ANNEX C

Parties' Comments on Other Parties' Questions

ANNEX C-1

KOREA'S COMMENTS ON QUESTIONS FROM THE PANEL TO THE UNITED STATES

(7 May 2001)

(i) The measure

1. Are there circumstances in which the nature of a safeguard measure may change, depending on whether the competent authority makes a finding of present serious injury, or a finding of threat of serious injury? If the competent authority finds that increased imports have caused "serious injury or a threat thereof," how does that authority ensure that the resultant safeguard measure is "necessary to prevent or remedy serious injury" within the meaning of Article 5.1 of the Safeguards Agreement? Is it necessary to choose between a finding of present serious injury and a finding of threat of serious injury in order to comply with the necessity requirement contained in the first sentence of Article 5.1? Please explain.

Answer

See Korea's answer to Panel's Question 8 to the Republic of Korea.

2. At para. 184 of its first written submission, the United States asserts that "the only limit on the volume of imports free from the 19 per cent supplemental duty is the number of WTO Members who choose to take advantage of the 9,000 ton exemption." Would this mean that there is a limit on the volume of imports subject to the lower tariff, and that the limit will be reached if all WTO Members choose to take advantage of the 9,000-short-ton exemption?

Answer

Obviously, there is a natural limit to the imports which will be subject to the lower rate of duty because only a limited number of countries make and supply line pipe to the US market. The ITC identified only seven significant suppliers other than Canada and Mexico.[1] Based on this assumption, the expected limitation on the quota amount would be approximately 63,000 tons at the normal rate of duty. As shown in Exhibit 49, total in-quota imports of line pipe during the first full quota year equalled 64,067 tons, while total imports from all subject suppliers (except Mexico and Canada) totaled 78,671 tons.[2] Therefore, there is a maximum level of imports that would be likely to enter at the normal rate of duty. This information was available to the ITC and the President.

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[1] See e.g., *ITC Determination, Staff Report,* Table 3 at II-15 (KOR-6); *see also ITC Determination, Bragg and Askey Views on* Remedy, I-89, n.11 (KOR-6) (noting that there are eight countries that constitute the principal sources of line pipe imports into the United States, as well as Venezuela). Moreover, the US President's announcement contained a list of all of the countries in the world capable of producing line pipe. Most had never supplied line pipe to the United States and have not under the *US* President's measure.

[2] See Exhibit 49 (Chart 1: US Imports of Line Pipe (1999-2000); Chart 2: US Imports of Line Pipe (March 2000-February 2001) (updated from previously submitted KOR-29) (KOR-49).

3. GATT Article XIII.2(a) provides that quotas representing the total amount of permitted imports shall be fixed "wherever practicable." GATT Article XIII.5 states that Article XIII.2(a) shall apply to tariff quotas. Would this suggest that there may be situations in which it may not be "practicable," in the context of a tariff quota, to fix a quota representing the total amount of permitted imports? If not, why not? If yes, would this also suggest that a measure may constitute a tariff quota even if there is no "overall limit on eligibility" (para. 185, US first written submission)?

Answer

The decision as to whether a measure is a tariff-rate quota (TRQ) cannot depend on whether it has been properly constructed and implemented by a Member. Otherwise a Member could evade each requirement of Article XIII of the GATT 1994 by failing to comply with all the requirements of Article XIII. That, in fact, appears to be the US defence to date – the United States asserts that the measure cannot be a TRQ because the United States has not met the requirement of a quota by establishing a total quota amount. The fact that the United States has violated its obligation cannot constitute proof that the obligation does not exist.

