

SAFEGUARD PROCEEDINGS INITIATED BY KOREA
IN RESPECT OF CERTAIN DAIRY PRODUCTS

Request for Consultations from the European Community
under Article 12.3 of the Agreement on Safeguards

The following communication, dated 11 December 1996, has been received from the Permanent Delegation of the European Commission.

Background

On 28 May 1996 the Korean Trade Commission ("KTC") initiated safeguard proceedings in respect of certain dairy products based on milk powder (Korean CN codes 0404.90.0000 and 1901.90.0000) and notified such initiation to the Committee on Safeguards ("the Committee") on 11 June 1996 (document G/SG/N/6/KOR/2 of 1 July 1996).

The European Community raised this matter at the Committee's regular meeting on 25 October 1996, as well as in bilateral contacts with the Korean Government, in order to express its serious concern as to these proceedings.

The European Community now understands that a determination of injury has been made by the KTC on 23 October 1996, and that the KTC may propose to the competent authorities in the Korean Government to adopt safeguard measures in respect of the above-mentioned products in the very near future.

The KTC's injury determination

The European Community had already expressed to Korea its misgivings as to the lack of data on which to base an assessment of these proceedings. The notification of the initiation contained only data on an alleged absolute increase in imports, and there were some doubts as to whether such data effectively referred to the products subject to the complaint or to a wider range of dairy products. No information was supplied, at that stage, in respect of any other factors relevant to a serious injury determination, or on the causal link between imports and any alleged injury.

The European Community has since received some more information in a letter from the KTC to the European Commission, as well as in what appears to be a summary of the KTC's injury determination. Nevertheless, even if this information were to be taken at its face value, there appear to be serious doubts as to whether the conditions for a finding of serious injury (and subsequent adoption of safeguard measures based upon such a finding) are present in this case. In particular:

- (a) The KTC mentions a "substitutive relationship" between the imported milk powder-based products and the domestic product, but no analysis has been supplied as to how and why the imported products directly compete with domestic ones as required by Article 2 of the Agreement.
- (b) Apart from the very concise nature of the information supplied, which casts some doubts on whether the state of the domestic industry has been analysed with the degree of precision required by the Agreement, no analysis at all appears to have been made of whether there is in fact a causal link between imports and the alleged injury. The European Community understands that fears as to the safety of domestically produced milk powder seems to be at the root of increased unsold stocks and producers' losses in Korea.

In addition, it must be noted that if the KTC made a determination of injury, such a determination should have been notified to the Committee on Safeguards in accordance with Article 12.1(b) of the Agreement on Safeguards. To date no notification has been circulated to WTO Members.

Request for consultations

In these circumstances, the European Community is of the opinion that Korea should not adopt safeguard measures on the basis of the KTC's finding of 23 October, or at least not without having supplied additional information to the Committee as provided for in Article 12.2 of the Agreement.

Moreover, should the Korean Government propose to adopt safeguard measures, the European Community, having a substantial interest as exporter of the products concerned, requests the opportunity to hold consultations prior to the adoption of such measures, with a view to reviewing the information so far provided by the Korean Government (as well as any further information the Korean Government may provide under Article 12.2 of the Agreement), and to discussing the application of Article 8.1 of the Agreement to the present case.

Finally, the European Community would welcome the opportunity to hold such consultations at the earliest opportunity. A copy of this request is being transmitted to the Chairman of the Committee in order to be circulated to Members of the Committee.