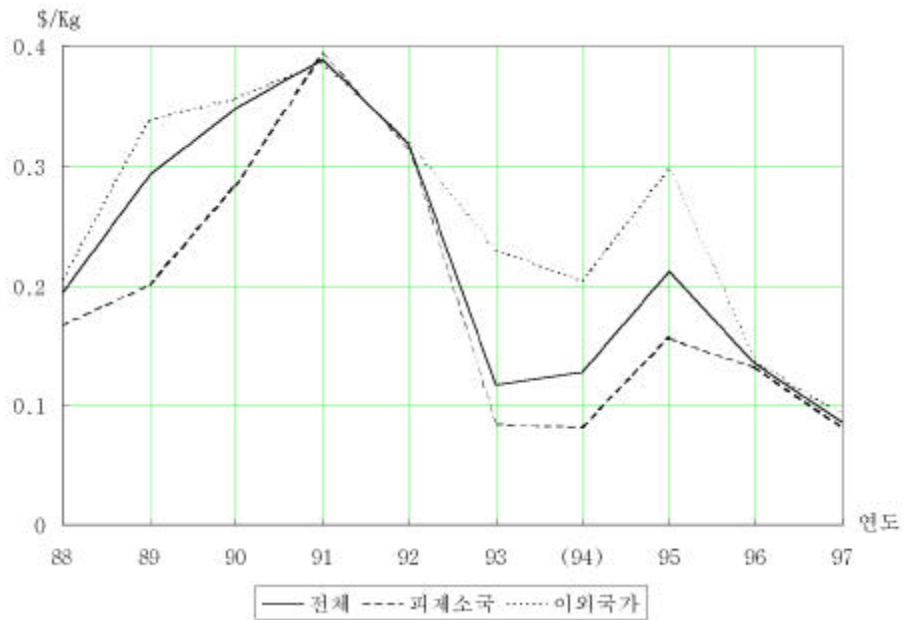
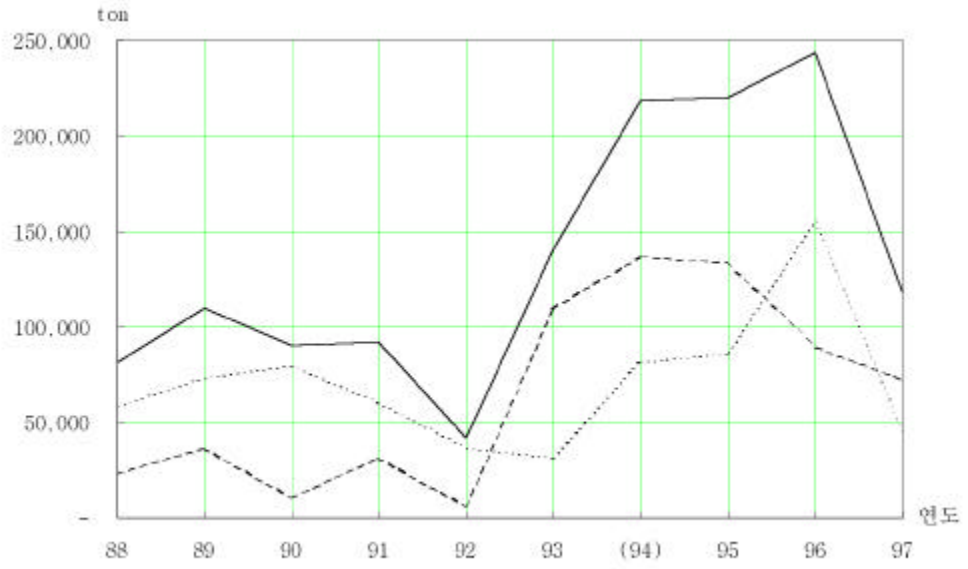
43) , .

[圖 VI- 11]

가

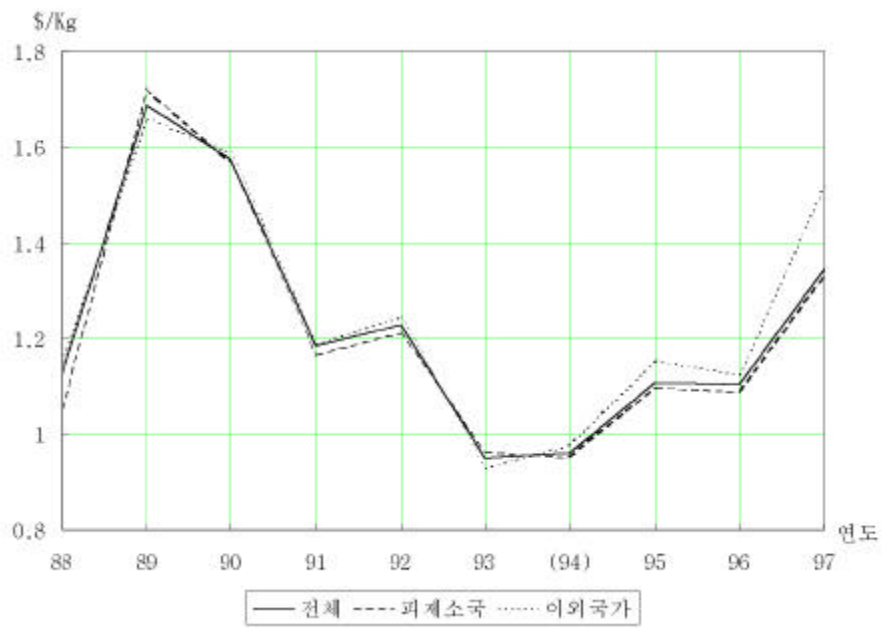


[圖 VI- 12] 가 가



[圖 VI-13]

가



VII. 政策的 示唆點 改善方案

1. 反 制度 前提

가.

가

的 輸入規制手段 . WTO 例外
가

가

가

EU

가 WTO 迂廻輸出 規制
擴大・適用 WTO 新協
商(New Round) 關稅引下 貿易自由화가 迂廻
輸出 規制가

가

WTO

가 . ,
WTO

가
가
가
가
1998
(58%)
差別的 通商手段
EU가
WTO
(882) 가
가
71
가

TV
가 恣意的
EU
(II)
,
交易減少
投資 生産 歪曲

WTO
,
WTO가
가 輸入規制手段

가
II
가
. , 差別

的 價格戰略(price discrimination) 市場進入 市場條件 變化
價格戰略 利潤極大化 原則
가

掠奪的(predatory) 價格

가 . , 가

外部效果

가 .

가 가

人爲的 比較優位가

競爭法 強化 相計關稅 適用가 .

가 競爭法 反 法

가 . 國內企業 競爭 外國業體 競爭者 國內業

體

가 .

가

가 가 .

競爭法 反 協定 改

善

가 .

가 斜陽産業 保

護

가 .

가 . ,

日沒規程

2. 反 制度: 政策的] 示唆点

가.

가

一時的 保護措置 . , 補助金 一
般關稅 日沒條項 WTO 履行協定 抵觸

가 .

가

産業政策 代案的 政策手段 . , VI

幼稚産業 境遇, 가

가 斜陽産業

가

,

가

1997

, 0.9%

가 典型的 威脅效果 .

‘向後 輸入 增大 可能性 “ 34%

. , 累積 評價

3

가

가

가 ,

D .

輸入制限的 競爭制限的 . ,

가

. , 行政的 效率性

輸出國 報復措置 貿易紛爭 . , 가

實效性 가 監視・後監督體系 .

製品 後方産業 消費者가

公益條項 .

가 市場競爭 影響 國內産業 成長可能性

保護 必要性 가 .

根本的 原因 最善

政策(first best policy) . , 가

3 . ‘

(, 1993) ‘ (, 1997) 3

正當化 論理

公益條項 가 .