As the question suggests, Korea agrees with the Panel that not all TRQs require an overall limit, because, as the Panel properly notes, Article XIII:2(a) of the GATT 1994 provides "wherever practicable." For example, import licenses are contemplated as an alternative to a total quota.[3]

4. In Section F.2.b of its first written submission, the United States argues that the rules in Article 5 of the Safeguards Agreement for quantitative restrictions and quotas do not apply because the Line Pipe measure is not a quantitative restriction. Does the United States consider that the terms "quantitative restriction" and "quota" (in Article 5 of the Safeguards Agreement) are synonymous? Please explain. In particular, and considering the US argument that a measure is only a TRQ if it includes an overall limit on eligibility, why should the term "quota" (Article 5.2) not refer to the quota element of a TRQ?

Answer

See Korea's answer to Panel's Question 9 to the Republic of Korea.

5. In Korea – Dairy, the Appellate Body stated that it does "not see anything in Article 5.1 that establishes such an obligation [to justify the necessity of a safeguard measure] for a safeguard measure other than a quantitative restriction which reduces the quantity of imports below the average of imports in the last three representative years." Could the Appellate Body have inferred that there is no obligation on a Member to explain that its safeguard measure is "necessary" (within the meaning of Article 5.1) unless that safeguard measure is a quantitative restriction which reduces the level of imports below the average level of the last three representative years? Please explain.

Answer

See Korea's answer to Panel's Question 10 to the Republic of Korea.

6. In their oral presentation the United States asserted that the President's decision on the safeguard measure relied on the same data and information as the ITC recommendation. Can the United States also confirm that there were no other documents prepared after the ITC's

[3] Article XIII.2(b) of the GATT 1994.

recommendation that formed the basis for the President's decision on the measure even if those documents relied on the same data and information before the ITC?

Answer

See US letter, dated 23 April 2001, conceding that such documents exist, but refusing to provide them to the Panel.[4] It appears that the US explanation is that such documents are confidential[5] and their rationale for not giving them to the Panel is that those documents are not released to other reviewing bodies. However, Korea notes that the United States also refuses to give data that is released to other reviewing bodies.[6] Moreover, it is now unclear in light of the US response to this question, how much the measure taken by the President relies on the ITC memoranda. It appears that the United States is now saying that the measure can and must be evaluated exclusively on the basis of the Presidential Proclamation and published memorandum, which "form the entirety of the explanation of the decision to impose ... the measure."[7] Neither the proclamation nor the measure provide any explanation or rationale for the measure. The United States appears to take the position that the measure is unreviewable by the Panel.

(ii) Serious injury

7. At para. 267 of its first written submission, the United States submits that "any problems experienced by Geneva resulted in part from the difficulties it experienced in line pipe s9 Tw 6 c1 (pr9m mu5 Tts2737pther the 44.25 0 TD 1071973 Tc1793612 T. ure. Ws that in p,re. e fw (por
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Report referring to other pipe products. The contrast is to other line pipe producers which also produced OCTG, standard and structural pipe.[10] Geneva did produce other finished steel products--plate and hot-rolled coil.

(b) As Commissioner Crawford correctly observed, the problem was that Geneva closed one of its blast furnaces and attributed the shutdown to the line pipe market.[11]

(c) Missing from the US response to the Panel, but not missed by Commissioner Crawford, is that the finished steel products produced from the blast furnaces of Geneva are hot-rolled steel and carbon plate--not line pipe.[12] Hot-rolled steel and carbon plate are finished steel products themselves and are "other product[s]" being produced in the facilities where welded line pipe is manufactured.[13] Only some of that hot-rolled and plate production is used for the production of line pipe.

(d) Thus, one cannot conclude that the shutdown of the blast furnace and its impact on the financial condition of Geneva was properly attributed to line pipe because Geneva produced no other "pipe" product on its line pipe-making line. Moreover, that's not the point. The point is that the shutdown of its blast furnace should have been attributed to conditions in Geneva's primary markets of hot-rolled and plate.[14] Indeed, Geneva has been an active participant in unfair trade cases against imported plate and hot-rolled coil. Commissioner Crawford's conclusion was not only logical, but also correct. It also demonstrates why Commissioner Crawford observed that it was incorrect to attribute the shutdown of the blast furnace to imports of line pipe.

