

KIEP Working Paper 200-03

# Currency Conversion in the Anti-dumping Agreement

Jong Bum Kim

2000. 4

**KOREA INSTITUTE FOR  
INTERNATIONAL ECONOMIC POLICY (KIEP)**

300-4 Yomgok-Dong, Seocho-Gu, Seoul 137-747, Korea

Tel: (822) 3460-1178 Fax: (822) 3460-1144

URL: <http://www.kiep.go.kr>

Kyung Tae Lee, *President*

---

KIEP Working Paper 200-03

Published April 30, 2000 in Korea by KIEP

© 2000 KIEP

## Executive Summary

A dumping margin calculation involves currency conversion of either the export price or the normal value. Although the Anti-dumping Agreement permits the conversion of currency when it is necessary for the price comparison, it does not provide a sufficient guideline to guard against potential distortion in the dumping margin calculation resulting from conversion. Unless the conversion is done with an appropriate exchange rate, an investigating authority's price comparison potentially results in a spurious estimate of dumping margin, in violation of the fair comparison requirement of Article 2.4 of the Anti-dumping Agreement. In particular, the distortion in the dumping margin calculation is magnified when the exchange rate moves significantly. This paper reviews the currency conversion clause of the Anti-dumping Agreement and suggests modifications in order to address the shortcomings.

Dr. Jong Bum Kim is currently working as a Trade Specialist for the Ministry of Foreign Affairs and Trade of the Republic of Korea. He earned M.Phil in Economics from the University of Oxford and his Ph.D in Economics from University of California, Riverside. He is currently listed in the WTO Indicative List of Panelist. Also, as a lead examiner, he participated in the evaluation of German and Japanese implementation of the OECD Bribery Convention. His current area of research is trade law and policy. Corresponding Address: 77 Sejongro Jongro-Ku, Seoul 110-760, S. Korea; E-mail: jbkim98@mofat.go.kr.

# Contents

Executive Summary .....	3
I. Introduction .....	7
II. Currency Conversion in the Anti-dumping Agreement .....	9
III. Exchange Rate Conversion in the U.S. ....	16
IV. Exchange Rate Conversion in the EU .....	20
V. Distortion from Exchange Rate Conversion .....	22
VI. Suggestions to Modify the Currency Conversion Clause .....	28
References .....	30
국문요약 .....	31

---

# Currency Conversion in the Anti-dumping Agreement

Jong Bum Kim\*

## I. Introduction

The Anti-dumping Agreement ("Agreement")<sup>1)</sup> provides that a product is considered as being dumped if a product is exported to another country at less than its normal value, the comparable price of like product when destined for consumption in the exporting country. In order to calculate the dumping margin, an investigating authority compares the export price with the normal value. This price comparison usually involves conversion of the currency of either the export price or the normal value. Although the Agreement permits

---

\* Trade Specialist, Ministry of Foreign Affairs and Trade, Korea. Research Fellow (On Leave), Korea Institute for International Economic Policy (KIEP). No part of this article reflects the opinion of the Korean government. Correspondence should be made to: Dr. Jong Bum Kim, Ministry of Foreign Affairs and Trade, Room 506, 77 Sejongro, Jongro-ku, Seoul Korea. Fax: +82-2-733-3724, E-mail: jbkim98@mofat.go.kr

1) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-dumping Agreement"), Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, The Results of the Uruguay Round of Multilateral Trade Negotiations, Legal Texts, World Trade Organization.

the conversion of currency when it is necessary for the price comparison, it does not provide sufficient guidelines to guard against potential distortion in the dumping margin calculation resulting from conversion. Unless the conversion is done with an appropriate exchange rate, an investigating authority's price comparison potentially result in a spurious estimate of dumping margin, in violation of the fair comparison requirement of Article 2.4 of the Agreement. In particular, the distortion in the dumping margin calculation is magnified when the exchange rate moves significantly. Therefore, the currency conversion clause of the Agreement needs to be modified to ensure a fair comparison.

The next section of the article discusses the exchange rate conversion clause of the Agreement. Section III and IV consider exchange rate conversion provisions of EU and US anti-dumping laws and examines country practices. The following section V analyzes the potential distortion from exchange rate conversion. Finally, Section VI concludes with some suggestions for the modification of the Agreement.