高率 關稅가 價

格引上 가 國內産業 確立 左

右

. ,

大部分 保護措置 生産性

部門 傾向

가 .

III IV WTO

가 , 가 .

VI

가

1) 가

1998 9 가 가

43 , 22 , 1997 가

2.1 1,446 0.15%

反 制度 經濟的 效果

가 /

가

過小評價 (威脅效果 價格效果). , 가

(輸入代替效果).

가 가

長期間 高率 反

關稅 價格引上約束 (累積效果).

VI , 1997

7.9

22 .

HS 10

類似 代替製品 後方製品

TV ,

投資 生産 變化 間接的 效果가 反 制
 度 經濟的 效果 輸入額 가 .
 , 製品 基本關稅率 , , 8% 反 關稅
 率 平均數值 3~4 22.4% ~31.4%
 輸入規制效果 . ,
 再審
 가 , 短
 期的 增幅 .
 低價 後進國 同種製品 産業被害救濟水準
 (injury margin)
 .
 救濟水準 陰 , 高價 先進國 製品 , 輸入價格
 相關
 (가 - 가 / 가)
 가 . ,
 ,
 ,
 : ,
 1998 33 가 (25)
 (28) (17) . ,
 固定費用 新規 獨占生産 .
 가 가 가 , ‘
 (PS , ,) 가
 . , , 大企業 中小企業 .
 , 低價製品 輸入占有率
 急増 增加趨勢 .

2) 가 , 提訴가 (< VI-7>).

1~2 가 .

反 規制 威脅效果 輸入代替效果가 . 가 가 가 가

輸入量 變化 價格引上效果 . 가 輸入抑 制 國內生産 増大 , 輸入價格 引上 國內價格 上昇 國內産業 效果 . , 完全代替財가 , 가 가

가 , 價格引上 經營狀態 改善 .

獨寡占市場 強化 非正常 的 利潤 後方産業 . , 競爭力 市場 가 가 事後評價

一時的 가 . 威脅效果 價格引上效果 , 輸入轉換

保護 效果
가
國籍企業 輸出 가
PS 特殊關係
變則輸出 事後監督
體制가

防止關稅法 WTO 履行協定

III 3

가 輸入制限的 性格 競
爭制限的 性格 가

가

가 : , 正
常價格 過大計上 輸出價格 過小評價
가 가 가 가
構成價格

利潤 間接費用 가 輸出價格
履行協定 가 防止關稅法 ‘ ; “
; ‘ ; ‘ , 一貫
制度適用 가 調查當局 調查者
가 内部規程 行

政指針

1) :

GATT 第6條 가 가

, , 가 가 . 一定 原則

16

提訴者 가

가 . , 被害 憂慮

가

가 .

가 因果關係가

單純 相關關係(correlation) 가

가 . 3 가

가 . 3

行政費用

專門人力

提訴者 가 情報 可用性

被害 因果關係

被害 原因 結果 輸入增大

被害 造作 地代追求行爲(rent seeking

activities)

3代 要因 , 가 單一接近方
式(unitary approach)

二段階 接近方式(bifurcated approach)

가 科學的 電算模型
가 , 가 가
3
가 , 價格效果 廉價 規模, 相對價格 變化,
代替財 가 가 가
가 過大 評價

2) :

機能 國內企業 가 輸入 規制 市場 獨寡占 制
度的 裝置가 私有化 가
; ‘ ; ‘ ’ 3 가

恣意的 適用
 가 .
 共益條項 導入 가 .
 가 가
 進入 難易度, 競爭狀態 競爭 , ,
 가 가 事前審査制
 成長可能性 幼
 稚産業 , 가
 人爲的 獨寡占體制
 , 死重損失(deadweight cost) 代價
 轉嫁 再分配措置 가
 가
 가
 , 公益條項 導入 6 12
 가 (information)
 가 利害關係人
 1).
 가 ‘ ,

逆關稅現象

1) ,
 가
 19 CFR Sec 351.208(f), 351.312(c).

(Sec. 777(h),

effect) , 製品 後方産業 保護(cascading) 가 .
 , 6 12 가
 , 가
 3) .
 가 가
 迂廻輸出, 代替負擔 輸
 入轉換 事後監督體系가 .
 가 價格引上效果 가
 , 基本關稅
 3~4 高率 輸入關稅 輸入規制 資源配分
 人爲的 加
 가 , 가 獨寡占體制 強化 가 被害補償
 措置 政策的 手段
 가 가
 , VI , PS ,
 變形·輸入 多國籍 企業
 가 ,
 迂廻輸出

變形製品, 新製品 가 後方製品(downstream product) 輸出
가

23), , 가 가
가

關稅法 施行令 第4條 14 ③

“ 가
가

”. ‘ 價格 再檢討’

III 4
WTO

獨立 調查

가
가

, PS

가

가

3

가 . , (1995)

(1990) ,

高價 가

가

2)

가 가

가

가

가

가

3

(Sec. 773(d), IV 2 2)).

3)

3

가

則 WTO , 原產地規程 HS分類 一般原
 가 .
 詐欺行爲 GATT 20 (d) 가 가
 , 가 가
 負擔(duty absorption)
 가 , 關
 稅 代替負擔 原審(original investigation) 輸出價格
 , 再審 .
 4) 가
 價格引上約束 獨寡占市場 , 가 人爲的 價格談合 長期
 間 . 가
 迂廻輸出 關稅 代替負擔 가
 . 가
 獨寡占體制 形成 . , 競爭法 低價
 違法 價格合意 公的 不當利潤
 가 .
 가 가
 , 가 公益 效率的 監
 督 가 (IV 2 8)).
 , 產業的 利用者 消費者團體
 利害關係人 . ,
 가 가 特殊

狀況 價 價 . 價
 가 가 .
 가 , 4 가
 , , H
 가 製品間
 價格歪曲 : 價格引上約束
 非彈力的 , 實效
 性 . , 反 關稅 輸入價格 定率
 가 가 가 가
 定額 輸出價格 가 最低輸出價格
 가가 가 가
 .
 가 가 가
 定額稅가
 (1995) (1988) 가 가
 價格合議制度 運營 “ 가
 ” 가
 (1998) 가
 4).
 , 公益 競爭狀態
 監視監督 가 , 가
 . 4 7 ③
 가 가
 가 ,

4) 가 가 (1995) , 가
 가 가 .

6個月 中斷 , 暫定期間

가 (19 CFR 351.208(e)).

3. 反 制度: 制度的 示唆点

VII 2 VI
防止關稅法 WTO 履行協定 公益條項

3 制度的 側面 防止關稅法
運營基準

가 가 ,

가 行政指針 內部規程
가

가.

貿易委員會가

關稅審議委員會 諮問 財經部가

(< VI-1>).

가 가 .
가 . 가

가 , 가

履行協定 第11條

司法, 仲裁 行政審判所 節次

(review)

Trade) , 國際貿易審判所(the U.S. Court of International Trade) 利害關係人

(factual findings)

(legal conclusion)

가

否定的

司法的 再審(judicial review)

日沒規程

再審判定

關稅審議委員會가

11

(關稅法 第16條 2, 施行令 第4條

30).

가

再審機關

가

後方產業 製品

(scope ruling),

가

司法的 再審 對象

(Sec. 771(18), Sec 780(a)(5), Sec 777(f)(1)(C), Sec 781(e)(1)(C)).

關稅法 施行令 第4條 8 ⑤項

가 (best information available)

‘合理的

期間內 ’가 가 ‘

가 . , 履行協定 2

of adverse inference) . , 不利 推論 適用(application 2 7

가 ,

不利 狀況

6 13

, 中小企業

가

가 . ,

內部去來 ,

(captive production)

專屬生產

(Sec. 771(7)(C)(iv)).

