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Utilizations of Anti-dumping and Countervailing Duty Investigations in the FTA Era

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Introduction

A growing number of countries are entering into free trade agreements (FTAs), a trend also followed by South Korea. The expansion of FTAs provides South Korea with opportunities to pursue free trade with a number of countries without the burden of tariffs, while the expansion of free trade is certain to serve as an opportunity for the Korean economy to leap forward to the next level of development. While the conclusion of FTAs clearly has the positive side of increasing free trade, it must also be considered that the increase in imports resulting from the elimination of trade barriers can damage domestic industries. If unfair trading policies instituted by another country leads to rising imports in Korea and consequently damages domestic industries, the trade imbalance must be rectified. As such, as the expansion of FTAs contributes to significantly increasing international trade without trade barriers, this heightens the growing significance of the institutional mechanism to guarantee a fair trade environment.

The two major mechanisms to secure the fair trade environment include anti-dumping (AD) and countervailing duty (CVD) imposition. Although Korea has been the target of anti-dumping investigations on frequent occasions, it has conducted a relatively small number of anti-dumping investigations against products from other countries and, notably, has never used countervailing duty measures, which demonstrates Korea's passivity in pursuing trade remedy measures.

Important discussions are underway around the world with regard to AD/CVD systems, and in particular, the discussion has been long underway

for the revision of the "WTO Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994" (hereinafter "the Anti-Dumping Agreement") and the "WTO Agreement on Subsidies and Countervailing Measures" (hereinafter "the SCM agreement") in the Doha Development Agenda (DDA) launched by the World Trade Organization (WTO). The revision of the WTO Anti-Dumping and SCM Agreements has been discussed with the aim to restructure and add several provisions that have caused issues among WTO member countries. Since such a change would directly affect each country's trade interests and therefore WTO member countries are sharply opposed across a variety of issues. As Korea is one of the main target countries facing AD/CVD measures and has been taking a positive attitude toward FTAs, it has therefore actively engaged in the revision of the WTO Anti-Dumping and SCM Agreements with keen interest. Amid the rapidly changing trade environment, however, Korea must approach this issue from a dual perspective as both importer and exporter.

The purpose of this paper is to confirm the increasing significance of trade remedy measures (AD/CVD) as the institutional foundation to allow Korean companies to compete in a fairer trade environment with those of other countries in the face of an FTA era characterized by increased market penetration and limitless competition following the elimination of tariff barriers. This study also focuses on suggesting the restructuring of institutions and policy proposals to actively utilize such trade remedy measures. As discussed above, the increased prevalence of FTAs leads to a growing volume of trade, which subsequently increases the possibility that goods from unfair trade can flow into the domestic market. In response, AD/CVD measures will be discussed as the only effective and legal methods to prevent unfair trade, thereby assisting businesses and industries in Korea to retain competitiveness in the FTA era.

Unlike previous studies, this study presents suggestions for improvement and policy implications with regard to AD/CVD measures, based on a comprehensive analysis of various external factors, such as the change in economic and international trade environments and progress in WTO negotiations. Even with regards to the same matter, different implications may be drawn depending on whether the analysis solely focuses on the revision of the WTO agreements or identifies new developments in the trade environment. Choices that may appear

to be correct in the context of the revision of the WTO agreements may not be entirely immutable when considering the progress of FTA negotiations with other countries. In conclusion, this study analyzes various factors based on the external change characterized as the expansion of the FTA regime, such as the discussion on revisions addressed in the WTO, case studies of foreign countries, analysis on related disputes, and the role and function of the Korea Trade Commission (KTC) in charge of managing AD/CVD measures as Korea's investigating authority. Based on the results, this paper suggests basic directions in the medium term for the operation of AD/CVD measures by the Korean government. This study bears substantial significance in that policy implications are drawn through the overall review of various considerations.

This paper will be structured as follows. Chapter II examines the current status of AD/CVD measures in Korea while exploring the role of the KTC in charge of AD/CVD investigations. Chapter III addresses the content and issues related to the revision of the WTO Anti-Dumping and SCM Agreements currently under discussion in the WTO and the position of the Korean government in the participation of such negotiations. Chapter IV analyzes the operation of AD/CVD measures of other countries and compares them with those of Korea. In Chapter V, policy implications for Korea are drawn based on preceding discussions. Lastly, Chapter VI summarizes the discussions and draws a conclusion.

Ⅱ

Trade Remedy Measures in Korea and Role of KTC

1 Trade Remedy Measures in Korea

A. Imposition of Anti-dumping Duty by the Customs Act

Just like the case with other international agreements, for the implementation of anti-dumping international regulations in Korea, the domestic laws such as the Customs Act and the Act on the Investigation of Unfair International Trade Practices and Remedy against Injury to Industry (hereinafter the "Trade Remedy Act") reflect anti-dumping related international regulations stipulated in Article VI. 1 and 2 of the General Agreement on Tariff and Trade (GATT) and the WTO Anti-Dumping Agreement.

In the Customs Act of Korea, anti-dumping duties are separately covered in the sub-section, under which anti-dumping duties are elaborated in Articles 51 through 56. The term, 'dumping,' refers to export by which products of one country are introduced into the commerce of another country at less than the normal value of the products.

The action of exporting products at such lower prices seem to be taken with the aim to increase the market share of an export country and eliminate rivals of the same kind of products, thereby acquiring and maintaining the exclusive position.

Article 23 of the Act on the Investigation of Unfair International Trade Practices and Remedy against Injury to Industry prescribes that the decision

to commence an investigation into material injury to a domestic industry caused by dumping, investigation into allegations of dumping, investigation and judgment of injury to the industry caused by dumping, recommendation of anti-dumping measures to prevent dumping, review, etc., shall be made in accordance with Articles 51 through 56 of the Customs Act. The said Act also stipulates the role of the KTC.

B. Imposition of Countervailing Duty by the Customs Act

Compared to AD investigations, CVD investigations have never been conducted so far in Korea. The absence of investigation for the imposition of such anti-subsidy duties is practically due to insufficient related systems and political and diplomatic burdens arising from the implementation of CVD investigation. In the era of the FTAs, however, the Korean government must approach anti-subsidy duty in a more strategic way and in particular, as it is expected to face an increase in demand for CVD investigation from the domestic industry, it is high time to be prepared for such change.

Article 24 of the Act on the Investigation of Unfair International Trade Practices and Remedy against Injury to Industry stipulates that the decision to commence an investigation into injury to an industry caused by subsidies, etc., investigation of payment of subsidies, etc., investigation and judgment of injury to the industry caused by subsidies, etc., recommendation of countervailing measures, review, etc., shall be made in accordance with Articles 57 through 62 of the Customs Act. In other words, countervailing duty is prescribed in Articles 57 through 62 of the Customs Act.

2 Korea Trade Commission

A. Establishment of the KTC

The KTC was established to conduct investigations, issue provisional and final determinations, and propose remedy measures in response to damages to

domestic industries caused by unfair international trade practices, the increase of import and subsidies, while performing a function of surveying the impact on industrial competitiveness.[1] Based on this provision, the KTC is designed to operate trade remedy measures such as anti-dumping duties, countervailing duties, safeguard measures and investigation on unfair trade practices. The trade commission is responsible for preventing unfair imports from foreign countries such as through dumping or infringement on intellectual property rights, curbing a sharp rise in imports that have a potential risk of inflicting substantial damage to the domestic market in the short term, and safeguarding domestic industries.

As the government agency in charge of AD investigations, the KTC identifies and assesses dumping cases and damage incurred to industries, but the Ministry of Strategy and Finance (MOSF) ultimately decides whether to impose anti-dumping duties based on investigation results. Korea operates a dualist structure in which the investigating authority and the agency for potential imposition are separate.

B. Role of the KTC

The KTC is in charge of the following matters prescribed in the Act on the Investigation of Unfair International Trade Practices and Remedy against Injury to Industry. First, the trade commission investigates and assesses unfair trade practices and decides provisional measures, while ordering the relevant actor guilty of unfair international trade practices to take corrective measures and imposing a penalty surcharge upon the relevant actor. Second, when the rising volume of imports causes serious damage to a domestic industry, the trade commission initiates and deliberates upon an investigation of the damage, while making recommendations, interim reviews or assessment of extension for various safeguard measures. Third, the trade commission investigates and determines trade damage caused by an increase in certain imports due to FTAs, and recommends support measures to compensate for such trade damage. Fourth,

1) Article 27 of the Act on the Investigation of Unfair International Trade Practices and Remedy against Injury to Industry.

as a step prior to imposing anti-dumping duties, the trade commission decides whether to commence investigations into damage to an industry; investigates allegations of dumping; probes and determines damage to an industry caused by dumping; and makes recommendations on or reviews anti-dumping measures. Fifth, as a necessary step to impose countervailing duties, the trade commission decides whether to commence investigations into damage to an industry; investigates the payment of subsidies; probes and determines damage to an industry caused by unfair subsidies; and makes recommendations on or reviews countervailing measures. Sixth, the trade commission investigates the effect on the competitiveness of domestic industries caused by the import of goods or supply of services from foreign countries, conclusion of trade agreements, and change in the international trade systems; examines degrees of damage inflicted on the domestic industry by trade counterparts' violation of international trade norms; and investigates and studies rules, systems and cases of disputes related to international trade.

Ⅲ

Discussion for Revision of WTO Anti-Dumping and SCM Agreements

1 Issues and Discussions on Revision of WTO Anti-Dumping Agreement

Having witnessed many cases of anti-dumping investigation conducted arbitrarily, WTO members have reached the consensus towards the need to revise the WTO Anti-Dumping Agreement. However, no significant progress has been made so far due to dissenting opinions among individual member states. Countries focusing on exports have maintained a sharp contrast of opinion with countries conducting investigations into imported goods.

At present, there is no visible progress in the discussion in regard to the revision of the Anti-Dumping Agreement, but various evaluations and relevant problems have been organized and each country's position generally follows a pattern.

A. Positions of Major Countries

The leading proponents of the revision of the Anti-Dumping Agreement can be largely categorized into four: first of all, the Friends of Anti-dumping Negotiation, or FANs, which strive to prevent the misuse or abuse of anti-dumping measures through their practical revision; the U.S. which maintains a lukewarm stand on this issue; EU, which shows a middle position between the FANs and the U.S.; and developing countries and emerging markets such

as India and Indonesia, which are active in the operation of anti-dumping measures.[2)]

First, FANs consist of 15 economies[3)] including South Korea and assert the need to prevent the misuse or abuse of the anti-dumping measures through the improvement of the anti-dumping systems. Therefore, FANs identify many issues necessary to be revised from the Anti-Dumping Agreement and submit relevant proposals.