---

## II. Currency Conversion in the Anti-dumping Agreement

As a result of the Uruguay Round, the GATT Anti-dumping Code<sup>2)</sup> has been provided with additional disciplines in such areas as the procedures for investigation, price comparison, standing of a petitioner, adjustment for sales below costs, raising the *de minimis* dumping margins, and five-year sunset provisions, and so forth. The Uruguay Round negotiation also introduced explicit details on currency conversion, which was not provided in the Tokyo Round anti-dumping Code.<sup>3)</sup> The new Agreement provides that when the conversion of currency is needed, "such conversion should be made using the rate of exchange on the date of sale, provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used."<sup>4)</sup> The Agreement further specifies that the date of sale on which the exchange rate is chosen would normally be the date of

---

2) The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade ("Tokyo Round Code"), 170 GATT BISD, 26 Supplement (1980). The 1979 Tokyo Round Code had 25 signatories as of May 1988. Note 24, John H. Jackson, "Dumping in International Trade: Its Meaning and Context," in *Anti-dumping Law and Practice: A Comparative Study* (John H. Jackson and Edwin A. Vermulst eds., 1990). By 1993, the number of signatories has increased to forty-two countries. See Gary N. Horlick and Eleanor C. Shea, "The World Trade Organization Anti-dumping Agreement," *Journal of World Trade*, Vol. 29 No.1, Feb. 1995.

3) As note 2, above.

4) As note 1 above, at art. 2.4.1.

contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.<sup>5)</sup>

Pursuant to the Agreement, the investigating authority needs to choose the exchange rate on the date of sale of the subject merchandise to convert either the export price or the normal value for the purpose of price comparison. The authority then chooses either the exchange rate on the date of export sale or on the date of home market sale in order to make the conversion. When the export price and the normal value is compared, pursuant to Article 2.4 of the Agreement, "at the same level of trade, normally ex-factory level, and in respect of sales made at as nearly as possible at the same time,"<sup>6)</sup> it would not make a difference whether the exchange rate on the date of export sale or the exchange rate on the date of domestic sale is chosen for price comparison. However, in reality the export sale and the domestic sale of the subject merchandise do not match as nearly as possible in sales volume and dates.

Although the Agreement resulting from the UR negotiation does not clearly indicate whether the exchange rate on the date of sale in the importing country or exporting country is used, Nordic countries proposed during the negotiation a specific currency conversion clause that required the use of the exchange rate on the date of export sale:

Normal value and export price, when not expressed in the same currency, shall be calculated according to the *official exchange rate in the exporting country* prevailing when the sales contract for exports to the importing country was concluded or when a binding offer was made.<sup>7)</sup> (emphasis added)

---

5) As note 1 above, at art. 2.4.1. footnote 8.

6) As note 1 above, at art. 2.4.



The proposal, however, was not adopted in two aspects. First, the proposal specified that the official exchange rate in the exporting country should be used. This specification, however, was not included in the Agreement because countries, including the U.S., would need to change its practice of using its own country's official exchange rate for currency conversion purpose.

Second, the proposal specified that the official exchange rate on the date of sales contract for export sales should be used for currency conversion. The official exchange rate in the exporting country may be significantly different from the rate actually used by the exporter. However, this possibility is not considered by the proposal. This proposal is implicitly in support of the notion that exporters actually use the official exchange rate that is closely identical to the market exchange rate.

The Nordic countries' proposal would have made more sense if an investigating authority were calculating the dumping margin in the exporting country's currency. In this case, the authority converts the export prices denominated in its currency to the exporting country currency using the official exchange rate of the exporting country on the date of sales contract for export sales. The dumping margin will be calculated based on the difference between the export price and the normal value that are denominated in the exporting country's currency. In contrast, if the dumping margin is calculated in the importing country's currency, investigating authority needs to convert export prices to its own currency using the exporting country's official exchange rate following the method in line with Nordic country's

---

7) Drafting Proposals of the Nordic Countries Regarding Amendments of the Anti-dumping Code, MTN.GNG/NG8/W/76, 11 April 1990, at 3.

proposal. However, using the official exchange rate of a foreign country for currency conversion would not be acceptable to some investigating authorities.