1) 가

가 輕微

(施行令 第4條 4 ④項). 特定國家 輸入占有率

3% 3% 가

7% 5 8 가

, 가 7% , 가

가 . 가 1994~5

3.4% 2.8% 가

4.0%, 12.4% 가

가 輕微 輸入 基準

累積的 評價가 가 .

, 期間 資料

가 3 基準年度

3 가 가 無視 輸入規模

()가 , 가 가 一年間 輸入規模

(Sec.771(24)).

, 가

가가 가 . 施行令 第4條 7 ③ 1. 2

, 累積 評價가 .

가 3%

가 가 “
 ”(2 2 1)6).
 4 4 ‘相當 期間以內 ’
 , 가 . , 가 가
 1 6 가
 . ‘特殊 市場狀況’
 가
 가 3 가 3 가
 가 가 가 가 .
 , 構成價格 가
 .
 가 가 가
 . , , 가
 (構成)輸出價格
 關稅 吸收負擔(duty absorption)
 . 가

) 가

同法 施行令 製4條 6 第5項 가 가 原則的
 加重平均價格 去來別 價格比較가
 , .

6) if the authorities determine that such sales are made within extended period of time in substantial quantities and

가 ,
가 (19 CFR Sec. 351.414(c)91)). (1997)
가 가 , 가 가
가 가 가 .
가 가 가 가
가 , 가 ,
가 가 . , 標的
(targetted dumping) 加重平均 對比 個別價格
2 4
가 가
가 가 가
, 가
, 施行規則 製4條 4
, III 가 行政指針
, 가 些少 費用
差異 가 , 가
0.33% 個別費用
費用 합 가 1%
(Sec. 777A(a)).

1)

가 , 零

2% 微小 가
 (4 6 2). 9 4 輸出業體 不
 誠實 對應 가 ‘ , 가
 利用可能 情報
 가
 가 . , ‘ (may) ’ ‘(shall)
 가 , , ‘ ,
 ‘ .
 産業被害救濟水準(injury margin)

(lesser duty rule, 10 1).
 가 가 가
 가

同種(like) 同一製品(identical product)
 適正販賣價格 가 .
 高價 先進國製品 陰 産業被害救濟水準
 가 . , ,
 (1998) 가 가 ,
 가 가 ,
 . , CIF 輸入價格 實際 販賣價格
 , 가
 가 .
 가 ,
 가 . , 反 關稅 相計

關稅 關稅還給 一般關稅가 (Sec. 779). ,
 關稅法 第7條 基本關稅
 가
 , 가
 .
 2)
 關稅法 施行令 第4條 10 ③項 ,
 , 4 6
 暫定措置 適用期間 ‘ , ‘ 國際協約
 ,
 . ‘ , 7 4 , ‘
 가 , 6
 9 , 가 産業被害救濟水
 準 (lesser duty rule)
 ‘ , 7 4
 .
 가 關稅法 第10條 5項 가 ‘
 ,
 防止關稅 遡及賦課基準 , ‘ ,
 . ,
 9 5
 가 遡及・適用
 가 가
 가 .

3)

4 12 ①

“ ”

被害 再發’ 가 . ‘實質的
, ‘가

刻 ’ , 確定 反 關稅 救濟效果 ‘深
適及適用 . ,

20 가 危急狀況

가

가 , 가 90

3

15% 가 大量輸入

(19 CFR Sec. 351.206(h)(1)). , 가 가
가 ‘ , 3

“

가 ”,

(10 ⑧, 4 14 ①).

“ 相殺 가 가
被害가 ” 가

11 2 “

가

”

가 . ,

證據 調查節次

(11 4) 6 , 原審(original investigation)

持續 再發 ,

가

(IV 2 3) . , 被害 再發 ,

輸入量 輸入價格效果 3

가 ,

(Sec. 751(a)(1)). , , 3 ,

가 가 相當 廉價販賣 可能

性 가 가

國際貿易委員會

가 長期的

(Sec. 751(a)(5)).

VIII. 結 論

反 制度 國際規範 制度現況

가 通商政策的 立場 , 不公正 貿易行爲

가

壁 가 WTO 一般關稅 各種 輸入障 自由貿易 例外的 國際規範 産業政策的 手段 反 制度 機能

가 救濟措置 , 一般關稅 守勢的 立場 反 關稅

가 WTO

迂回輸出 規制問題 反 制度 競爭法 連繫問

題 가 WTO 反 協定 改善方案 가

調查開始
 (威脅效果) 가 (輸入代替效果)
 85% 3~4% \ 가 .
 基本關稅率
 가
 價格引上效果 獨占利潤
 가 迂回 變形輸出
 가
 가 反 關稅
 代替負擔 價格引上約束 非彈力性
 事後監督體系가 가 .
 掠奪的 價格戰略
 市場需要 가 景氣不況
 新規進入 固定費用 一時的 .
 가
 斜陽產業 保護
 最適 政策手段
 가 反 制度 無用性 .
 , WTO
 次善 政策手段 가 , 一般 關稅 補助金
 半永久的 性格 一時的 保護措置
 가 .
 提訴 威脅效果가 特定 國家 輸出業體 가
 彈力的 使用 가

, 高率 關稅賦課 輸入制限的 性格 競爭制限
 的 性格 . , 가
 獨占産業 國內生産 增大 獨占業體 不當 利
 潤 政治的 制度 客觀性 透明
 性 .
 保護效果 가 國內産業 競爭力
 .
 , 迂回・變形輸出, 反 關稅
 代替負擔, 價格引上約束 非彈力性 事後監督體系 反 措
 置 實效性 被害 相關關係가 因果關係
 가 . 國內産業 成長可能性 競爭狀態 公益
 配慮가 WTO 가
 事前監視體系가 .
 對外的 , 對
 內的 가 , 消費者 市場 獨寡占
 實效性 貿易紛爭 . ,
 가
 客觀的 合理的 運營 가
 制度 實效性 制度的 改善

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88.6.3	D.C.P ()	()	,	88.12 가 (1) - 87.1.1 ~ 89.12.31	
88.8.29		()		89. 8 가 - US\$ 338.7/1T - 89.9.1 2	
89.10.6		()	, ,	90.11.19	
90.5.8		()	,	91.9.14 - 4% - 91.9.30 2	
92.6.29	H-	()	, ,	92.12.15	
92.7.3				93.2.20 - 40.96 ~ 54.28% 40.46 ~ 46.78% 2 - 93.2.20 3	
92.7.6		()		93.4.1 - 6.27% - 93.1.28 5	95.3.4
93.1.29		()		93.12.31 - 66.11% - 93.12.31 3 * 2	3
93.3.12	PS	()		93.12.31 - 24.51 ~ 38.16% - 93.11.8 5	
93.8.9		()	, , *	94.8.9 - 10.3 ~ 58.7% - 94.4.12 5 1 가	

93.10.14		()		94.6.23
94. 4. 6	가		, ,	94.12.9
94.11.24		()	, ,	95.6.23
95.6.8		()		95.10.5
95.8.8	()	()		96.2.29 - 18.66 ~ 57.55% - 96.2.20 2
95.9.18	()	()	, ,	96.2.29
96.1.12		()		96.10.31 - 20.07 ~ 33.84% - 96.7.10 5
96.2.7	1	()	, ,	96.12.19 - 5.25 ~ 49.69% - 96.9.2 3
96.2.13	()	()	, ,	96.8.26
96.3.4		()	, ,	96.12.3 - 33.83 ~ 49.62% - 96.9.2 5
96.4.3	PS ()	()		96.12.3
96.6.14		()	, , , ,	97.4.30 97.5.17 - 23.14 ~ 45.68% - 96.12.20 5 - 7 가