In addition, Korea notes that the only public record reference relied on by the United States to establish the source of Geneva Steel's problems is the ITC testimony of Mr. Johnsen, Executive Vice President and General Counsel of Geneva Steel.[15] Mr. Johnsen only stated that line pipe was "an essential part of our business," but this does not answer the question as to whether the bankruptcy can be attributed to the production of line pipe.[16] Given such self-serving testimony, this issue required a more thorough analysis. There is certainly no denial there that Geneva's primary business is hot-rolled sheet and cut-to-length plate[17] or that a "blast furnace" is not used to produce pipe.

This uncritical acceptance of assertions by the domestic industry witnesses contrasts sharply with the ITC's treatment of the dual-stencilled line pipe issue. In the latter case, the ITC states that Respondent's evidence could not be considered because Respondents failed to precisely quantify the amount of dual-stencilled line pipe sold as standard pipe.

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[10] See ITC Determination, Staff Report at II-25 (KOR-6).

[11] See ITC Determination, Crawford Dissenting Views on Injury at I-63 (KOR-6); ITC Determination, Staff Report at II-9, n.65 (KOR-6); see also US First Written Submission at para. 103.

[12] See ITC Determination, Crawford Dissenting Views on Injury at I-63 (KOR-6).

[13] See ITC Determination, Staff Report at II-25 (KOR-6).

[14] See ITC Determination, Crawford Dissenting Views on Injury at I-63 (KOR-6).

[15] See US First Written Submission at para. 103. We note that in making a reference regarding Geneva Steel, in Footnote 106 of their submission (found in para. 103), the United States cites to pages 32-33 of the Transcript of the Hearing on Injury. There is no reference to Geneva Steel on either of those pages. The correct cite is to pages 51-52. See Injury Transcript at pp. 32-33 (KOR-50) and pp. 51-52 (KOR-7) (Testimony of Mr. Johnsen, Executive Vice President and General Counsel, Geneva Steel).

[16] According to the United States, the decline in the line pipe business "played a major role in the decision to shutdown one of its blast furnaces and in the company's bankruptcy." US First Written Submission at para. 103.

[17] See Injury Transcript at pp. 51-52 (KOR-7); see also ITC Determination, Crawford Dissenting Views on Injury at I-63 (KOR-6).

10. Under the US system for imposing safeguard measures, what are the "competent authorities" within the meaning of Article 3.1 of the Safeguards Agreement? Do they include

to which imports from Korea of dual stencilled line pipe were used in standard pipe applications." Did the USITC seek such information for itself?

Answer

In *US – Wheat Gluten*, the Appellate Body held that Article 3.1 of the SA requires that the "authorities charged with conducting ... an "investigation" – must actively seek out pertinent information … [W]here the competent authorities do not have sufficient information before them to evaluate the possible relevance of such an 'other factor,' they must investigate fully that 'other factor,' so that they can fulfil their obligations ... under Article 4.2(a) of the SA."[26]

This issue on dual-stencilled line pipe was raised and discussed by the Korean Respondents during the ITC investigation on several occasions. The fact that there had been several years of litigation over the proper classification of such pipe strongly indicated that the effect might be very significant.[27] The ITC should have investigated the extent and proper quantification of dual-stencilled line pipe if it was not satisfied with the evidence presented by the Korean Respondents. That evidence included: (i) an affidavit and direct testimony by an individual, Mr. Smith, with 35 years of experience in the industry;[28] (ii) a confidential affidavit by a distributor with equivalent experience who confirmed the estimate of Mr. Smith that 70-80 per cent of the dual-stencilled line pipe imported into the West Coast is sold for standard pipe applications;[29] and (iii) the actual export data, by mill, by specification and by region, which supported the affidavits.[30]

14. Did the ITC undertake any quantitative analysis (such as a regression analysis, and/or elasticity analysis, for example) in support of its qualitative analysis regarding the impact of other factors such as the oil and gas crisis, and declines in the domestic industry exports?