Instead of adopting the proposed amendments, the UR negotiation resulted in the currency conversion provision that simply requires the use of the rate of exchange on the date of sale. In the absence of more detailed specification on whether export sales date or the domestic sales date should be chosen, the investigating authorities may resort to the use of exchange rates that could detract from a fair comparison of the export price and the normal value.

With regard to exchange rate fluctuation and sustained movements, Nordic countries and Republic of Korea have suggested the adjustments for the two special exchange rate conditions during the UR negotiations. According to the submission by the Nordic countries,

exporters should be given a reasonable period of time to adapt their prices to changes of exchange rates, in order to avoid that purely "technical dumping margins" result in anti-dumping measures.<sup>8)</sup>

The proposal importantly proposes that an exchange rate movement could result in a dumping margin that is "technical" rather than "real." In a similar line, the proposal by the Republic of Korea makes clear that fluctuations in the exchange rate should not cause an increase in the margin. In addition, the Korean proposal also makes the distinction between "sustained exchange rate fluctuations" and "temporary exchange rate fluctuations":

---

8) Amendments to the Anti-dumping Code, Submission by the Nordic countries, MTM.GNG/NG8/W/64, 22 Dec. 1989, at 6.

Margins or any increase in margins caused by temporary exchange rate fluctuations shall be ignored. Margins or any increase in margins caused by sustained exchange rate fluctuations shall be ignored, unless an exporter fails to change prices within X day.<sup>9)</sup>

Reflecting the proposals from both parties, the Article 2.4.1 of the Agreement first stipulates that "fluctuations in exchange rate shall be ignored..." However, the article does not define fluctuations, which could mean fluctuations occurring within a day or fluctuations occurring over a few months. Also, the exact measure for the investigating authorities to take in order to ignore fluctuations in the exchange rate is not provided. For example, an investigating authority could take the moving average<sup>10)</sup> of either the past 40 days or 80 days of the daily exchange rates as the rate of exchange for conversion. However, without a clear definition of fluctuations in the exchange rates, the moving average exchange rate to smooth fluctuations could vary greatly depending on the span of time over which the moving average is taken.

Also, reflecting the proposals, Article 2.4.1 of the Agreement provides that the investigating authority "shall allow exporters at least 60 days to have adjusted export prices to reflect sustained movements in exchange rates during the period of investigation."<sup>11)</sup> The presumption of the Article 2.4.1 is that exporters may not be able to immediately adjust the export prices to reflect sustained movements

---

9) Report of the Acting Chairman of the Informal Group on Anti-dumping, MTM.GNG/NG8/W/83/Add.5, 23 July 1990, at 91.

10) The moving average daily exchange rate is the average of daily exchange rates in the past beginning a certain dates prior to the present date.

11) As note 1, above.

in the exchange rates. Thus, the exporters are given a grace period of 60 days to adjust the export prices in response to either a sustained depreciation or a sustained appreciation of the exporting country's currency.

When an exporting country's currency appreciates, the normal value rises and the dumping margin increases. Therefore, the exporter needs to adjust the export or domestic sales price in order to reduce the dumping margin arising from the exchange rate condition. In contrast, in a sustained depreciation of exporting country's currency, the normal value falls relative to the export price, thus reducing the dumping margin. Since the exporter benefits from the currency depreciation, he has no reason to make any adjustment. In sum, although the "sustained movement" in the Article 2.4.1 does not explicitly rule out the case of exchange rate depreciation, it can be best interpreted as dealing only with the sustained appreciation of the exporting country's currency.

More importantly, Article 2.4.1 is not addressing the issue of choosing the correct exchange rate that reflects the true relative value of the currency. If the sustained movement in the exchange rate implies that the current daily exchange rate is moving away from the true relative value of the currencies, the Agreement should address a sustained depreciation as well as an appreciation of the exporting country's currency. However, Article 2.4.1 cannot be interpreted as addressing a sustained depreciation of the currency. It deals with an exporter's response to an unexpected exchange rate movement. In order to allow exporters 60 days grace period, as a plausible rule, the investigating authority may apply the exchange rate of the dates prior to the beginning of the sustained movement.