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96.6.28	()	()		97.4.19 97.5.17 - 23.43% - 97.5.17 3 - 2 가	
96.7.22		()		96.10.29	
96.8.7		()	가 ,	97.5.17 - 15.69 ~ 16.94% - 97.1.24 3	
96.10.2 6	H	()		97.8.2 97.8.2 - 15.13 ~ 15.18% - 97.4.15 5 - - 2 가	
97.1.3		()		97.7.21 - 97.7.21 3	
97.2.4				97.11.8 - 32.84% - 97.11.8 5	
97.2.10	-	()		97.8.5 가 - 97.8.5 5	
97.4.4		()		98.2.16	
97.4.4		()外4	,	97.1.17 - 7.02 ~ 33.11% - 98.1.17 3	
97.5.16		()外2	,	98.3.10 - 12.26 ~ 15.38% - 98.3.10 3 * 1 가	

< 1 >

97.5.16	H-	()	,	97.10.15	
97.9.25		() 外1	가 , ,	98.8.6 - 10.43 ~ 43.77% - 98.4.6 3	
97.10.14		外2		98.8.19 가 98.8.24 AD - 17.95 ~ 24.68% - 98.4.10 5	
97.10.16		()		98.8.20 - 27.0 ~ 37.75% - 98.4.10 5	
97.12.8		가	,	97.12.19	
98.4.25	1 ()	()		98.5.25	
98.5.7	PS ()			98.6.10	

: ; http://www.mocie.go.kr/ktc/save/save_1.html.

< 2 >

				가
(HS 3907.10.0000)	1991.9.30 ~1993.9.29	8% (15,13, 11,9%)		4%
(HS 8482.10.0000,	1993.1.28 ~1998.1.27	8% (15,11, 9%)	: 6.27%	
(HS 2836.20.0000)	1996.12.31 ~1999.12.30	8%	: 23.43%	: 155.43→185US\$/ 158.55→185US\$/
(HS 2836.20.0000)	1997.1.24 ~2000.1.23	8%	가 : 15.69% : 16.94%	
PS (HS 3701.30.9100, HS 3701.91.9100, HS 3701.99.9100)	1993.11.8 ~1998.11.7	8% (9%)	: 24.51~38.16%	
(HS 7019.10.0000, HS 7019.31.0000)	1994.6.1 ~1999.6.1	8%	: 10.3~37.4% : 24.8~58.7% : 38.2~39.5%	: (G75 1/0): 1.61→2.03US\$/kg : 1.30→1.60US\$/kg
(HS 2922.11.1000, HS 2922.12.1000, HS 2922.13.1000)	1996.7.10 ~2001.7.9	8%	: 20.07~33.84%	: MEA: 785.34→942US\$/ DEA: 767.10→905US\$/ TEA: 823.07→963US\$/
1 (HS 8506.50.0000)	1996.9.2 ~1999.9.1	8%	: 7.89~49.69% : 5.25~19.86%	
(HS 2923.10.2000)	1996.9.2 ~2001.9.1	8%	: 49.62% : 34.46~34.57%	

				가
(HS 8510.10.0000)	1996.12.20 ~2001.12.19	8%	: 30.09~45.68% : 23.14~41.57% : 37.76% : 26.85~34.59%	: 20.68~32.04% : 18.51~29.00% : 28.00% : 25.62~27.67%
H (HS 7216.33.1000, HS 7216.33.2000)	1997.4.15 ~2002.4.14	8%	: 15.13% ~ 15.18%	: 302→337US\$/MT
(HSK 9613.10.0000) (HSK 9613.20.0000)	1997.11.8 ~2002.11.7	8%	: 32.84%	
(HSK 4411.21.0000)	1998.1.17 ~2001.1.16	8%	: 7.02~33.11%	
(HSK 4809.20.1000, HSK 4809.20.2000, HSK 4816.20.1000, HSK 4816.20.2000)	1998.3.10 ~2001.3.9	8%	: 15.38% : 12.26%	: 1,476→1,592\$/
가 (HSK 8516.40.0000)	1998.4.6 ~2001.4.5	8%	가 : 10.43% : 43.77% : 11.47~14.02	
(HSK 7202.30.0000)	1998.4.10 ~2003.4.9	8%	: 17.95~24.68%	: 410→450~480US\$/MT [1999 (가) 가]
(PVA) (HS 3905.30.0000, HS 3905.91.0000) ()	1998.4.10 ~2003.4.9	8%	: 27.00~37.75%	

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가		
	11	H- , , , 가 , , , , ,
	11	D.C.P, , H- , PS , , , , , 1 , , , , ,
	9	, , , 가 , , , , 1 , , , H- ,
	4	, , , 가 ,
	4	, , , H-
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	3	D.C.P, , -
	2	,
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Article VI of the General Agreement on Tariff and Trade
(GATT 6)

Anti-dumping and Countervailing Duties

1. The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another

(a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,

(b) in the absence of such domestic price, is less than either

(i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or

(ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.

2. In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of

dumping in respect of such product.

For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph 1.

3. No countervailing duty shall be levied on any product of the territory of any contracting party imported into the territory of another contracting party in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation, including any special subsidy to the transportation of a particular product. The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production or export of any merchandise.

4. No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to anti-dumping or countervailing duty by reason of the exemption of such product from duties or taxes borne by the like product when destined for consumption in the country of origin or exportation, or by reason of the refund of such duties or taxes.

5. No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization.

6. (a) No contracting party shall levy any anti-dumping or countervailing duty on the importation of any product of the territory of another contracting party unless it determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic

industry, or is such as to retard materially the establishment of a domestic industry.

(b) The CONTRACTING PARTIES may waive the requirement of subparagraph (a) of this paragraph so as to permit a contracting party to levy an anti-dumping or countervailing duty on the importation of any product for the purpose of offsetting dumping or subsidization which causes or threatens material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party. The CONTRACTING PARTIES shall waive the requirements of sub-paragraph (a) of this paragraph, so as to permit the levying of a countervailing duty, in cases in which they find that a subsidy is causing or threatening material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party.

(c) In exceptional circumstances, however, where delay might cause damage which would be difficult to repair, a contracting party may levy a countervailing duty for the purpose referred to in sub-paragraph (b) of this paragraph without the prior approval of the CONTRACTING PARTIES; Provided that such action shall be reported immediately to the CONTRACTING PARTIES and that the countervailing duty shall be withdrawn promptly if the CONTRACTING PARTIES disapprove.

7. A system for the stabilization of the domestic price or of the return to domestic producers of a primary commodity, independently of the movements of export prices, which results at times in the sale of the commodity for export at a price lower than the comparable price charged for the like commodity to buyers in the domestic market, shall be presumed not to result in material injury within the meaning of paragraph 6 if it is determined by consultation among the contracting parties substantially interested in the commodity concerned that:

(a) the system has also resulted in the sale of the commodity for export at a

price higher than the comparable price charged for the like commodity to buyers in the domestic market, and

(b) the system is so operated, either because of the effective regulation of production, or otherwise, as not to stimulate exports unduly or otherwise seriously prejudice the interests of other contracting parties.

NOTE TO ARTICLE VI

Paragraph 1

1. Hidden dumping by associated houses (that is, the sale by an importer at a price below that corresponding to the price invoiced by an exporter with whom the importer is associated, and also below the price in the exporting country) constitutes a form of price dumping with respect to which the margin of dumping may be calculated on the basis of the price at which the goods are resold by the importer.

2. It is recognized that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.

Paragraphs 2 and 3

1. As in many other cases in customs administration, a contracting party may require reasonable security (bond or cash deposit) for the payment of anti-dumping or countervailing duty pending final determination of the facts in any case of suspected dumping or subsidization.

