

# Defining of Scope of Product Under Consideration

Woonho Lee  
Standing Commissioner  
Korea Trade Commission

- I. Regulations related to Product under consideration
- II. Determining Scope of Product under consideration in practices
- III. Cases in Korea

# I. Regulations related to Product under consideration

## Article 2.1 and 2.6 of AD Agreement

### No definition on product under consideration in AD Agreement

- ✿ **Article 2.1** : For the purpose of this Agreement, a **product** is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of **the product** exported from one country to another is less than the comparable price, in the ordinary course of trade, for the **like product** when destined for consumption in the exporting country."
- ✿ **Article 2.6** : Throughout this Agreement the term "**like product**" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the **product under consideration**, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the **product under consideration**.

# I. Regulations related to Product under consideration

## Anti-dumping investigation manual of Korea

- ✿ **Before the initiation of investigation : *Product under consideration***
  - A product concerning which an application for anti-dumping investigation is made
- ✿ **After the initiation of investigation : *Product under investigation***
  - A product that an investigating authority has determined to investigate among goods alleged by a complainant to have been dumped
  - Scope of the product under investigation could be different from the scope of product under consideration
- ✿ **Final decision : *Product under anti-dumping duty***
  - Some items may be excluded from the scope of the product under anti-dumping duty

# I. Regulations related to Product under consideration

## Significance of defining the scope of product under consideration

### ✿ Starting point of an investigation

- Standard for deciding which goods are to be investigate to find out existence of dumping
- Standard for determining the scope of the domestic like product and of the domestic industry sustaining injury from the dumped imports

### ✿ Significant impacts on the result of an investigation

- If defined inappropriately, difficult to prove dumping and injury
- If defined too narrowly, the effect of protecting the domestic industry will be insufficient

### ✿ Investigating authority's tendency to define the scope varies

- Depending on the condition of its domestic industry and the characteristics of the product

## II. Determining Scope of Product under consideration in practice

### ✿ Application

- An applicant indicates a product believed to be dumped and cause injury to its business
- When deciding the scope of the product, considers likenesses or similarities in physical characteristics, uses, channels of distribution, substitutability, level of competition with its own product, etc.
- Consult with investigating authority regarding the scope

### ✿ Investigating Authority

- Investigating authority's advice is important to ensure the scope of the product under consideration clearly defined
- After initiation of investigation, the scope may be changed to reflect new information and interested parties' opinion

## II. Determining Scope of Product under consideration in practice

### Decision on “a single product”

- ❁ **The product under consideration should be “a single product”**
  - (Article 2.1) **A product** is to be considered being dumped, .....
  - If more than one product, another investigation needed
- ❁ **Decision on “whether a single product or more” is sometimes difficult and controversial depending on the product**
  - Investigating authorities sometimes make discretionary decision to expand the scope of a product under investigation
  - Black-and-white TV *vs.* Color TV
- ❁ **KTC’s criteria for the decision**
  - Sameness or likeness in physical, commercial, functional aspects, and production

## II. Determining Scope of Product under consideration in practice

### WTO cases as to product under consideration

#### ❁ **US – Softwood Lumber from Canada (DS264, April 2004, Panel)**

- AD agreement does not provide explicit guidelines
- US determined the product under investigation based on a technical definition that included a descriptive explanation and tariff classification, and used the identical definition for like product

#### ❁ **Korea – Paper from Indonesia (DS312, February 2005, Panel)**

- KTC determined “the product under consideration” to be PPC and WF (Indonesia insisted that PPC and WF are different products)
- KTC also defined the domestically produced PPC and WF using identical definition of the PPC and WF imported from Indonesia
- KTC’s definition of like product was consistent with provision in Art. 2.6, and KTC’s injury determination based on the definition of like product was consistent with AD agreement



### III. Practices and Cases in KOREA

- ❁ **KTC's examination regarding the scope of the product under consideration during the process of investigation**
- ❁ **Particle Board:** The scope of an investigation was reduced at the stage of examining the application
- ❁ **Wood-free Printing Paper:** Exporters' opinion was examined after the initiation of an investigation, but not accepted
- ❁ **Bottle Cans:** The scope of products subjects to the imposition of duties was reduced after the initiation of an investigation
- ❁ **Stainless Steel Bars:** The scope of the product subject to the imposition of duties was reduced during the sunset review



**감사합니다**  
**धन्यवाद**  
**Thank you**