Answer

No. The ITC's legal analysis of causation, specifically the investigation of the effects of "other factors," clearly was insufficient and not in compliance with Article 4.2(b) of the SA. The ITC did not attempt to identify and isolate the effects of other factors such as the oil and gas crisis. They certainly were not "quantified" in any manner. Yet, the United States says they "weighed" the relative impact of each factor (one by one). However, as elaborated in Korea's Written Rebuttal, the United States relied almost exclusively on a two-period comparison for its causation or "weighing" analysis. Regardless of the hypothetical integrity of such an analysis, that actual comparison was riddled with flawed facts and assumptions.

15. In para. 104 of its first submission the United States responds to Korea's argument that the industry was not injured as shown by an increase in capital expenditure during the POI. Would the United States also comment on Korea's argument made in Para 250 of its first submission that during the POI two newD -0is thKorl -0.c6orl -0.c6orl -8a the.75 TD -0.152slt0.348 j T* 7quival

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(iii) Exclusion of Canada and Mexico

17. According to the United States, the absence of any reference to GATT Article XIX in Article XXIV:8(b) means that Article XIX safeguard measures "may or must be made part of the general elimination of 'restrictive regulations of commerce' under any FTA (para. 216, US first written submission). Why does the United States consider that safeguard measures "may" (as opposed to "must") be made part of the general elimination of "restrictive regulations of commerce" under any FTA? Would an a contrario reading of Article XXIV:8(b) mean that the imposition of a safeguard measure between FTA partners is inconsistent with the concept of an FTA? Please explain.

Answer

Korea considers that the US position on this point is inconsistent and illogical. We assume this position by the United States is necessitated by the fact that the NAFTA exception is applied on a case-by-case basis. It seems to be the US position that Article XXIV of the GATT 1994 does not address the issue. For this reason, Korea does not believe that the United States is relying on Article XXIV:8 as a defence.

Article XXIV:8(b) of the GATT 1994 has a meaning. Either Article XIX measures are permitted between FTA Members or they are not. The fact that Article XIX does not appear in Article XXIV:8 is not dispositive, as the Appellate Body held in *Turkey – Textiles*.[36]

18. Is it logical that Article XIX safeguard measures are not permitted between FTA partners, while Article XI measures are, given the fact that Article XIX safeguard measures may take the form of (Article XI) quantitative restrictions? Please explain.

Answer

See Korea's answer to Panel's Question 16 to the Republic of Korea.

19. In Turkey – Textiles (WT/DS34), the Appellate Body stated that a GATT Article XXIV defence may be available in the context of a customs union if two conditions are met: (1) the measure at issue is introduced upon the formation of the customs union, and (2) "the formation of [the] customs union would be prevented if it were not allowed to introduce the measure at issue." In this regard, please explain how the formation of the NAFTA would have been prevented if the NAFTA parties had not been allowed to introduce the safeguards exemption provided for in section 311(a) of the NAFTA Implementation Act. If the formation of NAFTA would have been prevented but for the safeguards exemption, why are NAFTA members not automatically excluded from safeguard measures imposed by other NAFTA members?

Answer:

It is not clear to Korea that the United States is relying on Article XXIV of the GATT 1994 as a "defence" in this case. The United States seems to center its entire argument on the language of Footnote 1 to Article 2.1 of the SA, which does not apply to the US safeguard measure.

In fact, Korea believes that Article XXIV of the GATT 1994 cannot provide a defence when the NAFTA explicitly provides that safeguards are to be applied on a case-by-case basis.

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[36] Turkey – Restrictions on Imports of Textile and Clothing Products, WT/DS34/AB/R (22 October 1999) at para. 64.