Second, unlike the FANs, the U.S. is not active in the movement for the revision of the Anti-Dumping Agreement, thus diverging considerably from the position of the FANs. For the past 20 years, the U.S. has been a leading country in resorting to anti-dumping measures and is intent on maintaining the current anti-dumping system. As a country which has taken many measures against dumping and also has been investigated for dumping, the U.S. takes an active position to adopt the regulations that prohibit circumvention of anti-dumping measures when deemed favorable, and shows the volition to revise matters related to improving anti-dumping investigation procedures and transparency in such procedures.

Third, the EU and Canada take a middle ground between the FANs and the U.S., agreeing to the necessity of preventing the misuse or abuse of anti-dumping measures, while keeping the current anti-dumping systems in place.

The last group includes developing countries and emerging markets such as India and Indonesia, which actively utilize anti-dumping measures as a means to protect their domestic industries. In addition, even if advanced countries including the U.S. and the EU implement anti-dumping measures against them, these developing countries believe it is more favorable to apply anti-dumping measures against the advanced countries of their own volition. Since such countries benefit from the use of the current anti-dump agreement, they are passively opposed to revision as opposed to being active proponents.

2) Park, Nohyoung and Sung-Hoon Park, 2010, pp. 53-55.

3) FANs consist of 15 economies: Brazil, Chile, Columbia, Costa Rica, Hong Kong, Israel, Japan, South Korea, Mexico, Norway, Singapore, Switzerland, Taiwan, Thailand, and Turkey. www.wto.org/english/tratop_e/dda_e/negotiating_groups_e.htm

B. Current Progress in the Revision of the Anti-Dumping Agreement

As seen above, member states express different views on the revision of the Anti-Dumping Agreement. Taking these dissenting opinions into account, Guillermo Valles Galmés, the Chair of the Negotiating Group on Rules, proposed the first draft of the Chair's text in November 2007 and the revised text in December 2008.

The first draft included matters on which member countries did not show significant conflict in viewpoints, as well as over ten crucial issues on which they were opposed sharply. Although a revised draft was presented in response to the core problems of the said crucial issues, it was met with strong opposition from member states. In the face of such confrontation, the Chair of the Negotiating Group on Rules, Guillermo Valles Galmés circulated a new draft text in December 2008, which reflected opinions of the members on less disputed agenda in a well-coordinated text, but withdrew most of the suggestions on the ten disputed issues raised in the 2007 draft to strong opposition, and instead merely noted in the text that certain aspects of the existing Anti-Dumping Agreement cause controversy. Since then until 2013, activities to revise WTO rules remained at a standstill without any additional proposals.

The 2010 Chair's text contains 11 major issues covered in the 2007 text and the 2008 revised text.[4][5] Some of these issues are not handled in the 2007 Chair's text draft but most were raised in the 2007 first draft and withdrawn in the 2008 revision due to sharp differences in viewpoints among WTO members. As for other matters, the Chair expressed that there was disparity of opinions.[6]

4) Zeroing, causation of injury, material retardation, exclusion of related producers, product under consideration, information requests to affiliated parties, public interest & lesser duty, anti-circumvention, sunset reviews, third country dumping and special & differential treatment/technical assistance.

5) WTO, TN/RL/24.

6) WTO, TN/RL/24.

2 Issues and Discussions on Revision of WTO SCM Agreement

As is the case with the Anti-Dumping Agreement, the WTO SCM Agreement is currently under negotiation for revision, which has reached agreement on most of the issues. The negotiation on the revision of the SCM Agreement is significant since it demonstrates the growing recognition towards the importance of each country's subsidy policy in an international dispute, and that new standards and legal systems are introduced as an international response to address subsidy-related problems. Various kinds of subsidy disputes in a range of areas involving Korea, China, the U.S., Japan and the EU demonstrate that subsidy policy is likely to emerge as a core area of international trade disputes. Centering on the disputes between the U.S. and China, subsidy disputes have already become a regular issue, ranging from direct subsidies and various indirect support measures from the government.

In particular, the recent trend in which AD and CVD investigations are conducted simultaneously suggests that even when the AD investigation is the main objective, the inspection is likely to also include a CVD investigation. Conversely, CVD inspections are also likely to be accompanied by AD investigations. Major countries are moving in the direction of conducting the two investigations simultaneously, which intends to draw favorable judgment to their domestic companies by placing physical burden upon a country or a company against which a petition is filed. Therefore, continuous attention and response must be given to the SCM Agreement and the characteristics and implications of CVD investigation.

A. Positions of Major Countries

The revision of the WTO agreement on subsidies draws sensitive responses from each country across a range of areas. This is because, unlike the Anti-Dumping Agreement which simply assesses the pricing policy of export companies, the agreement on subsidies entails the assessment and review of a foreign government's legal systems and institutions by a government agency of another country. Hence CVD investigations constantly bear the potential to

cause controversy with regards to a potential infringement of the sovereignty of the country facing the said inspection.[7] In recognition of this point, the SCM Agreement and disputes over the interpretation and application of such agreement often include precautionary text to prevent unfair infringement.[8]

The bilateral conduct of CVD investigations is stipulated in Part V of the SCM Agreement, which is closely related to Parts I through IV of the agreement, and therefore the revision of content from Part I to Part IV will exert almost the same effect on the investigation items for countervailing duty investigations listed in Part V, and vice versa.[9] Compared to the Anti-Dumping Agreement, the SCM Agreement faces relatively little scope for revision. While the Anti-Dumping Agreement contains many technical details and faces numerous demands for revisions, the SCM Agreement has yet to incur a general consensus for revision within a short timeframe with a few matters in exception. As seen in the controversy over subsidies in relation to each country's exchange rate policy, the differences in the positions of member states are at such a fundamental level as to be far from being reflected in the agreement.

Overall, positions regarding the revision of the subsidies agreement can be categorized into two: The first group, including the U.S. and the EU, favors the strengthening of regulatory power of the agreement in order to effectively prevent each country from granting illegal subsidies; while the second group, including China, Brazil, and India, voices concerns over the SCM Agreement imposing an unfair restriction on legitimate government policies. Korea's

7) This point has been discussed since the introduction of the WTO SCM Agreement and is often confirmed in the dispute resolution procedures. *United States–Final Countervailing Duty Determination with respect to Certain Softwood Lumber from Canada*, Appellate Body Report, WT/DS257/AB/R, 19 January2 004, para.52, n.35, *quoting United States–Measures Treating Exports Restraints as Subsidies,* Panel Report, WT/DS194/R,29 June 2001, para.8.65. ("…negotiating history demonstrates ... that the requirement of a financial contribution from the outset was intended by its proponents precisely to ensure that not all government measures that conferred benefits could be deemed to be subsidies. This point was extensively discussed during the negotiations, with many participants consistently maintaining that only government actions constituting financial contributions should be subject to the multilateral rules on subsidies and countervailing measures").

8) Ibid.

9) See WT/DS70/AB/R, 2 August 1999, para. 157. The WTO Panel and Appellate Body review Article 14 in regard to economic benefits included in Part V as a crucial criteria in the interpretation of Article 1.2. For example, Canada – Measures Affecting the Export of Civilian Aircraft, Appellate Body Report.

standpoint is not clear, but is seen to be closer to the latter overall. Given the fact that the U.S. and the EU grant massive subsidies to domestic companies, which cause ceaseless controversy,[10] their position on the reinforcement of regulatory power of the SCM Agreement is somewhat ironic. Despite continuing to grant subsidies, the U.S. and the EU raise concerns over subsidies from other countries. In any case, these countries assert that for WTO members to grant a wide range of subsidies is a major cause for disruption in the international trade order, and maintain the consistent position that in order to prevent or restrain such actions, the international community must secure effective tools and revise the agreement in this direction. This standpoint is also suggested in bilateral negotiations of FTAs with such countries. Based on this fundamental difference in viewpoints, the discussion has been limited to the revision or addition of specific provisions in the agreement. Taking into account the increase in disputes concerning subsidies or countervailing duties, it is evaluated that tension between countries is expected to escalate over the agreement on subsidies, rather than over the well-established and arranged Anti-Dumping Agreement.

B. Current Progress in the Revision of the Agreement

The current discussion on the revision of the SCM Agreement has made no significant progress since the first draft of the Chair's text on rule negotiation was circulated in August 2007. Based on the Chair's text, working-level negotiations have continued up to the first half of 2011, but no real progress that could change the flow of negotiation has been identified. However, it would appear that a tentative consensus has been reached among countries with regards to matters other than fisheries subsidies. As seen in the Anti-Dumping Agreement, the development of further negotiations in the future is highly likely to result in an agreement on the final revision. Matters to be included in a

10) The latest disputes on a variety of subsidies raised by the U.S. and the EU are follows: Appellate Body Report, European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft, WT/DS316/AB/R, adopted 1 June 2011; Appellate Body Report, United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint), WT/DS353/AB/R, adopted 23 March 2012. In the disputes, both parties won respective case to find that government–assisted programs from the partner country are in violation of the subsidies agreement.

revised version of the SCM Agreement are stipulations of legal principles confirmed through existing subsidy-related disputes with the exception of the new issue of fisheries subsidies. Therefore, the examination of the current version of the revision would provide an important guideline that facilitates an effective response to the upcoming negotiation and operates government policies in order to comply with the WTO agreement within the current scheme on subsidies. Such context gives important implications with regards to CVD investigations, which are conducted against Korean companies and conducted by the Korean government against foreign companies.

3 Korean Government's Position on Revision of the SCM Agreement

As the DDA negotiations have failed to be completed so far without producing any significant progress, the revision of WTO Anti-Dumping and SCM Agreements has also seen no advancement either. Member countries have generally reached the consensus that issues in dispute regarding the SCM Agreement are difficult to facilitate an agreement with the exception of fisheries subsidies, and therefore the current regulation is expected to remain in place, although fisheries subsidies may prove to be an obstacle.