2. Multiple currency practices can in certain circumstances constitute a subsidy to exports which may be met by countervailing duties under paragraph 3 or can constitute a form of dumping by means of a partial depreciation of a country's currency which may be met by action under paragraph 2. By " multiple currency practices " is meant practices by governments or sanctioned by governments.

Paragraph 6 (b)

Waivers under the provisions of this sub-paragraph shall be granted only on application by the contracting party proposing to levy an anti-dumping or countervailing duty, as the case may be.

**AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE
GENERAL AGREEMENT ON TARIFFS AND TRADE 1994
(1994 6)**

PART I

Article 1

Principles

An anti-dumping measure shall be applied only under the circumstances provided for in Article VI of the GATT 1994 and pursuant to investigations initiated¹⁾ and conducted in accordance with the provisions of this Agreement. The following provisions govern the application of Article VI of the GATT 1994 in so far as action is taken under anti-dumping legislation or regulations.

Article 2

Determination of Dumping

2.1 For the purpose of this Agreement a product is to be considered as being dumped, i.e., introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

1) The term "initiated" as used hereinafter means the procedural action by which a Member formally commences an investigation as provided in Article 5.

2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country²⁾, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and any other costs and for profits.

2.2.1 Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus selling, general and administrative costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities³⁾ determine that such sales are made within an extended period of time⁴⁾ in substantial quantities⁵⁾ and are at prices which do not provide for the recovery of all

2) Sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing country, provided that a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.

3) When in this Agreement the term "authorities" is used, it shall be interpreted as meaning authorities at an appropriate senior level.

4) The extended period of time should normally be one year but shall in no case be less than six months.

5) Sales below per unit cost are made in substantial quantities when the authorities establish that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average unit cost or that the volume of sales below per unit costs represents not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value.

costs within a reasonable period of time. If prices which are below costs at the time of sale are above weighted average costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

2.2.1.1 For the purpose of paragraph 2 of this Article, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs. Unless already reflected in the cost allocations under this sub-paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations⁶⁾.

2.2.2 For the purpose of paragraph 2 of this Article, the amounts for administrative selling and any other costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of

6) The adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of investigation, the most recent costs which can reasonably be taken into account by the authorities during the investigation.

trade of the like product by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

- (i) the actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the same general category of products;
- (ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;
- (iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

2.3 In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.

2.4 A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences

which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability⁷⁾. In the cases referred to in paragraph 3 of Article 2, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases, price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.

2.4.1 When the price comparison under this paragraph requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale⁸⁾, provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and, in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements during the period of investigation.

2.4.2 Subject to the provisions governing fair comparison in paragraph 4 of this Article, the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable

7) It is understood that some of the above factors may overlap, and authorities shall ensure that they do not duplicate adjustments that have been already made under this provision.

8) Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.

export transactions or by a comparison of normal value and export prices on a transaction to transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods and if an explanation is provided why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

2.5 In the case where products are not imported directly from the country of origin but are exported to the country of importation from an intermediate country, the price at which the products are sold from the country of export to the country of importation shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely trans-shipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

2.6 Throughout this Agreement the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e., alike in all respects to the product under consideration, or in the absence of such a product, another product which although not alike in all respects, has characteristics closely resembling those of the product under consideration.

2.7 This Article is without prejudice to the second Supplementary Provision to paragraph 1 of Article VI in Annex I to the GATT 1994.

Article 3

Determination of Injury⁹⁾

3.1 A determination of injury for purposes of Article VI of the GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.

3.2 With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing country. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3.3 Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the investigating authorities may cumulatively assess effects of such imports only if they determine that (1) the margin of dumping established in relation to the imports from each country is more than de minimis as defined in paragraph 8 of Article 5 and that the volume of imports from each country is not negligible and (2) a cumulative assessment of

9) Under this Agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like domestic product.

3.4 The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; 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.

3.5 It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4 of this Article, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of 3.6 consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

3.6 The effect of the dumped imports shall be assessed in relation to the domestic

production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

3.7 A determination of a threat of material 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 imminent¹⁰). In making a determination regarding the existence of a threat of material injury, the authorities should consider, inter alia, such factors as:

- (i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importations;
- (ii) sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing country's market, taking into account the availability of other export markets to absorb any additional exports;
- (iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and

10) One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the near future, substantially increased importations of the product at dumped prices.

(iv) inventories of the product being investigated.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.

3.8 With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care.

Article 4

Definition of Domestic Industry

4.1 For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that

(i) when producers are related¹¹⁾ to the exporters or importers or are

11) For the purpose of this paragraph, producers shall be deemed to be related to exporters or importers only if (a) one of them directly or indirectly controls the other; or (b) both of them are directly or indirectly controlled by a third person; or (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers;

- (ii) in exceptional circumstances the territory of a Member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.

4.2 When the domestic industry has been interpreted as referring to the producers in a certain area, i.e., a market as defined in paragraph 1(ii), anti-dumping duties shall be levied¹²⁾ only on the products in question consigned for final consumption to that area. When the constitutional law of the importing country does not permit the levying of anti-dumping duties on such a basis, the importing Member may levy the anti-dumping duties without limitation only if (1) the exporters shall have been given an opportunity to cease exporting at dumped prices to the area concerned or otherwise give assurances pursuant to Article 8 of this Agreement, and adequate assurances in this regard have not been promptly given, and (2) such duties cannot be levied only on products of specific producers which supply the area in question.

12) As used in this Agreement "levy" shall mean the definitive or final legal assessment or collection of a duty or tax.

4.3 Where two or more countries have reached under the provisions of paragraph 8(a) of Article XXIV of the GATT 1994 such a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the domestic industry referred to in paragraph 1 above.

4.4 The provisions of paragraph 6 of Article 3 shall be applicable to this Article.

Article 5

Initiation and Subsequent Investigation

5.1 Except as provided for in paragraph 6 of Article 5, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written application by or on behalf of the domestic industry.

5.2 An application under paragraph 1 shall include evidence of (a) dumping, (b) injury within the meaning of Article VI of the GATT 1994 as interpreted by this Agreement and (c) a causal link between the dumped imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following:

- (i) identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of

all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;

(ii) a complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;

(iii) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the importing country;

(iv) information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, such as those listed in paragraphs 2 and 4 of Article 3.

5.3 The authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.

5.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed¹³⁾ by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry¹⁴⁾. The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

5.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, after receipt of a properly documented application and before proceeding to initiate an investigation, the authorities shall notify the government of the exporting country concerned.

5.6 If in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of dumping, injury and a causal link, as described in

13) In the case of fragmented industries involving an exceptionally large number of producers, authorities may determine support and opposition by using statistically valid sampling techniques.

14) Members are aware that in the territory of certain Members, employees of domestic producers of the like product or representatives of those employees, may make or support an application for an investigation under paragraph 1.

paragraph 2, to justify the initiation of an investigation.

5.7 The evidence of both dumping and injury shall be considered simultaneously (a) in the decision whether or not to initiate an investigation, and (b) thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional measures may be applied.

5.8 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is de minimis, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be de minimis if this margin is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing country unless countries which individually account for less than 3 per cent of the imports of the like product in the importing country collectively account for more than 7 per cent of imports of the like product in the importing country.

5.9 An anti-dumping proceeding shall not hinder the procedures of customs clearance.

5.10 Investigations shall, except in special circumstances, be concluded within one year after their initiation, and in no case more than 18 months.

Article 6

Evidence

6.1 All interested parties in an anti-dumping investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

6.1.1 Exporters or foreign producers receiving questionnaires used in an anti-dumping investigation shall be given at least thirty days for reply¹⁵⁾. Due consideration should be given to any request for an extension of the thirty day period and, upon cause shown, such an extension should be granted whenever practicable.

6.1.2 Subject to the requirement to protect confidential information, evidence presented in writing by one interested party shall be made available promptly to other interested parties participating in the investigation.