However, the rule relies on the definition of what constitutes a sustained exchange rate movement. Since it is difficult to define what

constitutes a sustained movement, the application of the law could vary in practice. Does a sustained movement mean a currency movement in one direction over a week, a month, or more? How steeply should a currency move in one direction to constitute a sustained movement. If an exchange rate moves in one direction but takes steps in the other direction during this movement, should this constitute a sustained exchange rate movement? The Agreement does not explicitly provide any clues to these questions. The provision on exchange rate movement is subject to different interpretations, which could potentially result in disputes.

---

### III. Exchange Rate Conversion in the U.S.

The U.S. amended the Title VII of the Tariff Act of 1930 ("Act") in order to implement the provisions of the Anti-dumping Agreement.<sup>12)</sup> The amendment included provisions on currency conversion that is largely identical to the Article 2.4.2 of the Agreement. According to the amendment, "the U.S. administering authority shall convert foreign currency into U.S. dollars using the exchange rate in effect on the date of sale of the subject merchandise."<sup>13)</sup> It also stipulates that when a currency transaction in the forward markets is directly linked to an export sale, "the exchange rate specified with respect to such currency in the forward sale shall be used to convert the foreign currency."<sup>14)</sup> The U.S. implementation law differs from the Agreement in clearly providing that a price level denominated in the exporting country's currency should be converted to the U.S. dollars.

However, the direction of the exchange rate conversion as adopted in the U.S. anti-dumping law from the home market price to the U. S. dollar price is not necessarily the only option for the purpose of a fair price comparison. It has been argued that since dumping results from an exporter's managerial decision to sell at a lower price in the foreign market than in the home market, it would be reasonable to compare the domestic sales price to the proceeds of exports calculated

---

12) The basis U.S. anti-dumping law is set out in Title VII of the Tariff Act of 1930, as amended, codified in Title 19 of the United States Code, Section 1673 to 1677.

13) Tariff Act, Section 773(a), 19 USC, Section 1677b(a).

14) As note 13, above.

on the basis of the exchange rates the exporter obtains for the export sales.<sup>15)</sup> Therefore, the appropriate direction of conversion could also be the conversion from the U.S. dollar to the exporting country's currency.<sup>16)</sup>

With regard to the unusual exchange rate movement, the amended U.S. anti-dumping law provides that the administering authority should ignore fluctuations in exchange rates.<sup>17)</sup> The Tariff Act as amended and the regulations of the Department of Commerce ("Commerce") as set forth in Title 19 of the Code of Federal Regulations ("CFR") do not provide the details necessary to define fluctuations. Instead the Department's policy guidelines<sup>18)</sup> describes the exchange rate model that defines fluctuations. The guideline introduces the concept of a benchmark exchange rate to distinguish the "normal" exchange rate from the "fluctuating" exchange rate. The benchmark is a moving average of the actual daily exchange rates for the eight weeks immediately prior to the date of actual daily exchange rate to be classified. If the actual exchange rate falls out of the two-and-a-quarter percent band of the benchmark exchange rate, the actual daily rate is classified as fluctuating.<sup>19)</sup> If the actual exchange rate falls within the band, the actual daily rate is classified as normal.<sup>20)</sup> If an actual

---

15) N. David Palmeter, *Exchange Rates and Anti-dumping Determination*, 22 J. World Trade 73, 80 (1988).

16) See note 15, above. Palmeter argues that converting home market sales in domestic currency to U.S. dollars is equivalent to "monetary ethnocentricity that is out of date."

17) As note 13, above.

18) Policy Bulletin 96-1: Import Administration Exchange Rate Methodology, Federal Register, Vol. 61, No. 47, Friday, March 8, 1996.

19) As note 18, above.

daily exchange rate is classified as normal, the daily exchange rate is the official exchange rate for that day.<sup>21)</sup> However, if an actual daily rate is classified as fluctuating, the benchmark rate is the official rate for that day.<sup>22)</sup>

With regard to a sustained movement in the value of the foreign currency relative to the U.S. dollar, the administering authority shall allow exporters at least 60 days to adjust their export prices to reflect such sustained movement.<sup>23)</sup> However, the statute does not define what constitutes exactly a sustained movement? The U.S. Department of Commerce ("the Department") recognizes only the sustained increase in the value of the foreign currency relative to the U.S. dollar as a sustained movement in foreign currency.<sup>24)</sup>

The U.S. adopts an elaborate method in order to determine what type of movement in the exchange rate constitutes a sustained movement. According to the Department's policy guideline, whenever the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks of the recognition period, the model classifies the exchange rate change as a sustained movement.<sup>25)</sup> The guideline interprets a sustained movement in the exchange rate as a sustained appreciation of the home country's currency relative to the importing country's currency. It does not recognize the sustained depreciation of exporting country's currency as a sustained movement. When the exporting country's

---

20) As note 18, above

21) As note 18, above

22) As note 18, above

23) Tariff Act, Section 773(a), 19 USC, Section 1677b(b).