Meanwhile, as for the Anti-Dumping Agreement, WTO members are in conflict of interests over major issues, which are hindering the smooth transition to an agreement. Under these circumstances, member countries have formulated separate anti-dumping regulations by entering into FTAs with other countries of compatible positions, which further complicates the situation.

Korea shares opinions with FANs with regard to the revision of the WTO Anti-Dumping Agreement. FANs suffer relatively greater losses from anti-dumping investigations and measures, while demanding stricter regulations against dumping. In essence, FANs are a group representing countries under anti-dumping investigations. Meanwhile, the U.S. aspires to maintain the existing rules from the position of actively utilizing AD measures. With a strategy to exploit AD measures, India and Brazil approach this issue based on preferences for each individual regulation.

At this juncture, Korea must reconsider its strategy of participating in negotiations from the position of FANs. Korea is expected to expand its FTAs and will inevitably lower its tariff barriers. As seen above, Korea will face the situation in which it has to better utilize AD/CVD measures, which implies that the KTC must establish the groundwork for the effective usage of such measures.

Korea has thus far assumed a defensive posture in conformity with FANs not only with regards to FTAs but also about the WTO Anti-Dumping Agreement in consideration of national circumstances, which has remained a valid position to date. In the future, however, Korea must consider both offensive and defensive postures toward anti-dumping under the FTA system. Korea can no longer simply remain defensive against dumping as long as it is a signatory to FTAs. As the cases are prospected to increase where Korea has to apply anti-dumping measures, Korea must take part in the negotiation for the revision of the WTO Anti-Dumping Agreement.

As major issues such as zeroing, correlation, prevention of circumvention of export subsidies, and dumping margin have been raised and discussed through WTO disputes, Korea must contemplate the introduction of the concept of public interest instead of the lesser duty rule. The Customs Act contains text that can be construed as the concept of public interest, which stipulates that "if it is necessary to consider enhancement of bolstering the competitiveness of the relevant industry, stabilizing prices and promoting trade cooperation with trading partners, when imposing any anti-dumping duties or countervailing duties, the Minister of Strategy and Finance may investigate such matters and reflect the outcomes of such investigation." However, Korea has never applied this provision and most countries except for a few including Canada do not seem to consider the application of public interest. If public interest is reflected in the revision of the WTO Anti-Dumping Agreement, it will need to reduce social costs incurred from the possible increase in complaints and disputes through efforts to objectify factors that determine public interests without resorting to subjective factors.

Ⅳ

Operation and Implications of Overseas Cases

1 Operation of Anti-dumping Investigation and Related Systems

A. Overview of Anti-dumping Investigations

An AD investigation is a trade remedy measure, and the most frequently applied instrument for maintaining fair competition in the international trade. When a foreign company exports a product at a price lower than the normal value (which refers to the sales price in the domestic market), thereby inflicting severe harm on domestic companies and the industry manufacturing the same kind of products, the importing country must verify the damage incurred and impose tariffs on the imported product. AD investigations do not target a certain country's government but a certain company, but it should be given attention that once an investigation is launched against dumping by a certain company, the scope of investigation extends to apply to all companies in the targeted country that manufacture and export the same kind of products to the importing country in question. Since dumping is an unfair trade practice that distorts international trade, the confirmation of dumping must be followed by the imposition of additional tariffs and efforts to recover the trade balance, which is the basic purpose of AD investigations.

Each of the 160 WTO members, including Korea, conducts anti-dumping investigations in their own characteristic way. This is because the WTO Anti-Dumping Agreement provides only a general frame for investigation against

dumping, while granting each member discretion in regard to the specific means to implement it. The common trait identified in each nation's anti-dumping investigation procedure is generally conducted with the aim of protecting domestic industries. While advanced countries strive to achieve this aim with a variety of grounds and procedures without exposing their intention, developing countries directly express their aim or reflect it in the process of investigation. This difference makes it more difficult for developing countries to make an objection with regard to judicial review on the final resolution and the WTO panel.

B. Operation of Anti-dumping Measures

Under the Anti-Dumping Agreement, which took effect as the WTO was established in 1995, a total of 4,230 anti-dumping cases have been placed under investigation. In 1995, 157 cases were reported to the WTO and afterwards, the number of the cases investigated against dumping has risen rapidly, in particular with 358 cases in 1999 and 371 in 2001, culminating in the late 1990s and early 2000.

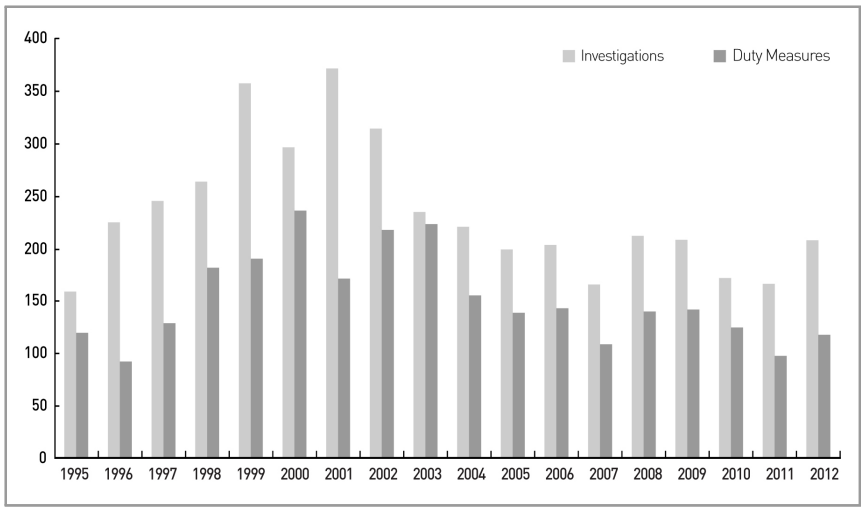
AD investigations do not always lead to the imposition of anti-dumping duties. Cases are often determined to have involved no dumping, while other cases are terminated without any anti-dumping measures but with an increase in the export price by prior consultation.

Among a total of 4,230 cases of anti-dumping investigation conducted since 1995, only 2,719 cases, or approximately 64 percent, resulted in anti-dumping measures.

Since the establishment of the WTO in 1995, India has conducted 677 AD investigations, the largest number so far reported by 2012, followed by the U.S. and the EU with 469 and 451, respectively. These three countries (regions) accounted for approximately 38 percent of the total, and the top 10 countries in terms of AD investigations accounted for approximately 75 percent of all AD investigations. Considering that the WTO is comprised of 159 member countries, it is evident that AD investigations are only conducted by a small number of countries.

[Figure IV-1] **Anti-dumping Investigations and Measures by Year**

(Unit: case)



Source: Compiled by the author based on WTO (http://www.wto.org/english/tratop_e/adp_e/adp_e.htm).

Subject to the largest number of AD investigations, India also conducted the largest number of AD measures with 508 cases. In India, approximately 75 percent of cases investigated against dumping resulted in the imposition of anti-dumping measures. China showed a higher rate than India at 78 percent, while Turkey implemented anti-dumping measures with 90.1 percent of the investigated cases.

The U.S. and the EU showed similar rates of AD investigations leading to AD measures with 66.5 percent and 63.2 percent, respectively, similar to the average total rate of 64 percent. Korea recorded 63.7 percent, almost a similar level with the average total rate.

Since 1995, China has been subject to the greatest number of AD investigations, followed by South Korea. Among the total number of 4,230 investigation cases, China accounts for approximately 21.7 percent, and when the three countries of China, Korea and the U.S. are combined, the rate rises to approximately 35 percent.

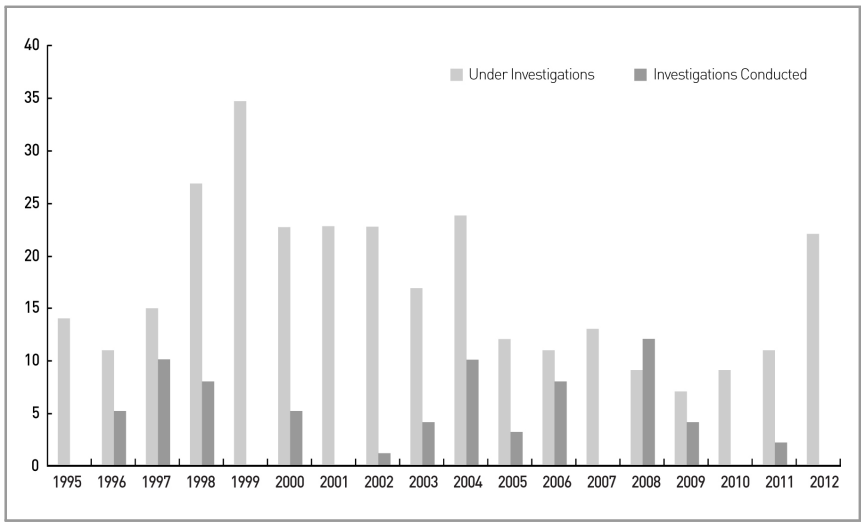
C. Anti-dumping Investigations and Measures for Korea

As mentioned above, Korea is one of the countries that have been most frequently subjected to AD investigations by other countries. AD probes were conducted against Korean products in a total of 306 cases from the establishment of the WTO in 1995 to 2012. In particular, the number of AD investigations increased around 2000. In the wake of a decline in the number of AD investigations, Korea is also on the declining trend, but the number of the AD probes into Korea rose sharply to 22 in 2012.

In contrast, Korea launched only 113 cases of anti-dumping investigations. The period of 2009 to 2011 saw no case of such investigation and 2012 saw two cases. Compared to the number of the AD probes against Korean companies, the number of cases Korea conducted AD investigations into other countries is one third.

[Figure IV-2] **AD Investigations Conducted on and by Korea**

(Unit: case)



Source: Compiled by the author based on WTO (http://www.wto.org/english/tratop_e/adp_e/adp_e.htm).

2 Operation of Countervailing Duty Investigations and Related Systems

A. Overview of Countervailing Duty Investigation

Imported products manufactured by a subsidized foreign export company could cause significant damage to domestic companies in the import country and therefore this also constitutes a prominent case of unfair trade. In this case, if the import country's government detects the existence of subsidies and determines through CVD investigations that such subsidies are proven to cause material damage to a domestic industry, then the government imposes additional countervailing duties equivalent to the amount of subsidies to offset the effect of such subsidies. As with the AD investigation, WTO members designate the government agency responsible for conducting CVD investigations; and in most countries, the same agency is in charge of the two investigations. In Korea, the KTC is responsible for both anti-dumping and countervailing duty investigations, the latter of which has never been performed by the agency yet.