(v) Causal link

23.

first half of 1998.[44] Such a significant drop in consumption could be expected to produce significant injurious effects. No similar drop in consumption had been experienced in the previous periods.[45] Furthermore, that decline coincided with a 25 per cent increase in domestic capacity on an annualized basis due to significant new capacity coming on stream[46] (US producers were projecting an increase in demand).[47] Export markets had also dried-up due to the decline in oil and gas demand worldwide.

Thus, the ITC failed to properly identify and isolate the effects of other "differences" between those two periods, including increased capacity, declining export markets and domestic consumption.[48] The oil and gas crisis was the underlying cause that produced all these other effects and their confluence caused an industry decline. The combined effects of all these factors so dilute the effects of imports that imports no longer had a genuine and "substantial" relationship to the serious injury.

24. Is a determination that the crisis in the oil and gas industry could not have accounted for the totality of the serious injury experienced by the domestic industry sufficient to demonstrate a genuine and substantial relationship of cause and effect between the increased imports and the serious injury suffered by the domestic industry? Does such a determination ensure that none of the injurious effects caused by the crisis in the oil and gas industry have been attributed to increased imports? Please explain.

Answer

No, it cannot since Article 4.2(c) of the SA only requires that "other factors" cause "injury" (Imports must cause "serious injury.") By definition, other factors may not account for the totality of serious injury.

As noted above, the ITC analysis is backwards and does not properly isolate the effects of other factors. Nor does the US causation standard even allow the ITC to measure the effect of each factor. Rather, the US methodology is simply to weigh imports against each individual cause. Hypothetically, under the US standard, if there are 10 causes, including imports, each contributing 10 per cent of the "injury," the ITC could determine that imports are the substantial cause of serious injury because imports are "not less than any other single cause." Yet, imports in this scenario could not be found to bear a "genuine and substantial" relationship to serious injury since in the absence of these other factors, serious injury may not have occurred.[49] This standard does not comply with the requirements of Article XIX of the GATT 1994 or Article 4.2(b) of the SA.

25. Did the ITC find that injury was caused by "other factors" in addition to the decline in the oil and gas industry? If so, how did the ITC ascertain that the injurious effects of all these "other factors" together did not preclude the conclusion that there was a genuine and substantial relationship of cause and effect between the increased imports and the serious injury?

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[44] The United States indexed data shows that apparent consumption declined almost 30 per cent between first half of 1998 and second half of 1999. *See US 16 February Letter*.

[45] See *id.*.

[46] See KOR-48A.

[47] See KOR-56.

[48] See KOR-48A.

[49] See Restatement (Second) of Torts § 433 cmt. e. (1965)(KOR-58).

Answer

See answers to Questions 23 and 24 above. Moreover, we note that the ITC did not properly investigate the extent to which producers had shifted between the production of OCTG and line pipe.[50] The United States had an obligation to conduct a more thorough analysis of the degree to which the collapse in the market for OCTG resulted in a shift to line pipe production and distorted the financial results of the line pipe industry.[51]

(vi) Developing country exemption

26. Does the Line Pipe measure "appl[y]" (within the meaning of Article 9.1 of the Safeguards Agreement) to developing countries?

Answer

There is no question that the safeguard measure would apply to developing countries if they exported in excess of the 9,000 short tons. The 9,000 short tons is an arbitrary limit that does not reflect the terms of Article 9 of the SA. The language of Article 9 suggests that the determination of whether a developing country is "in" or "out" should be made at the time the measure is imposed so that it can be determined whether the measure applies to them or not. The 9,000-short-ton limit is arbitrary also because it must be constantly reconstructed based on current import levels. This is particularly the case when Mexico and Canada are excluded so that import levels will vary.

27. With regard to para. 227 of the US first written submission, does the 9,000-short-ton exemption guarantee that developing country Members accounting for 3 per cent or less of total subject line pipe imports into the United States will not be subject to the Line Pipe measure? What if the volume of subject line pipe imports (especially from Canada and Mexico) increases to such an extent that a developing country Member could export more than 9,000 short tons to the United States, and still remain at or below the 3 per cent threshold?