6.1.3 As soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under paragraph 1 of Article 5 to the known exporters¹⁶⁾ and to the authorities of the exporting country

15) As a general rule, the time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the day on which it was sent to the respondent or transmitted to the appropriate diplomatic representative of the exporting country or in the case of a separate customs territory Member of the WTO, an official representative of the exporting territory.

16) It being understood that, where the number of exporters involved is particularly high, the full text of the written application should instead be provided only to the authorities of the exporting country or to the relevant trade association.

and make it available, upon request, to other interested parties involved. Due regard shall be paid to the requirement for the protection of confidential information as provided for in paragraph 5 below.

6.2 Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally.

6.3 Oral information provided under paragraph 2 shall be taken into account by the authorities only insofar as it is subsequently reproduced in writing and made available to other interested parties, as provided for in sub-paragraph 1.2.

6.4 The authorities shall whenever practicable provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 5 and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.

6.5 Any information which is by nature confidential, (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information) or which is provided on a confidential basis by parties to an

investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it¹⁷⁾.

6.5.1 The authorities shall require interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

6.5.2 If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct¹⁸⁾.

6.6 Except in circumstances provided for in paragraph 8, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested parties upon which their findings are based.

6.7 In order to verify information provided or to obtain further details, the authorities may carry out investigations in other countries as required, provided they obtain the agreement of the firms concerned and provided they notify the representatives of the government of the country in question and unless the latter

17) Members are aware that in the territory of certain Members disclosure pursuant to a narrowly-drawn protective order may be required.

18) Members agree that requests for confidentiality should not be arbitrarily rejected.

object to the investigation. The procedures described in Annex I shall apply to verifications carried out in exporting countries. The authorities shall, subject to the requirement to protect confidential information, make the results of any verifications available or provide disclosure thereof pursuant to paragraph 9, to the firms to which they pertain and may make such results available to the applicants.

6.8 In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.

6.9 The authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.

6.10 The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation. In cases where the number of exporters, producers, importers or types of products involved is so large as to make such a determination impracticable, the authorities may limit their examination either to a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to the authorities at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.

6.10.1 Any selection of exporters, producers, importers or types of products made

under this paragraph shall preferably be chosen in consultation with and with the consent of the exporters, producers or importers concerned.

6.10.2 In cases where the authorities have limited their examination, as provided for in this paragraph, they shall nevertheless determine an individual margin of dumping for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation. Voluntary responses shall not be discouraged.

6.11 For the purposes of this Agreement, "interested parties" shall include:

- (i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product;
- (ii) the government of the exporting country; and
- (iii) a producer of the like product in the importing country or a trade and business association a majority of the members of which produce the like product in the importing country.

This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.

6.12 The authorities shall provide opportunities for industrial users of the product under investigation, and for representative consumer organizations in cases where

the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding dumping, injury and causality.

6.13 The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested and provide any assistance practicable.

6.14 The procedures set out above are not intended to prevent the authorities of a Member from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of this Agreement.

Article 7

Provisional Measures

7.1 Provisional measures may be applied only if:

- (i) an investigation has been initiated in accordance with the provisions of Article 5, a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments;
- (ii) a preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry; and
- (iii) the authorities concerned judge such measures necessary to prevent injury being caused during the investigation.

7.2 Provisional measures may take the form of a provisional duty or, preferably, a security - by cash deposit or bond - equal to the amount of the anti-dumping duty provisionally estimated, being not greater than the provisionally estimated margin of dumping. Withholding of appraisement is an appropriate provisional measure, provided that the normal duty and the estimated amount of the anti-dumping duty be indicated and as long as the withholding of appraisement is subject to the same conditions as other provisional measures.

7.3 Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.

7.4 The application of provisional measures shall be limited to as short a period as possible, not exceeding four months or, on decision of the authorities concerned, upon request by exporters representing a significant percentage of the trade involved, to a period not exceeding six months.

When authorities, in the course of an investigation, examine whether a duty lower than the margin of dumping would be sufficient to remove injury, these periods may be six and nine months, respectively.

7.5 The relevant provisions of Article 9 shall be followed in the application of provisional measures.

Article 8

Price Undertakings

8.1 Proceedings may¹⁹⁾ be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary

undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping. It is desirable that the price increases be less than the margin of dumping if such increases would be adequate to remove the injury to the domestic industry.

8.2 Price undertakings shall not be sought or accepted from exporters unless the authorities of the importing country have made a preliminary affirmative determination of dumping and injury caused by such dumping.

8.3 Undertakings offered need not be accepted if the authorities consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. Should the case arise and where practicable, the authorities shall provide to the exporter the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

8.4 If the undertakings are accepted, the investigation of dumping and injury shall nevertheless be completed if the exporter so desires or the authorities so decide. In such a case, if a negative determination of dumping or injury is made, the undertaking shall automatically lapse except in cases where such a determination is due in large part to the existence of a price undertaking. In such cases the authorities may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement. In the event that an affirmative

19) The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings except as provided in paragraph 4.

determination of dumping and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Agreement.

8.5 Price undertakings may be suggested by the authorities of the importing country, but no exporter shall be forced to enter into such an undertaking. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the dumped imports continue.

8.6 Authorities of an importing country may require any exporter from whom undertakings have been accepted to provide periodically information relevant to the fulfilment of such undertakings, and to permit verification of pertinent data. In case of violation of undertakings, the authorities of the importing country may take, under this Agreement in conformity with its provisions, expeditious actions which may constitute immediate application of provisional measures using the best information available. In such cases definitive duties may be levied in accordance with this Agreement on goods entered for consumption not more than ninety days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

Article 9

Imposition and Collection of Anti-Dumping Duties

9.1 The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of

dumping or less, are decisions to be made by the authorities of the importing country or customs territory. It is desirable that the imposition be permissive in all countries or customs territories Members, and that the duty be less than the margin, if such lesser duty would be adequate to remove the injury to the domestic industry.

9.2 When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources from which price undertakings under the terms of this Agreement have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.

9.3 The amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2.

9.3.1 When the amount of the anti-dumping duty is assessed on a retrospective basis, the determination of the final liability for payment of anti-dumping duties shall take place as soon as possible, normally within 12 months, and in no case more than 18 months, after the date on which a request for a final assessment of the amount of anti-dumping duty has been made²⁰). Any

20) It is understood that the observance of the time-limits mentioned in this sub-paragraph and in sub-paragraph 2 may not be possible where the product in question is subject to judicial review proceedings.

refund shall be made promptly and normally in not more than 90 days following the determination of final liability made pursuant to this sub-paragraph. In any case, where a refund is not made within 90 days the authorities shall provide an explanation if so requested.

9.3.2 When the amount of the anti-dumping duty is assessed on a prospective basis, provision shall be made for a prompt refund, upon request, of any duty paid in excess of the margin of dumping. A refund of any such duty paid in excess of the actual margin of dumping shall normally take place within 12 months, and in no case more than 18 months, after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping duty. The refund authorized should normally be made within 90 days of the above-noted decision.

9.3.3 In determining whether and to what extent a reimbursement should be made when the export price is constructed in accordance with paragraph 3 of Article 2, authorities should take account of any change in normal value, any change of costs incurred between importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and should calculate the export price with no deduction for the amount of anti-dumping duties paid when conclusive evidence of the above is provided.

9.4 When the authorities have limited their examination in accordance with the second sentence of paragraph 10 of Article 6, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed:

(i) the weighted average margin of dumping established with respect to the

selected exporters or producers or,

- (ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value, the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined, provided that the authorities shall disregard for the purpose of this paragraph any zero and de minimis margins and margins established under the circumstances referred to in paragraph 8 of Article 6. The authorities shall apply individual duties or normal values to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation, as provided for in sub-paragraph 10.2 of Article 6.