The investigating authority in charge of CVD investigations must prove the following facts: (i) the export government' action satisfies three basic elements required for a subsidy to exist, set forth in the WTO SCM Agreement and the import country's own commerce law; and (ii) these subsidies caused material losses to a domestic industry that manufactures the same kind of products. The facts are established through a preliminary determination and a final determination and then notified to the general public in document form. The CVD investigation bears similarities with the AD investigation. Above all, the two investigations share the basic framework in which the import country is responsible for investigating imported products, but the items to be proven by the result of investigation are different: One is to identify the existence of dumping and the other, subsidies.

Unlike AD investigations, only a few countries have the experience of conducting CVD investigations, because they require substantive preparations. First of all, details for countervailing duty investigation methods and procedures must be specified in domestic legislations. While AD probes need domestic legislation, CVD probes require more complicated rules. They include not only

export companies but also export governments in the coverage of investigation, because the government of the export country is ultimately responsible for implementing subsidy programs and policies. Therefore, CVD investigations inevitably accompany potential diplomatic conflicts in that they investigate foreign government agencies and assess foreign legislations. These characteristics are reflected in Article 13 of the SCM Agreement, which prescribes that bilateral consultations must be made prior to the initiation of any investigation. It is also stipulated that on-site verification for CVD investigations must be undertaken after obtaining consent of the government whose export products may be subject to investigation.

For these reasons, CVD investigations are conducted in a few countries but as there is a growing awareness in regard to their effectiveness, an increasing number of countries have begun to take an interest in CVD investigations, representative of which are the U.S. and the EU, closely followed by China and its increase of the number of such investigations. India also joins this trend noticeably. Korea has been a party to the disputes of subsidies for a long time, but has never conducted CVD investigations.

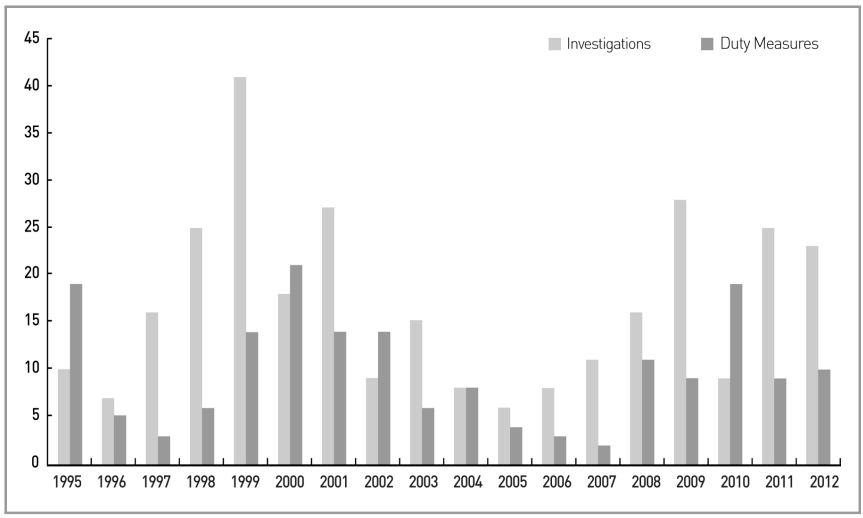
B. Operation of Countervailing Duty Measures

Since the establishment of the WTO in 1995, a total of 302 cases were investigated for countervailing duty. Compared to the 4,230 cases of AD investigations in total, the number of CVD investigations is relatively low.

Countervailing duty investigations do not necessarily lead to countervailing actions. Since 1995, a total of 177 cases or approximately 58.6 percent, out of 302 cases investigated for countervailing duty resulted in the imposition of countervailing duties, a slight lower level than approximately 64 percent of anti-dumping investigations leading to anti-dumping duties.

[Figure IV-3] Countervailing Duty Investigations and Measures by Year

(Unit: case)



Source: Compiled by the author based on WTO (http://www.wto.org/english/tratop_e/scm_e/scm_e.htm).

Since the creation of the WTO in 1995, the U.S. has performed the largest number of countervailing duty investigations with 119 cases by 2012 and accounted for about 40 percent of all countervailing duty investigations, which was followed by the EU and Canada with 67 and 33 percent, respectively. The three political entities account for 72.5 percent of the total, and top 10 countries take up approximately 92.4 percent of the total, which indicates that only about ten countries conduct CVD investigations. Compared to AD investigations, much fewer countries engage in CVD investigations. This is because CVD investigations are deemed to require deep understanding and skilled expertise with regard to countervailing measures.

Since 1995, China has been subject to the largest number of CVD investigations with 62 cases by 2012, which accounts for one fifth of the total number of CVD investigations, followed by India with 55, Korea with 19, and Indonesia with 16. These four countries account for half of all CVD investigations to date, while the U.S. and the EU recorded 15 cases and 13 cases, respectively.

3 Comparison of Anti-dumping and Countervailing Duty Measures in Major Countries

The following is the comparison of the KTC with other countries' counterparts. First of all, Korea has a dual structure between the KTC and the MOSF. While the KTC is responsible for conducting AD/CVD investigations and assessing damages to domestic industries, the MOSF determines whether to apply AD/CVD based on the result of the KTC's decision. The same dual political system can be found in many countries: Each of investigation and final determination is made by different agencies.

As for the EU, the European Commission is responsible for investigations while the EU Council is in charge of final resolutions. In China, the Ministry of Commerce conducts investigations and the Tariff Commission of State Council has the final say; in India, the Directorate General of Anti-Dumping and Allied Duties takes on investigations, while the Ministry of Finance has the final decision; and in Australia, the Anti-dumping Commission is responsible for investigations, and the Ministry of Home Affairs reserves the right to final resolution. These countries operate separate agencies to practically investigate and deliberate on cases. The U.S., however, has a peculiar system: While the U.S. Department of Commerce is in charge of probing the existence of dumping and subsidies and the U.S. International Trade Commission determines the extent of the damage to domestic industries, the U.S. Department of Commerce is responsible for the final determination on the imposition of anti-dumping or countervailing duty. Given these facts, Korea's dual scheme is not entirely extraordinary.

The dual system, however, only vaguely defines the responsibility and authority between the KTC and the MOSF, which potentially causes many problems. For example, when another country files a petition to the WTO against the Korean government, both the KTC and the MOSF can be the target of petition as the subject of investigations and the subject of imposition of duties, respectively, and in particular the MOSF, which does not participate in the actual investigations, would become the target of a petition simply due to the imposition

of tariffs. If the ministry's final resolution does not reflect the commission's investigation results and imposes tariffs, it will be unclear which agent is accountable for the situation. Furthermore, if Korea loses a case of WTO dispute, it will be unclear which agency would be accountable for the result and responsible for implementing the final verdict. The situation would be more complicated if the number of dumping cases and subsidy investigations is rising and more complicated as a result of the conclusion of the FTAs, which will create the opportunity to discuss structural issues. Therefore, even if the current dual structure is maintained the authority and accountability of relevant agents must be specified and clarified in consideration of reality.

Seen from another institutional aspect, it is noteworthy that the KTC is operated under the jurisdiction of the current Ministry of Trade, Industry and Energy (MOTIE). Before the restructuring of government organizations, the KTC had been under the Ministry of Knowledge Economy while trade policies were under the charge of the Ministry of Foreign Affairs and Trade. As the result of government reorganization, the Ministry of Foreign Affairs transferred trade function to the MOTIE, and consequently, the KTC was transferred to the MOTIE, which leads trade policies. The system of establishing in investigative body for trade remedy under the auspices of the government agency responsible for trade policy is a somewhat rare model.

The U.S., the EU, China and Australia each operate an independent agency responsible for conducting trade remedy investigations. In India, however, the Directorate General of Anti-Dumping and Allied Duties under the Ministry of Commerce and Industry supervises all affairs related to anti-dumping investigations, including probes into dumping and industrial damage, which is similar to the situation when the KTC was under the Ministry of Industry and Energy.

Under the circumstances where the conclusion of FTAs increases the number of investigations against dumping and subsidies while further complicating the situation, if the MOTIE adds the task of investigating trade disputes including trade remedy probes, to the existing tasks of trade policies such as trade negotiations and implementation of agreements, as well as assistance for domestic industry and protection policies, this would raise the possibility that other countries will question the fairness and neutrality of investigations. Fair

anti-dumping and countervailing duty investigations will be possibly criticized as being protectionist, depending on circumstances.

〈Table IV-1〉 **Operating Agencies of Anti-dumping and Countervailing Duty Systems**

Country	Responsible Agency	Independence of investigating authority	Dumping and Subsidies	Damage Investigation	Decision of Imposition
U.S.	U.S. International Trade Commission	Independent		○	
	Department of Commerce	–	○		○
EU	European Commission	Independent	○	○	
	EU Council	–			○
China	Ministry of Commerce	–	○	○	
	Tariff Commission of State Council	–			○
India	Directorate General of Anti–Dumping and Allied Duties	Ministry of Commerce and Industry	○	○	
	Ministry of Finance				○
Australia	Anti–dumping Commission	Independent	○	○	
	Ministry of Home Affairs	–			○
Korea	KTC	MOTIE	○	○	
	MOSF	–			○

V

Policy Implications

1 Emergence of FTA Era and AD/CVD Investigations

The international trade order is recently undergoing significant changes, from its traditional conduct under the GATT/WTO system. At the center of these changes is the system of FTAs. On top of the existing obligations under WTO membership such as the Anti-Dumping and SCM Agreements, WTO member countries have been forced to assume additional obligations resulting from the conclusion of multiple FTAs. If South Korea eventually signs an FTA with 30 different trade partners in the future, the country has to comply with 30 additional obligations in addition to the existing WTO obligations. FTAs ostensibly continue to follow existing WTO obligations within a broad framework, and yet there is a difference in the detailed requirements and procedures for each FTA. Thus, the authorities responsible for investigations in each country must inevitably bear a growing practical burden of understanding and applying different requirements and procedures to each investigation. Considering such matters, this section deals with new challenges and issues of AD/CVD investigations raised by the introduction of the FTA system.