Answer

No, it does not guarantee that developing country Members will not be subject to the line pipe measure. The measure is a TRQ, with a quota of 9,000 short tons plus a 19 per cent duty. The TRQ applies equally to developing countries. Were a developing country to export 10,000 short tons to the US market, 1,000 tons would be subject to a 19 per cent tariff. Thus, the United States has failed to exempt developing countries. With respect to the US claim that 9,000 short tons represents the 3 per cent limit, Korea observes that 9,000 short tons is far in excess of 3 per cent of current import levels and could be below future levels. If developing countries are not exempted, they are also denied their preference under Article 9 of the SA because the overall limit has not been set by the United States in this case. There is no way of determining what level of imports 3 per cent represents.

(vii) Increased imports

28. In *Argentina – Footwear*, the Appellate Body found that the increase in imports must be *inter alia* "recent enough." How "recent" should the increase in imports be, relative to the date of the competent authority's decision to impose a safeguard measure? What is the minimum period of time that a domestic industry would need in order to file a petition following a sudden increase in imports? In the present case, could the US line pipe industry have filed a petition

[50] See *US – Wheat Gluten (AB)* at para. 55; see also KOR-48C (The Percentage Relationship Between Net Shipments of Line Pipe and Net Shipments of OCTG).

[51] See *US – Wheat Gluten(AB)* at para. 55.

before it did? Please explain. Could the ITC have reached its determination before it did? Please explain.

Answer

See Korea's answer to Panel's Question 3 to the Republic of Korea.

29. The United States argues in para. 66 of its first submission that a comparison of "mismatched" interim periods could create distortions because of seasonal changes in market

ANNEX C-2

THE REPUBLIC OF KOREA'S COMMENTS ON UNITED STATES' RESPONSE TO QUESTIONS FROM THE PANEL AT THE SECOND MEETING WITH THE PARTIES

1. The Panel extended to the Parties the opportunity to respond to the submissions of 15 June 2001. Before proceeding, Korea notes that it provided its responses to the Panel's questions and to the positions of the United States as they were expressed by the US representatives at the Second Meeting with the Parties ("Second Panel Meeting"). Very little has been added by the United States through the written response. Therefore, rather than repeating our points and arguments, Korea will largely confine itself to commenting on new material provided in the US response.

Questions for All

2. Question 4, paragraphs 8-11 of the United States Responses to Questions from the Panel at the Second Meeting with the Parties ('Second US Response"). Korea notes that the United States has made no claim of prejudice because, of course, it could not do so. As noted in paragraph 11 of Korea's Second Response to Questions,[1] the Appellate Body held in *Thailand – Antidumping on Angles* that the question is whether a party "suffer[ed] any prejudice on account of any lack of clarity in the panel request."[2] None has been claimed here nor shown to exist.

3. As Korea properly identified in paragraph 9 of the "Panel Request,"[3] critical information on which the United States relied in its decision-making has not been provided to Korea. Korea's claim in paragraph 9 is clearly separate from its Article 3 and 4 claims made in relation to the ITC phase of the investigation in paragraph 1 of its Panel Request.[4] The nature of the measure and "how" it was

temporary decline in the industry indicators, did not cause imports to increase. Indeed, it caused imports to decline as well. That, of course, is the point.

14. Korea made its claim with respect to unforeseen developments in paragraph 2 of the "Panel Request"[8] and the United States does not deny that it failed to make a finding of unforeseen developments in its determination in violation of Article XIX.[9]

15. Other Questions, Capacity: paragraph 49 of the Second US Response. The United States refers to the ITC questionnaire, which defined average production capability as follows:

> *Average production capability*. The level of production that your establishment(s) could reasonably have expected to attain during the specified periods. Assume normal operating conditions (i.e., using equipment and machinery in place and ready to operate; normal operating levels (hours per week/weeks per year) and time for downtime, maintenance, repair, and cleanup; and a typical or representative product mix).[10]