9.5 If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product.

Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing country. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

Article 10

Retroactivity

10.1 Provisional measures and anti-dumping duties shall only be applied to products which enter for consumption after the time when the decision taken under paragraph 1 of Article 7 and paragraph 1 of Article 9, respectively, enters into force, subject to the exceptions set out in this Article.

10.2 Where a final determination of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or, in the case of a final determination of a threat of injury, where the effect of the dumped imports would, in the absence of the provisional measures, have led to a determination of injury, anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

10.3 If the definitive anti-dumping duty is higher than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall not be collected. If the definitive duty is lower than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.

10.4 Except as provided in paragraph 2 above, where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive anti-dumping duty may be imposed only from the date of the determination of threat of injury or material retardation and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

10.5 Where a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

10.6 A definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the authorities determine for the dumped product in question that:

- (i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practises dumping and that such dumping would cause injury, and

- (ii) the injury is caused by massive dumped imports of a product in a relatively short time which in light of the timing and the volume of the dumped imports and other circumstances (such as a rapid build-up of inventories of the imported product) is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned have been given an opportunity to comment.

10.7 The authorities may, after initiating an investigation, take such measures as the withholding of appraisement or assessment as may be necessary to collect anti-dumping duties retroactively as provided for in paragraph 6, once they have sufficient evidence that the conditions set forth in that paragraph are satisfied.

10.8 No duties shall be levied retroactively pursuant to paragraph 6, on products entered for consumption prior to the date of initiation of the investigation.

Article 11

Duration and Review of Anti-Dumping Duties and Price Undertakings

11.1 An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.

11.2 The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review²¹⁾. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

11.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and

21) A determination of final liability for payment of anti-dumping duties as provided for in paragraph 3 of Article 9 does not by itself constitute a review within the meaning of this Article.

injury²²). The duty may remain in force pending the outcome of such a review.

11.4 The provisions of Article 6 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within twelve months of the date of initiation of the review.

11.5 The provisions of this Article shall mutatis mutandis apply to price undertakings accepted under Article 8.

Article 12

Public Notice and Explanation of Determinations

12.1 When the authorities are satisfied that there is sufficient evidence to justify the initiation of an anti-dumping investigation pursuant to Article 5, the Member or Members the products of which are subject to such investigation and other interested parties known to the investigating authorities to have an interest therein shall be notified and a public notice shall be given.

12.1.1 A public notice of the initiation of an investigation shall contain or otherwise make available through a separate report Where authorities provide information and explanations under the provisions of this Article in a separate report²³), adequate information on the following:

22) When the amount of the anti-dumping duty is assessed on a retrospective basis, a finding in the most recent assessment proceeding under sub-paragraph 3.1 of Article 9 that no duty is to be levied shall not by itself require the authorities to terminate the definitive duty.

23) they shall ensure that such report is readily available to the public.

- (i) the name of the exporting country or countries and the product involved;
- (ii) the date of initiation of the investigation;
- (iii) the basis on which dumping is alleged in the application;
- (iv) a summary of the factors on which the allegation of injury is based;
- (v) the address to which representations by interested parties should be directed;
- (vi) the time-limits allowed to interested parties for making their views known.

12.2 Public notice shall be given of any preliminary or final determination, whether affirmative or negative, of any decision to accept an undertaking pursuant to Article 8, of the termination of such an undertaking, and of the revocation of a determination. Each such notice shall set forth or otherwise make available through a separate report in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities. All such notices and reports shall be forwarded to the Member or Members the products of which are subject to such determination or undertaking and to other interested parties known to have an interest therein.

12.2.1 A public notice of the imposition of provisional measures shall set forth or otherwise make available through a separate report sufficiently detailed explanations for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. Such a notice or report shall, due regard being paid to the requirement for the protection of confidential information, contain

in particular:

- (i) the names of the suppliers, or when this is impracticable, the supplying countries involved;
- (ii) a description of the product which is sufficient for customs purposes;
- (iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value under Article 2;
- (iv) considerations relevant to the injury determination as set out in Article 3;
- (v) the main reasons leading to the determination.

12.2.2 A public notice of conclusion or suspension of an investigation in the case of an affirmative determination providing for the imposition of a definitive duty or the acceptance of a price undertaking shall contain or otherwise make available through a separate report all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures or the acceptance of a price undertaking, due regard being paid to the requirement for the protection of confidential information. The notice or report shall in particular contain the information described in sub-paragraph 2.1 of Article 12, as well as the reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and importers, and the basis for any decision made under sub-paragraph 10.2 of Article 6.

12.2.3 A public notice of the termination or suspension of an investigation

following the acceptance of an undertaking pursuant to Article 8 shall include or otherwise make available through a separate report the non-confidential part of this undertaking.

12.3 The provisions of this Article shall apply mutatis mutandis to the initiation and completion of reviews pursuant to Article 11 and to decisions under Article 10 to apply duties retroactively.

Article 13

Judicial Review

Each Member, whose national legislation contains provisions on anti-dumping measures, shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 11 of this Agreement. Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question.

Article 14

Anti-dumping action on behalf of a third country

14.1 An application for anti-dumping action on behalf of a third country shall be made by the authorities of the third country requesting action.

14.2 Such an application shall be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing injury to the domestic industry concerned in the third country.

The government of the third country shall afford all assistance to the authorities of the importing country to obtain any further information which the latter may require.

14.3 The authorities of the importing country in considering such an application shall consider the effects of the alleged dumping on the industry concerned as a whole in the third country; that is to say the injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's export to the importing country or even on the industry's total exports.

14.4 The decision whether or not to proceed with a case shall rest with the importing country. If the importing country decides that it is prepared to take action, the initiation of the approach to the Council for Trade in Goods seeking its approval for such action shall rest with the importing country.

Article 15

Developing country Members

It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members.

PART II

Article 16

Committee on Anti-Dumping Practices

16.1 There shall be established under this Agreement a Committee on Anti-Dumping Practices (hereinafter referred to as the "Committee") composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.

16.2 The Committee may set up subsidiary bodies as appropriate.

16.3 In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a Member, it shall inform the Member involved. It shall obtain the consent of the Member and any firm to be consulted.

16.4 Members shall report without delay to the Committee all preliminary or final anti-dumping actions taken. Such report will be available in the WTO Secretariat for inspection by government representatives. The Members shall also submit, on a semi-annual basis, reports of any anti-dumping actions taken within the preceding six months.

16.5 Each Member shall notify the Committee (a) which of its authorities are

competent to initiate and conduct investigations referred to in Article 5 and (b) its domestic procedures governing the initiation and conduct of such investigations.

Article 17

Consultation and Dispute Settlement

17.1 Except as otherwise provided herein, the Understanding on Rules and Procedures Governing the Settlement of Disputes is applicable to consultations and the settlement of disputes under this Agreement.

17.2 Each Member shall afford sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, representations made by another Member with respect to any matter affecting the operation of this Agreement.

17.3 If any Member considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective is being impeded, by another Member or Members, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the Member or Members in question. Each Member shall afford sympathetic consideration to any request from another Member for consultation.

17.4 If the Member that requested consultations considers that the consultations pursuant to paragraph 3 of Article 17 have failed to achieve a mutually agreed solution and final action has been taken by the administering authorities of the importing Member to levy definitive anti-dumping duties or to accept price undertakings, it may refer the matter to the Dispute Settlement Body (DSB). When a provisional measure has a significant impact and the Member considers

the measure was taken contrary to the provisions of paragraph 1 of Article 7 of this Agreement, that Member may also refer such matter to the DSB.