A. Inevitable Increase in the Number of AD/CVD Investigations

It is a predictable trend that the spread of FTAs would lead to an increase

in the frequency of AD/CVD investigations.[11] After signing a FTA, every government will strive to prevent the products of a FTA partner country from entering its domestic market in the most legal manner possible by actively initiating AD/CVD investigations. For example, in 2011, the U.S. Department of Commerce undertook both AD and CVD investigations against Korean refrigerator exports while in the following year it investigated washing machines manufactured in Korea.

This is in some respects a natural phenomenon. As more traffic on the road brings about more traffic accidents, an increase in the trade volume between trade partners due to the conclusion of a FTA inevitably leads to growing cases of AD/CVD disputes. This is particularly understandable given the fact that AD/CVD investigations are the last resort available to each government to protect domestic markets. As such, the focus should be on the domestic measures required by Korea to effectively overcome this trend, while expressing excessive concern over the trend itself is counterproductive.

B. Procedural Problems Related to FTAs and Solutions Thereof

One of the most burdensome aspects with regards to AD/CVD investigations and the introduction of the FTA system is that each FTA is equipped with different provisions, which exerts a considerable administrative difficulty on the investigative body. Of the nine FTAs ratified by Korea, although the basic framework of investigations generally follows the WTO Anti-Dumping and SCM Agreements, the specific details of the actual investigations contain differences in the procedural details.

Regarding the prohibition of zeroing as a key issue for the discussion of the revision of the WTO Anti-Dumping Agreement, Korea's FTAs with Singapore, India, and Turkey include regulations against zeroing, whereas no anti-zeroing regulations are included in FTAs with Chile, the European Free

11) On this subject, Park, Soochan (2008) conducted an empirical investigation and concluded that FTAs tend to increase the number of anti-dumping investigations. As policy implications, the paper insisted that regulations on abolishment of anti-dumping investigation should be included in FTAs.

Trade Association (EFTA) and Peru, as well as the U.S. and the EU that stand against the ban of zeroing. In addition to zeroing, differences can be found in terms of the lesser duty rule, which is included in FTAs with Singapore, the EFTA, India, Peru, and Turkey as well as the EU that has applied the rule, except for the FTA with the U.S. that opposes the lesser duty rule. As for the sunset review, only FTAs with India, the EU, and Turkey contain relevant regulations. The broader application of the *de minimis* regulation is contained in FTAs with the EU and Turkey, while regulations on public interest concerns are only included in the Korea-EU FTA.

In addition, the principle of advance notification prior to the commencement of investigations differs among FTAs. Korea's FTA with India specifies the notification of the other party at least ten working days in advance of the starting date of an investigation. Korea's FTAs with EU and Turkey stipulate a written notification 15 working days in advance of the investigation. When an anti-dumping investigation is to be conducted, the FTAs with the EFTA, the EU and the U.S. specify prior consultation, while other FTAs have no such conditions. As reviewed above, if South Korea concludes 20~30 more FTAs, it is more likely to deal with an entirely different range of special regulations on anti-dumping for each FTA.

Under the FTA system, investigating authorities must have knowledge of all the regulations and procedures for each FTA in order to carry out an investigation. Therefore the investigating authority in Korea confronts entirely different situations in relation to the country of origin for the product under investigation, with regards to aspects such as the investigation period, matters to be complied with during the investigation, investigative methodology, etc. Although determining the damage to domestic industries and the dumping scale is important in an anti-dumping investigation, if the investigation is conducted in a manner incongruent with the relevant agreement, a petition may be filed with the WTO.

In the abundance of human and capital resources, investigating authorities may be sufficiently capable to deal with such challenges. However, the investigating authority in South Korea is relatively limited in personnel and resources, especially in relation to the country's trade volume. Thus it is necessary to expand the allocation of manpower and resources to the investigating

authority, while improving and reorganizing basic systems. Without manpower expansion and systemic reorganization, the Korean investigating authority is highly likely to face difficulties in handling the heavy workload resulting from the introduction of the FTA system.

2 Strengthening the Role and Functions of the Investigating authority in Korea

A. Drawing Implications from Existing AD/CVD Investigations

1) Preparation of Final Verdict with Specific Content

The final assessments of anti-dumping investigations produced by the KTC are excessively brief compared to those of other countries. Since the Anti-Dumping Agreement does not specify the content and explanations that must be included in the final verdict, its simplification does not violate the WTO Anti-Dumping Agreement *per se*. However, in accordance with Article 12.2 of the Anti-Dumping Agreement, the investigating authorities of each member country shall provide an explanation in sufficient detail when publicly disclosing any preliminary or final verdict in order to ensure that the other interested parties understand facts and legal issues that serve as the ground for the resolution.[12] Anti-dumping investigations entail the assessment of complex facts and legal issues. The final verdict as the presentation of investigation results contains the review, analysis and assessment of diverse facts and legal issues. Therefore the verdicts are generally voluminous in content even when intended to be succinct.

12) Article 12.2 of the Anti-Dumping Agreement states the following: 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 termination of a definitive anti-dumping duty. 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.

In this aspect, it is at times questionable as to whether the final verdicts prepared by the Korean investigating authority provide sufficient information. Despite the particularities of each investigation, the final verdicts presented by the investigating authority in Korea are merely brief summaries of the core content and either omits or fails to properly outline the factors that led to the conclusion, such as its logical basis, case studies, analysis, and comments on the other party's arguments. Thus, final verdicts in Korea show a considerable difference in length compared to other countries. This also seems to be attributable to the shortage of manpower and resources in the Korean investigating authority, which is likely to be worsened with the spread of the FTA system and further diminish the quality of final verdicts.

If a final verdict fails to deliver a sufficiently detailed explanation and rationale, it might cause adverse effects. First, extremely deficient reporting in the final verdict can be deemed as violation of Article 12.2 of the Anti-Dumping Agreement, as indicated above. If a foreign exporter claims to be unable to understand or accept the assessment criteria for a certain issue highlighted in the final verdict, then excessive brevity in the final verdict makes it difficult for the Korean investigating authority to refute such claim. In particular, this miscommunication becomes more pronounced through the translation of the final verdict into English. Whereas the Korean language is suitable for the concise phrasing used in formal text, if the content of the final verdict is translated into the narrative expressions used in English, its overall succinctness may deteriorate.

Second, an extremely brief final verdict gives a negative impression to the panel and the Appellate Body given authority over the dispute concerned. Pursuant to Article 17.6 of the Anti-Dumping Agreement, the concerned panel may respect the verdict resolution made by an investigating authority if possible when facing an ambiguous situation.[13] However, if the final verdict is markedly short in length, it will inevitably raise the question as to whether the investigating

13) The provision specifies the following: 17.6 (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.

authority conducted a careful examination required under the Anti-Dumping Agreement. In this respect, the absence of a properly presented argument will likely generate a negative view towards the logical basis of the verdict itself.

Third, this issue is related to the burden of proof raised in the dispute settlement process. Lacking reliable evidence to suggest otherwise, the WTO panel carries out a review on the assumption that the investigating authorities reached the conclusion of the final verdict based on findings obtained after conducting an internal review of matters. However, matters omitted from the final verdict are construed to have not undergone a review by the authority. This is because proof that the investigation was actually conducted requires the presentation of various data acquired during the process, which may consist of verbal exchanges or discussions not left in document form as well as those that cannot be disclosed publicly. A key problem arising from this issue is that matters that can be resolved easily given the availability of the basic frame of the final verdict can instead cause significant difficulty in the absence of such framework.

For such reasons, it is necessary to prepare a final verdict with substantial and systematic content. Moreover, the translation of such content into English must consider the expressions and terminology that will be used to convey the original text. Although this task often requires considerable time and effort, it will play a critical role in raising the possibility for final verdicts made in Korea to be approved in the global trade system. The importance of final verdict preparation is equally applied to countervailing duty investigations as well as anti-dumping investigations.

2) Protection of Confidential Information of Interested Parties

Protecting confidential information submitted by each interested party is a matter of practical importance facing investigating authorities in AD/CVD investigations. During an investigation, the majority of the numerous documents provided by the relevant export companies and domestic companies tend to be confidential information. Furthermore, countervailing duty investigations face a greater chance to deal with sensitive and confidential information provided by the government of a country subject to the investigation. Investigating authorities

have the responsibility to thoroughly protect such confidential information in accordance with Article 6.5 of the Anti-Dumping Agreement. The SCM Agreement also stipulates similar provisions related to countervailing duty investigations. Therefore, the failure to provide such protection is not only a violation of relevant provisions but also results in a corporation or the government under the investigation being reluctant to provide related information, which might disrupt the smooth progress of the investigation.

In fact, protection of confidential information is not a significant concern when AD/CVD investigations are sporadic events. In this case, investigations may proceed safely through the personal discretion of the investigator. However, if a number of complicated investigations are simultaneous underway or the number of the interested parties rises, this may incur unforeseen incidents such as the failure to protect or the accidental disclosure of confidential information in the absence of systemic mechanisms for the protection of confidential information.

The Anti-Dumping Agreement specifies regulations requiring the provision of investigation-related information for interested parties in sufficient detail,[14] while it also has provisions of protecting the confidentiality of information as much as possible during the course of the investigation. This creates a conflict of interests, whereby fulfilling both of the opposing responsibilities requires systematic institutions and mechanisms for controlling confidential information and limiting the disclosure thereof. For example, the U.S. and the EU both operate complex systems in order to reflect this conflict. Thus, in order for South Korea to begin conducting credible AD/CVD investigations, the country needs to reform or establish institutions and guidelines for the management of confidential information provided during the investigations.

3) Focus on Ensuring Procedural Due Process

Placing greater emphasis on the procedural due process of law adds further weight to the burden facing investigating authorities in charge of AD/CVD

14) Articles 6 and 12 of the Anti-Dumping Agreement stipulate relevant regulations.

investigations. Recent WTO disputes show that a number of agreement violations were caused by the failure to adhere to the basic procedures or conditions required by the anti-dumping or SCM Agreement during the process of producing an investigation verdict as opposed to the actual content of the verdict. Investigating authorities in most countries, in fact, conduct AD/CVD investigations with focus on the validity of the conclusion. If the conclusion is valid, the investigation itself is generally recognized to have been undertaken in a valid manner. Such attitude is closely associated with a civil-law-oriented legal culture that values correct results. On the other hand, the common law instead emphasizes compliance with procedural requirements as much as substantive violations and misconducts. The operation of WTO agreements and the application of conflict resolution procedures have also been influenced by the common law school of thought, due to its familiarity in prominent countries involved in negotiations and disputes such as the United States. As a result, the due process has emerged as a key issue in recent AD/CVD disputes. In particular, this issue is being magnified in trade remedy disputes between the U.S. and China.