16. The above definition does not impose a uniform methodology on domestic producers. To the contrary, the actual allocation methodology is at the discretion of each producer and explained in the confidential questionnaire responses. The ITC determination makes no mention of the closing of facilities in the second half of 1998. Yet, according to the ITC at Table 5 in its determination, domestic capacity in 1998 and 1999 was as follows:

1st half 1998 **2nd half 1998** **1st**

19. The fact is that the issue of the usage of dual-stencil pipe had been well-known to the ITC even before the beginning of the investigation on the instant case. Thus, in its Pre-Hearing Staff Report, the ITC noted as follows concerning dual and triple stencilling by US producers.

> In some instances, the assignment of sales values and costs to welded line pipe and standard pipe was complicated by dual (or triple) stenciling. For example, the triple stenciled welded line pipe and standard pipe sold by *** in 1994 were physically the same product. Under these circumstances, according to company officials, the product's end use is the only practical way to distinguish between welded line pipe and standard pipe.[11]

20. We note that the ITC appears to be treating dual/triple stencilled line pipe produced by domestic producers as line pipe or standard pipe depending on their usage. We further note that the ITC, irrespective of such a prior knowledge, did not ask purchasers to identify what percentage of their sales of dual/triple stencilled pipe were used respectively for standard or line pipes. An incidental point to be made here is ITC's differential treatment of witnesses for petitioners and for respondents. The ITC completely ignored the witness for Korean respondents, whose testimony was also under oath, and whose testimony was further supported by an additional confidential affidavit[12] and actual imports of dual stencil pipe by port.[13].

21. Moreover, it appears that dual-stencilled or triple-stencilled line pipe was not always treated as "line pipe" by the US domestic industry itself. For the purposes of assigning costs and sales, it seems that the US industry based allocations between standard pipe and line pipe based on "end use" of those pipes. Korea finds that this is another distortion in the sales and cost data since the ITC treated all dual-stencilled or triple-stencilled line pipe as "line pipe" in terms of imports. This further highlights the problem with the methodology the ITC used to allocate the cost data.

22. Finally, the ITC routinely follows up and requests information additional to that in the original questionnaires. As the US admits in its response to Panel questions, the ITC specifically requested additional data from the Japanese producers in the case of arctic grade and alloy line pipe, which it treated as "a supplement to the Japanese producers' questionnaire responses."[14] Obviously, that same procedure was not followed with respect to the dual-stencil line pipe issue.

23. Other Questions. The determination of the "competent authorities" and the views of the Commission, Paragraphs 57-63 of the Second US Response.

24. It appears to be the position of the US that the "competent authorities" encompass only the ITC and only those the
can be based.

25. There is no support in the SA for such a narrow reading, and the obligations of the SA are not dependent on the structure of d C a1a-making process in the United States or any other Member State. First, "competent authorities" is clearly a term used to refer to those entities entrusted with the responsibility for safeguards actions. The composition of thj 3entity can not chang Tw pending upon the determinations3uade from -3 case to another. According to the US theory, the "competent authorities" in the US could be three thein case of a 3-3 "affirmativ
de C a1a") and all sixain a unanimous d C a1a. There is no support fosuch a theory. The SA is

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[11] *Prehearing Staff Report,* Circular Welded Carb1a-Quality Line Pipe, Inv. No. TA-201-70 (21 September 1999) at p. I-25; identical languag Tin*ITC Determination, Staff Report* at II-25 (KOR-6).

[12] *See Posthearing Brief of Japanese and Korean Respondents* j 3Exh. 2 (KOR-25).

[13] 3*See id.* j 3Exh. 12 (KOR-62).

[14] *Second US Response* para. 48.

framed in terms of the entity – not individual members of the ITC. Similarly, under the US theory, the President is not encompassed in the "competent authorities," even though the President is clearly an entity which finally decides whether to take a safeguard measure.