17.5 The DSB shall, at the request of the complaining party, establish a panel to examine the matter based upon:

- (i) a written statement of the Member making the request indicating how a benefit accruing to it, directly or indirectly, under this Agreement has been nullified or impaired, or that the achieving of the objectives of the Agreement is being impeded, and
- (ii) the facts made available in conformity with appropriate domestic procedures to the authorities of the importing Member.

17.6 In examining the matter in paragraph 5:

- (i) in its assessment of the facts of the matter, the panel shall determine whether the authorities' establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective. If the establishment of the facts was proper and the evaluation was unbiased and objective, even though the panel might have reached a different conclusion, the evaluation shall not be overturned;
- (ii) the panel shall interpret the relevant provisions of the Agreement in accordance with customary rules of interpretation of public international law. Where the panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, the panel shall find the authorities' measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations.

17.7 Confidential information provided to the panel shall not be disclosed without formal authorization from the person, body or authority providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the person, body or authority providing the information, shall be provided.

PART III

Article 18

Final Provisions

18.1 No specific action against dumping of exports from another Member can be taken except in accordance with the provisions of the GATT 1994, as interpreted by this Agreement²⁴).

18.2 Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

18.3 Subject to sub-paragraphs 1 and 2, the provisions of this Agreement shall apply to investigations, and reviews of existing measures, initiated pursuant to applications which have been made on or after the date of entry into force for a Member of the Agreement Establishing the WTO.

18.3.1 With respect to the calculation of margins of dumping in refund procedures

24) This is not intended to preclude action under other relevant provisions of GATT 1994, as appropriate.

under Article 9.3, the rules used in the most recent determination or review of dumping shall apply.

18.3.2 For the purposes of paragraph 3 of Article 11, existing anti-dumping measures shall be deemed to be imposed on a date not later than the date of entry into force for a Member of the Agreement Establishing the WTO, except in cases in which the domestic legislation of a Member in force at that date already included a clause of the type provided for in that paragraph.

18.4 (a) Each government accepting or acceding to the WTO shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the Agreement Establishing the WTO for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply for the Member in question.

(b) Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

18.5 The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the Council for Trade in Goods of developments during the period covered by such reviews.

18.6 The Annexes to this Agreement constitute an integral part thereof.

ANNEX I (1)

Procedures for On- The- Spot Investigations Pursuant to paragraph 7 of Article 6

1. Upon initiation of an investigation, the authorities of the exporting country and the firms known to be concerned should be informed of the intention to carry out on-the-spot investigations.
2. If in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the firms and the authorities of the exporting country should be so informed. Such non-governmental experts should be subject to effective sanctions for breach of confidentiality requirements.
3. It should be standard practice to obtain explicit agreement of the firms concerned in the exporting country before the visit is finally scheduled.
4. As soon as the agreement of the firms concerned has been obtained the investigating authorities should notify the authorities of the exporting country of the names and addresses of the firms to be visited and the dates agreed.
5. Sufficient advance notice should be given to the firms in question before the visit is made.
6. Visits to explain the questionnaire should only be made at the request of an exporting firm. Such a visit may only be made if the authorities of the importing country notify the representatives of the government of the country in question and unless the latter do not object to the visit.

7. As the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary and the government of the exporting country is informed by the investigating authorities of the anticipated visit and does not object to it; further, it should be standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.

8. Enquiries or questions put by the authorities or firms of the exporting countries and essential to a successful on-the-spot investigation should, whenever possible, be answered before the visit is made.

ANNEX II (2)

Best Information Available in Terms of paragraph 8 of Article 6

1. As soon as possible after the initiation of the investigation, the investigating authorities should specify in detail the information required from any interested party, and the way in which that information should be structured by the interested party in its response. The authorities should also ensure that the party is aware that if information is not supplied within a reasonable time, the authorities will be free to make determinations on the basis of the facts available, including those contained in the request for the initiation of the investigation by the domestic industry.

2. The authorities may also request that an interested party provide its response in a particular medium (e.g., computer tape) or computer language. Where such a request is made, the authorities should consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and should not request the company to use for its response a computer system other than that used by the firm. The authority should not maintain a request for a computerized response, if the interested party does not maintain computerized accounts and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g., it would entail unreasonable additional cost and trouble. The authorities should not maintain a request for a response in a particular medium or computer language if the interested party does not maintain its computerized accounts in such medium or computer language and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g., it would entail unreasonable additional cost and trouble.

3. All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties and which is supplied in a timely fashion, and, where applicable, supplied in a medium or computer language requested by the authorities, should be taken into account when determinations are made. If a party does not respond in the preferred medium or computer language but the authorities find that the circumstances set out in paragraph 2 have been satisfied, this should not be considered to significantly impede the investigation.

4. Where the authorities do not have the ability to process information if provided in a particular medium (e.g., computer tape) the information should be supplied in the form of written material or any other form acceptable to the authorities.

5. Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it provided the interested party has acted to the best of its ability.

6. If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons thereof and have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the authorities as not being satisfactory, the reasons for rejection of such evidence or information should be given in any published findings.

7. If the authorities have to base their determinations, including those with respect to normal value, on information from a secondary source, including the information supplied in the request for the initiation of the investigation, they should do so with special circumspection. In such cases, the authorities should, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not co-operate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did co-operate.

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< 國文要約 >

反 制度 運營現況 制度的 改善方案

張 權 鎬

不公平 貿易行爲 WTO (New Round) WTO 迂回輸出 1998 規制가
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輸入制限的 競爭制限的 性格
指定産業 高率 輸入關稅 人爲的 資源配分
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가 自由貿易
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 配慮가 WTO 가
 事前監視體系가 .
 調查開始 再審 審議節次가 가
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 市場 獨寡占 實效性 貿易競爭 .
 客觀的 合理的 運營 가
 制度 實效性

< **Abstract** >

**A Study on the Anti-Dumping Measure on Korea
: Economic and Institutional Evaluation.**

Chang, Keunho

In 1998, seventy-three nations has adopted various anti-dumping measure which was originally developed to prevent unfair trade practices and, as a result of trade strategies of developed countries like US and EC, anti-dumping measure such as the prevention of circumvention is expected to be a major agenda for discussion in 1999 WTO New Round.

In addition, there has been increasing dependency of anti-dumping measure in Korea, which resulted in, respectively, 43 cases of dumping investigations and 22 case of the imposition of anti-dumping measure. Thus, in face of increasing demands for anti-dumping measure caused by the deepening of trade competition among trading partners, there exists a need to overhaul anti-dumping system for an effective and objective management.

Because anti-dumping measure tends to restrict not only imports but also competition, it is most imperative to establish an objectivity and transparency of anti-dumping measure so that the measure may not be distorted by monopolistic industries and political lobbies. Furthermore, in view of trade strategy of the Korean government , it is important to ensure a consistent operation of anti-dumping system and to ensure a consider economy-wide impact of an anti-dumping duties.

The data analysis reveals that the impact of dumped products decreases sharply right after the initiation of dumping investigations while that of normal import

tends to increase. however., normal import does not substitute dumped import. Also, the accumulated effects of anti-dumping measure, including price impact, are substantial, since the anti-dumping duties are as much as three or four times greater than 8% normal duties and those duties continued to be effective for a few years. In addition, there exists a pattern of circumvention or modified product import and a sign of the change in the pricing pattern of developed countries' product in response to anti-dumping measure for an early removal of anti-dumping duties.

Considering the possibility of duty absorption or the inflexibility of price increase agreement, it is necessary to provide monitoring program to watch out for anti-dumping measure evasion and to establish a procedure to review public interests such as effect on competition and the feasibility of domestic industry's growth. Furthermore, the anti-dumping law and various decrees on administrative procedures and regulations should elaborate in a greater detail in order to prevent an arbitrary or a subjective decision.