The term ‘procedural due process’ is not stipulated anywhere in the Anti-Dumping and SCM Agreements. However, in the interpretation and application of various terms and phrases frequently used in both agreements, the WTO panel and the Appellate Body confirm that these agreements contain or pursue the principle of procedural due process, which is then presented as a new standard to be observed by investigating authorities.

This provides important implications to the Korean investigating authority with regards to the greater importance of the process through which a conclusion is reached rather than the conclusion itself. In the anti-dumping investigation on printing paper products conducted between Korea and Indonesia, for example, the WTO panel had supported the Korean government regarding the validity of its final verdict, but a trivial violation of procedural regulations resulted in the Korean government losing the case. This shows that violations of procedural regulations can weaken the essential part of investigation.

The Korean investigating authority must observe any matter required to satisfy the procedural due process of law, including those not explicitly stated in the agreements, as well as written provisions. However, the investigating authority in Korea has dedicated meager efforts towards securing procedural

validity. In the future, measures towards securing procedural validity must be introduced in multi-faceted efforts, considering the current juncture of anticipating potential investigations and subsequent disputes. It may be advisable to establish detailed guidelines for investigation procedure to be used in training investigators.

4) Active and Proactive Conduct of Investigations

There is a common misconception that the WTO directly conducts all AD/CVD investigations and handles any dispute arising from the investigations as well. As mentioned before, AD/CVD investigations instead constitute a process of domestic administrative investigation undertaken by investigating authorities in each WTO country through their own laws and regulations. It is the investigating authorities that assume responsibilities for any investigation and the WTO is not involved in the investigation.

Any member country can bring a case to the dispute settlement system of the WTO upon suffering damages caused by the actions of another WTO member.[15] After the case is referred to the dispute settlement body, the WTO begins to intervene in the case[16] which becomes a WTO dispute over the AD/CVD measure.

Determining a breach of WTO agreements generally requires three years from the starting date of the AD/CVD investigation; one year for the actual investigation and two years for judgment of the panel and the Appellate Body. Therefore, during the actual investigation phase, there is no way for an export company or exporting country to suspend the investigation even if it believes a particular investigative method or decision to be in violation of the anti-dumping or SCM Agreements, since there is no recourse for a trustworthy organization to verify the fact.

In the investigation stage, the investigating authority can exert a wide range of discretionary power. The WTO Anti-Dumping and SCM Agreements specify

15) See Articles 1.1, 3.2, and 3.7 of the Dispute Settlement Understanding (DSU).

16) See Article 4 of the DSU.

detailed procedures applied to the investigation, but AD/CVD investigations are generally undertaken case by case with a focus on factual relevance, which allows the investigating authority significant discretionary power at each stage of investigation. Even if such power is exercised against the benefit of interested parties, this can be deemed consistent with the WTO Anti-Dumping and SCM Agreements as long as it acts within the framework of these agreements. Therefore, a decision about whether to maintain a wide range of discretionary power for an investigating authority or to place specific restrictions on the power has a major impact on the overall implementation of the WTO agreements. This is the reason that several issues dealt with in the DDA rules negotiation can be summarized in a single topic: the extent to which the discretionary power of the investigating authority is guaranteed.

It is inevitable for Korean exporters and the Korean government to become subject to AD/CVD investigations in other countries, since companies or investigating authorities in importing countries are entrusted with the independent decision on whether to initiate an investigation. The only response available to Korea is to defend its interests to the best of its ability. On the other hand, as an importer, Korea has the option to undertake its own investigations. In a rather passive and defensive approach, Korea assumes that exporters from other WTO members export products to the Korean market in accordance with WTO rules. If such rules are violated, the country attempts to resolve it through a bilateral negotiation with the exporting country in question or sometimes holds consultation at the WTO level. Only when a breach of the agreements is confirmed does it refer the case to the WTO dispute settlement system. Meanwhile, Korea can take an active, aggressive stand. The Korean government as an importing country makes an independent decision on whether there is any violation of WTO rules and unfair trade practices committed by foreign exports, and based on its findings, exercises its legitimate discretionary authority as specified in the WTO Anti-Dumping and SCM Agreements, thereby ultimately protecting its domestic market from unfair trade practices in an active manner. This is a way to exert the given power within the boundary of the WTO agreements since it takes a substantial length of time for the WTO to exercise trade remedy measures.

The abolishment of tariffs and other trade barriers in the FTA era demands

such an active and aggressive approach. Major FTA partners of South Korea including the U.S., the EU, China, and India have already adopted such active approach. It may be the opportune juncture for South Korea to seriously review the adoption of this stand in order to engage in international trade on an equal footing with the aforementioned countries.

B. Necessity of a Greater Role for the KTC and the Establishment of an Independent Investigating authority

1) Strengthening the KTC

A pending issue resulting from the introduction of the FTA system is the rapidly expanding role of the KTC responsible for actually undertaking AD/CVD investigations as the relevant investigating authority in South Korea. In order to succeed in performing the given role, the budget and manpower of the KTC must be continuously expanded. The differences in national power and circumstances may make it difficult to establish an investigating authority of equal standing to those in Korea's trading partners such as the U.S., China, and the EU. However, it is now more essential than ever for Korea to develop its investigating authority to become capable of conducting investigations at a level required for maintaining trade relationships with such countries. The fulfillment of minimum requirements for trade remedy investigations may first require the expansion of human resource and budget allocation.

In particular, the simultaneous conclusion of multiple FTAs burdens the KTC with mounting workload and more complicated process of business affairs, as mentioned above in the difference of each FTA. For instance, there are differences in investigation period, requirements, and methods that the KTC must observe depending on the country of origin for the subject of an anti-dumping investigation. Under such circumstance, investigations of today are certainly different from those of the past when only the WTO Anti-Dumping Agreement was in effect. More importantly, the trade commission does not have the experience of conducting a countervailing duty investigation, despite its growing importance. The commission must be given full support including the manpower and budgets in order to attain the capacity to undertake countervailing duty

investigations equivalent to those of the U.S., China, and the EU.

The case of India provides us with important implications. In India, the Directorate General of Anti-Dumping and Allied Duties administers all affairs related to trade remedy measures including anti-dumping and trade damage investigations. The agency has been conducting the world's largest number of anti-dumping investigations with relatively poor human and capital resources compared to those of the U.S. and the EU, thus resulting in diverse flaws and problems found in its final verdicts, which has raised complaints from other countries and consequently led to the filing of petitions with the WTO. China has significantly reinforced the capability for trade remedy investigations of the Ministry of Commerce, but it seems to have difficulties in dealing with a growing number of WTO disputes over products from the U.S. and the EU. Korea must examine the cases of other countries that face difficulties dealing with a sharp increase in remedy investigations.

2) Establishment of Independent Investigation Institution

The position of the KTC must be considered as a more fundamental problem than supplementing manpower and improving systemic aspects. According to the current dual structure, the commission directly undertakes trade remedy investigations while the MOSF retains the right to impose customs duties as part of its responsibilities as the customs authority. It is time to consider the status of the KTC: whether to maintain the commission under the umbrella of the MOTIE as it is currently; whether to move it under the MOSF that has right of imposing final anti-dumping or countervailing duties; or whether to make the commission an independent institution. There is no single right answer to the issue, of course and 159 WTO members have operated investigating authorities in various forms and styles. If issues have diverse policy implications as in the case of the KTC, there are advantages and disadvantages regardless of the method used.

As for maintaining the current dualistic system, the advantage is consistency with policy of levying customs duties. In addition, the MOSF can comprehensively consider various internal and external economic situations, along with specific results of the trade remedial investigation in question, when

finally deciding whether or not to impose additional duties. On the other hand, its disadvantage is that the two government agencies — the KTC and the ministry — may become major subjects of petition when the Korean government is sued with the WTO dispute settlement system, since different entities are responsible for investigation and imposition. In particular, the ministry may become the subject of petition only with the reason for imposing duties at the final stage even though it does not participate in an actual investigation. Therefore, the ministry can carry a practical/political burden under these circumstances. Meanwhile, there is a possibility for the trade commission to raise a question about which agency is responsible for the dispute generated by AD/CVD measures, which are contrary to the commission's final verdict. If the Korean government ultimately loses the case regarding anti-dumping measures, it is not clear which agency assumes the responsibility for carrying out the decision in question within the country, thus leading to confusion. Such detailed issues are more likely to emerge as the number of investigations is growing and the content gets complicated.

Instead of the current dualistic structure, a unified structure can be adopted in which a single government agency is given all responsibilities of relevant trade remedy to greater efficiency in investigative and operational performance. However, this structure also has demerits in that trade remedy measures are difficult to accurately reflect the domestic industrial situation or it is difficult to understand the impact of such remedy measures on the national economy as a whole. As long as the imposition of duties is the key to trade remedy measures, it cannot be ignored that practically the intervention of the MOSF and the Korea Customs Service is inevitable in some form.

As the greater prevalence of FTAs is expected to increase demands for trade remedy measures in the long term, a general consensus appears to be formed that the current ambiguities in the relevant legal aspects should be addressed in some way and the matter of responsibility and authority should be clarified domestically, even if the dualistic structure remains in place.

Other options for the KTC are to maintain it as an agency affiliated to the MOTIE as it is currently, or to reorganize it into an independent institution. Both options have benefits and shortcomings. Allowing the KTC to remain under the ministry creates the opportunity to establish a system of cooperation and

facilitate information exchange in relation with domestic industries. In addition to these advantages, the trade commission can conduct its businesses affairs in conjunction with the MOTIE as its affiliated agency, given the fact that the trade remedy system cannot be separated from the domestic industry and one of key trade remedy actions is to investigate damages to domestic industries. However, under the current circumstances that the principle of procedural due process is gradually becoming the center of trade remedy investigations and more emphasis is being placed on the fairness and independence of investigations in Korea and abroad, foreign countries may show disapproval toward the ministry with direct interests playing the role of an investigating authority at the same time. When there are few investigation cases or low global interest, this would not cause serious problems. However, if demands for investigations increase in terms of both quality and quantity, such uncertainties in the investigation system might provide a reason for foreign governments to blame the Korean government for a breach of performance of agreement obligations. In particular, the MOTIE is also responsible for commercial negotiations, and if the ministry came to assume responsibilities for all trade affairs including the negotiation and implementation of agreements, support and protection of domestic industries, and the conduct of trade remedy investigations, the neutrality and independence of the ministry will be questioned. This poses a risk that even fair, legitimate AD/CVD investigations may be criticized for trade protection measures.

Establishing an investigating authority as an independent institution may present serious challenges as well. The independent institution would be isolated from other government departments that deal with matters of interest for domestic industries and work as official channels for negotiation with foreign governments, thus making it difficult to establish a close, cooperative relationship with those departments in a systematic manner. Expenditures for resources and manpower required to be invested in creation of new independent agency is another matter. Nevertheless, it is judged that establishing an independent investigating authority is more likely to become the ultimate solution in order to manage trade remedy system in an active way in the current trade environment. In addition, the independent agency might have an advantage of cultivating professional with expertise in the field, thus contributing to capacity-building in the long term.

3 Implications Drawn from Responses to AD/CVD Investigations

A. Implications Drawn from Responses to Anti-dumping Investigations

1) Relative Limitations on the Role and Functions of the Government

The role of the government in an exporting country is extremely limited in the course of an anti-dumping investigation. Although most companies expect their government to serve an important role, such an active role is difficult to perform due to the independent discretionary authority granted to an importing country under the WTO Anti-Dumping Agreement. Thus, Korean enterprises need to clearly distinguish areas where the government can and cannot provide assistance.

Korea's FTAs are particularly notable for strengthening the channel for intergovernmental consultation in relation to anti-dumping investigations. For example, the Korea-U.S. FTA stipulates prior notification and consultation before initiating an anti-dumping investigation, along with an investigation suspension agreement by negotiating the price and quantity of products. It is desirable to actively utilize such regulations in the future.

2) Risk from the Application of Facts Available

Once it is decided to respond to an anti-dumping investigation, the government provides full possible cooperation to investigating authorities in order to avoid the application of the regulation regarding facts available as stipulated in Article 6.8 of the Anti-Dumping Agreement. This provision provides the legal base that investigating authorities can draw a final verdict on the basis of the fact available if a company, subject to the investigation, does not provide necessary information within a reasonable period. Article 6.8 works as the most powerful instrument from the perspective of investigating authorities. A considerable number of WTO anti-dumping disputes are recently proceeding based on the validity of this principle. It is unlikely that the WTO dispute settlement body will support the government subject to the investigation, even if investigating authorities apply this principle arbitrarily following the discovery

of failure to submit information or cooperate with the investigation. Within reason, it is better to submit necessary materials at a later juncture or provide detailed reasons for the failure to submit information. In this case, even if the case is brought to the WTO, the explanatory materials may raise a possibility for the WTO to accept the argument thereof.

3) Possibility of Arbitrary Investigation by Foreign Investigating Authorities in Exploitation of Ambiguities in the Anti-Dumping Agreement

Many Korean exporters demonstrate the misunderstanding about anti-dumping investigations that foreign investigating authorities always reach a fair and correct conclusion through anti-dumping investigations. The current WTO Anti-Dumping Agreement provides a basic framework for investigations while delegating the authority of choosing a specific investigation method to each member country. As such, the investigating authorities of each country are more likely to use the investigation to the advantage of domestic companies and against the interests of exporters in other countries. It is necessary for Korean exporters to gain an accurate understanding of this trend in order to fully prepare for a defense against the investigations. This exploitation of ambiguities can be found in some countries including the U.S. and the EU that are active in undertaking anti-dumping investigations against Korean companies.

4) Active Use of Review Proceedings

It should be recognized that review proceedings are just as important as the final verdict in the initial anti-dumping investigation. The Anti-Dumping Agreement includes several review proceedings including the annual review, changed circumstances review, interim review, new exporter review, and sunset reviews. Even if the imposition of anti-dumping duties is confirmed, it is possible to weaken or withdraw the anti-dumping measure in question through these review proceedings. Once anti-dumping duties are introduced, counterstrategies must be devised by focusing on how to initiate or use such review proceedings.

5) Domino Effect of Anti-dumping Investigations

It should be noted that anti-dumping investigations exhibit the domino effect

in some aspects. Initiating an anti-dumping investigation in a major export market immediately leads to further investigations in other markets, which is consequently followed by another in a third-party country. As the volume of exports that was subject to the anti-dumping investigation can be transferred to another country's market, such action works as incentive for the country importing the product in question to initiate another anti-dumping investigation against the same product as a precautionary action. This domino effect is identified in fiercely competitive industries such as steel, textiles, and chemicals. Therefore, careful considerations must be made in the decision to transfer the destination of the export volume to other countries immediately after the initiation of an anti-dumping investigation in a major market as a way to reduce the impact of an anti-dumping investigation.

6) Active Use of WTO Dispute Settlement Process

The Korean government can constantly demonstrate its strong willingness to refer the anti-dumping duties imposed by a forging investigating authority to the WTO dispute settlement process if necessary. This certainly plays an important role in securing a fair investigation process. Although it is the government's decision to file a petition with the WTO, a company under an anti-dumping investigation needs to constantly warn the investigating authorities during the course of investigation that the case could be referred to the WTO if there is any violation of the WTO Anti-Dumping Agreement in the course of producing the final verdict. This attitude is more effective, especially for investigating authorities of developing countries with less experience in WTO disputes. Most countries are reluctant to be sued at the WTO and perceive the possibility as an important matter.

7) Seeking Effective Countermeasure against Parallel Proceedings

Recently, there have been a growing number of cases in which AD and CVD investigations are initiated simultaneously. Given the fact that most trade remedy investigations are anti-dumping investigations, the parallel proceedings are more likely to aim for anti-dumping duties in reality. Nevertheless, the fundamental reason for simultaneous AD and CVD investigations has to do with

the intention of the investigating authority to deny the exporter the necessary time and manpower to respond to the dual investigations. Until now, Korean companies have prepared only for anti-dumping investigations and must now become cognizant of the greater likelihood of being subject to both AD and CVD investigations simultaneously in identifying strategies to cope with both investigations at the same time.

B. Implications Drawn from Responses to Countervailing Duty Investigations

Since countervailing duty investigations differ from anti-dumping investigations in directly investigating government agencies at the same time, it is necessary to make systematic preparations in response.

1) Efficient Cooperation System between the Government and Corporations

Unlike anti-dumping investigations, countervailing duty investigations target both the government and businesses and therefore require close coordination and cooperation. This is because government agencies and exporters under the same investigation need to prepare and submit a written answer that maintains logical consistency and unity. To this end, both ex ante and ex post coordination are required between the government bodies and businesses concerned. Such coordination is also required between government ministries if the ministries are involved in programs subject to the investigation. In the case of difference found in answers from interested parties, foreign investigating authorities might try to apply the principle of facts available under Article 12.7 of the SCM Agreement on the grounds of confirming such inconsistency between answers, rather than understanding such difference in good faith. In order to prevent such situation, advance preparation is essential in countervailing duty investigations.

2) Preventing Any Potential Application of the Facts Available

Applying the principle of facts available is currently the most sensitive issue in AD/CVD investigations. Since several government agencies are associated with countervailing duty investigations unlikely anti-dumping cases that only target one exporter, intentional or unintentional non-cooperation is more likely

to occur. The application of this principle has a higher risk and impact on countervailing duty investigations than anti-dumping investigations. Therefore, it is desirable for officials of relevant several government agencies to adjust and coordinate the content of answers in countervailing duty investigations.

3) Explanation of Government Programs

Recent countervailing duty investigations show the difficulty and importance to accurately explain government programs. Programs subject to countervailing duty investigations vary while each policy and system is based on extremely complicated laws and regulations, which makes it difficult for foreign investigating authorities to accurately understand them even though they are translated into English. Despite such difficulty, the provision of accurate explanations will raise the possibility that the final verdict will be made in favor of the Korean government and companies since Korean legislation is mostly consistent with the WTO agreements. Nevertheless, the Korean government and companies have recently faced unfavorable verdicts due to insufficient explanation, which suggests the necessity of providing a full, accurate account to allow an adequate understanding of the policies and systems of the Korean government.

4) Importance of On-site Verification

On-site verifications are important, particularly in countervailing duty investigations. The verification consists of numerous visits to government agencies and interviews with officials in charge. During the on-site verification, full account and diverse materials can be delivered, which may help turn the investigation to be more favorable to the Korean side. On the contrary, the failure to present a full description and necessary information might cause the risk of denying the content of the written answers submitted by the Korean government and companies, which would require additional preparation.

5) Importance of Bilateral Consultation

The initial bilateral consultation is considered critical in countervailing duty investigations. In accordance with Article 13 of the SCM Agreement, the

investigating authorities of the importing country must hold a bilateral consultation with the government of the exporting country before the initiation of the countervailing duty investigation. Throughout the course of bilateral consultation, both parties must clarify their position and arrive at an agreed solution regarding all relevant details such as the initiation of the investigation. The bilateral consultation process enables the government subject to the investigation to preemptively induce the other party not to launch an investigation on the government program if it is falsely subjected or has no actual benefit from the investigation, which is deemed as one of the important roles of the consultation. Such prior arrangement of target programs can serve as a critical factor in managing countervailing duty investigations, which is conducted over the course of a year.

6) Prevention of Future Utilization as Precedents

It should be noted that final verdicts of countervailing duty investigations provide important precedents in a similar manner to a court decision, and continue to be cited and used in follow-up countervailing duty investigations or new countervailing duty investigations by other countries. The U.S. Department of Commerce conducts massive countervailing duty investigations and publicly discloses the results through its website. Other countries often actively use such verdicts and data in their countervailing duty investigations. This feature is observed only in countervailing duty investigations, as opposed to anti-dumping investigations. If some matters are deemed unimportant in disputes in question, the government under the countervailing duty investigation sometimes concedes to the argument of the investigating authority or declines to make counterarguments. In this case, the government neglects the fact that the final verdicts of the subsidy granted in the program in question is documented and would be used as an important base for other disputes in the future. Therefore further attention should be paid on the ripple effect of the final verdicts, together with the verdict itself in the course of countervailing duty investigations.

7) Accurate Understanding of Countervailing Duty Investigation Purposes

During a countervailing duty investigation, the government subject to the

investigation often asserts the unfairness of the investigation or imposition of countervailing duties on the grounds that the government of the investigating authorities conducts similar subsidy policies. This argument has the potential for sentimental appeal but in the legal sense it is not appropriate and difficult to accept. Therefore, it is a naïve and hasty judgment to believe that Korea might be safe from being subject to a countervailing duty investigation since the country operates similar subsidy programs to those of importing countries or trade partners.

8) Active Use of the WTO Dispute Settlement Process

Just like the cases of anti-dumping investigations, it is important to take an aggressive attitude toward countervailing duty investigations. If any problem is found in a countervailing duty investigation, the government must raise the issue and continue to express its determined will during the investigation to file the matter with the WTO dispute settlement body. In addition, it is advised to bring the verdict with identified problems before the WTO to correct or withdraw the false verdict. In the long term, such action may provide an important deterrent to similar incidents.

4 Strengthening Professionalism in the Exercise of Judicial Reviews

As the number of AD/CVD investigations is expected to grow, the Korean court system will have more opportunities to carry out judicial reviews regarding anti-dumping and countervailing duties. If anyone suffers from damages associated with AD/CVD measures by the Korean government, he/she can initiate administrative proceedings against the Korean government in a Korean court regardless of nationality, as with other administrative decisions or measures. These proceedings refer to a judicial review as specified in Article 13 of the Anti-Dumping Agreement and Article 23 of the SCM Agreement.

A Korean court, in charge of judicial review, may order the withdrawal of AD/CVD measures in question if it decides that the verdict made by the KTC or the MOSF contains legal errors. Naturally, the decision on error can be

appealed to a higher court. If the errors in anti-dumping and countervailing duties are finally determined through the appeal proceedings, the measures in question are not only withdrawn but also the duties that have been levied until the date of court verdict, together with the interest on the duties are refunded to a payer (importer).

When it comes to judicial reviews by a Korean court, it is noteworthy that the judge concerned does not approach the case with an attitude of being the primary judge when hearing the case of the AD/CVD investigation in question. The judge only reviews evidences collected and reviewed by the KTC and the ministry during the investigation and final verdict to ensure that the legitimacy of the measures in question is supported by the given evidence. This can be interpreted as the principle that the judiciary respects the professionalism and expertise of the executive branch. To cite an extreme example, if a judge concludes upon reviewing the relevant evidence and materials that he/she would not have made the same decision as the investigating authority (i.e. imposition of anti-dumping duties), the said judge must accept the decision of the administration if the evidence and materials provided create a valid rationale. According to this legal principle, final verdicts by the KTC and the ministry are unlikely to be withdrawn in the absence of serious flaws.

When conducting judicial reviews, Korean courts apply domestic laws and regulations including the Customs Act and the Enforcement Decree of the said Act, along with relevant WTO agreements and precedents. Since South Korea's legal system follows the monist approach, international agreements are also treated as part of domestic laws. Thus, judges in Korean courts are bound to apply domestic laws and pass judgment by considering international agreements including WTO agreements and FTAs that have already been incorporated into local laws. However, things are different in the U.S. and the U.K. that take the dualistic approach toward trade agreements. In the course of judicial reviews conducted in U.S. courts, only the U.S. Trade Act is applied. Naturally, whether a country adopts a monistic or dualistic system has no bearing on the scope of responsibilities with regards to WTO agreements. However, there is a difference in the mechanism used for the domestic implementation of the same agreement between countries with different approaches.

In order for Korean courts to deal with the growing number of judicial

reviews, it is necessary to secure judges equipped with specialty and expertise in the subject of international trade. For example, the U.S. has established courts that exclusively deal with this kind of trade disputes. However, establishing such courts is not a viable solution for South Korea. At least, it is inevitable in a long-term perspective for Korea to secure enough judges with expertise that covers various trade issues. Therefore, the issue of procedural method for judicial reviews in Korean courts should be examined during the course of restructuring the trade remedy system.

VI

Conclusion

This study discussed potential improvements to AD and CVD systems, which are institutional tools that facilitate the Korean domestic industry and companies to engage in competition with other countries in a fair trade environment amid the pursuit of free trade in the era of FTA.

As the FTA regime increases the trade volume and incurs more fierce competition among businesses through the abolition of tariff barriers, industries in Korea become more susceptible to damage from unfair trade practices. In order to protect domestic industries, there is no choice but to resort to AD/CVD systems as the sole instrument for domestic market protection recognized by FTAs. Just as growing traffic leads to more road accidents, an increase in the trade volume due to FTA conclusions certainly results in a gradual rise in the volume of unfair trade, thereby increasing the number of AD/CVD investigations proportionally. The growing number of investigations is likely to lead to an increase in trade disputes between exporting and importing countries. Amid the gradual disappearance of custom duties as an instrument of domestic market protection, the active use of AD/CVD investigations becomes the last resort to mitigate unfair trade practices. The fact that FTAs admit a wide range of trade remedies might reflect the need for practical protection measures. This is an opportunity for the Korean government to identify various problems and limitations in advance that it will face when initiating investigations against import products from other countries, moving beyond the passive, one-dimensional approach assumed out of the concern that Korean export products may become subject to the same investigations. To this end, it is urgent

to improve and reorganize related systems and this study suggested specific policy implications in the operation of AD/CVD systems as they take on greater importance.

Diverging from previous literature, this study conducted a comprehensive analysis on overall issues associated with AD/CVD systems. The study dealt with a wide range of topics: discussion on the revision of the WTO agreements based on changes in the economic environment through the expansion of FTA regime; differences and problems for each FTA in reflection of such changes; overseas case studies of AD/CVD systems; analysis of AD/CVD measures against Korea; and role and functions of the KTC as the entity in charge of operating AD/CVD systems. Based on the findings, the study proposed methods of operation of AD/CVD systems that the Korean government might adopt.

The negotiation on the revision of the Anti-Dumping Agreement, which has been in discussion at the WTO, is making slow progress due to the numerous issues involved and divergent interests of each country. Although South Korea has taken a rather defensive approach toward the revision so far, it is asserted the Korean government must engage in the negotiation on the agreement revision from a more balanced perspective of defensive and aggressive sides, rather than simply shifting from the current defensive manner. Considering the trade circumstance that the spread of the FTA system will raise the urgency of protecting domestic industries from harm, Korea has no choice but to take active measures to counter anti-dumping investigations. Regarding disputes over the Korea-China FTA, however, the Korean government is advised to take a defensive strategy in consideration of the profile of China's investigating authority. Having being subject to several AD/CVD investigations in the U.S. and the EU, China retains considerable experience and knowhow, along with a great deal of organizational and manpower resources, which may demonstrate the potential disadvantage of taking an aggressive stance.

Issues raised in the current negotiation on amending the WTO Anti-Dumping Agreement are reflected separately on FTAs that Korea has concluded. In order to recognize differences in FTAs and prepare for the changing trade environment in which the spread of FTAs may cause a greater frequency of anti-dumping and countervailing duty measures, this study recommends the KTC to strengthen manpower and improve systemic aspects. In addition, this study placed greater

emphasis on several aspects in relation to the status of the trade commission, such as legislatively reorganizing the distribution of responsibility with regards to the MOSF as the final authority, preparing for disputes associated with the rising incidence of anti-dumping and countervailing duty measures, and reviewing the possibility to establish the KTC as an independent organization under the MOTIE. As a way to strengthen the role of the KTC, this paper also suggests specific policy implications such as fulfilling the basic requirements for final verdict preparation, introducing systematic procedures of confidential information protection, and securing the principle of procedural due process in the course of investigations.

In particular, this study presented useful policy implications for the actual operation of AD/CVD systems after conducting case studies of AD/CVD measures applied to Korea. Such implications include identification of limits on the government's role in the course of anti-dumping investigation; prevention of application of facts available by providing utmost cooperation in meeting information requests by an investigating authority; responding to arbitrary investigations using ambiguities of the Anti-Dumping Agreement; actively using review proceedings; preventing domino effects of anti-dumping investigations; actively using the WTO dispute settlement process; and actively utilizing verdicts detailing the absence of dumping along and negligible damage on industries. As for countervailing duties, it proposed efficient cooperation system between the government and corporations; faithful cooperation through consistent information in fulfilling information demand; advance preparation of explanation materials for government subsidy programs; importance of on-site verification; adjustment of investigations through bilateral consultations; actively preventing countervailing duty measures from being used as precedent in other countries; and active use of the WTO dispute settlement process as is the case with anti-dumping investigations.

Considering the country's trade volume, South Korea has posed a rather passive attitude toward the operation of the anti-dumping system and does not have the experience of taking a countervailing duty measure against import products. This is somewhat exceptional compared to Korea's major trade partners including the U.S., the EU, China, and India. If the Korean government initiates a countervailing duty investigation, the KTC is highly likely to use the materials

collected from prior investigations in other countries and only confirm or update some of the materials. That is because the imposition of countervailing duties as a result of unfair subsidies being identified is decided based on whether the exporting government provides unfair subsidies on a certain program or policy regardless of export products and companies, while for anti-dumping investigations, the margins and investigation contents vary widely depending on the export prices set by the particular exporting country and exporting company. The KTC is naturally unable to impose countervailing duties solely based on facts investigated by other countries. However, it is not difficult for the trade commission to undertake a countervailing duty investigation by observing the agreements of the WTO and the FTA as long as it performs an additional investigation to a certain degree. The fact that several countries have been active in initiating the countervailing duty investigation proves the potential ease of implementing the said measure. Therefore, the commission must swiftly develop the capacity to be able to undertake countervailing duty investigations.

South Korea has concluded FTAs with the U.S. and the EU and is expecting to enter into an agreement with other countries including China. As the country has competed and traded on an equal footing with these economic giants, the KTC is expected to perform the corresponding role and functions. The enhanced role of the commission will help to create a fair trade environment in which Korean companies can engage in competition with foreign corporations on an equal playing field.

Diverse policy implications for AD/CVD systems, proposed in this study, are expected to contribute to maximizing the positive economic benefits resulting from the spread of FTAs, while alleviating the negative effects.

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