24) 19 C.F.R. 351.415.

25) See note 18, above.



currency depreciates against the dollar, a separate adjustment is not required; the standard model employed to ignore exchange rate fluctuations will be applied.

According to the guideline, the Department gives 60 calendar days for the respondents to correct their prices in response to the appreciation of the exchange rates in the exporting country. The 60 days grace period begins on the first day after the eight weeks recognition period. During the grace period, the official rate on the last day of the recognition period is the official rate in the investigations.

---

## IV. Exchange Rate Conversion in EU

The European Union ("EU") amended its anti-dumping legislation codified in the Council Regulation 2423/88 in order to conform to the Agreement.<sup>26)</sup> The previous Regulation contained both anti-dumping and countervailing duty provisions. However, the amendment separated the two, and the anti-dumping regulation has been replaced by the Council Regulation 384/96 (EU anti-dumping Regulation) of 22 December 1995.<sup>27)</sup>

Article 2(10)(j) of EU anti-dumping regulation adopted verbatim Article 2.4.1 of the Agreement dealing with currency conversion. In the EU anti-dumping regulation, unlike in the U.S., an additional guideline on currency conversion does not exist. The EU practice since the UR implementation has not departed significantly from the past practice that adopts the average monthly exchange rate as the official exchange rate.<sup>28)</sup>

Article 2(10)(j) of EU anti-dumping regulation also additionally defines the date of sale as "the date of invoice but the date of contract, purchase order or order confirmation may be used if these more appropriately establish the material terms of sale." In contrast to the Agreement, the EU anti-dumping regulation puts priority on the use

---

26) O.J. (1988) L 209/1 as amended by Regulation 521/94, O.J. (1994) L 66/7, and Regulation 522/94, O.J. (1994) L 66/10.

27) O.J. (1996) L 56/1

28) Clive Stanbrook and Philip Bentley, *Dumping and Subsidies: The Law and Procedures Governing the Imposition of Anti-dumping and Countervailing Duties in the European Community* 68-69 (Kluwer Law International 1996)

of the date of invoice as the date of sale over three other choices: the date of contract, purchase order or order confirmation.

By taking the average monthly exchange rates as the official rate, EU's practice smoothes the exchange rate fluctuation that occurs over a month period. Under this method, the determination of the official exchange rate would critically depend on the month of which the exchange rate is based, thus resulting in a discrete jump from a month to another month. In particular, when there exist sustained exchange rate movements, the discrete jumps will be magnified.

The EU's method of determining the official exchange rate does not allow exporters 60 days to adjust export prices to reflect sustained movement in exchange rates during the period of the investigation as required by the Article 2.4.1 of the Agreement. An exporter who exports in the beginning of a month when there exists a sustained appreciation of the exporting country currency later in the month would be unfairly penalized for the exchange rate appreciation later in the month. In fact, the exporter will be subject to the average of daily exchange rates during the month without the benefit of a grace period. Compared to the U.S. method which adopts the smoothed daily exchange rate prior to the sustained movement as the official rate, the EU's method greatly enlarges the dumping margin when there exist a sustained appreciation of exporting country's currency.

---

## V. Distortion from Exchange Rate Conversion

When two different price levels denominated in separate currencies are compared, one of the prices has to be converted into another using an appropriate exchange rate. As a comparison of price levels in two different currencies, a dumping margin calculation requires currency conversion of either the export price or the normal value, but the Agreement does not specify which one of the two needs to be converted. Nevertheless, an investigating authority usually converts the normal value denominated in the exporting country's currency to the currency of the investigating country using the weighted average exchange rate. This usual practice is clearly favored by investigating authorities, as it eases the investigating authority's task.

Theoretically, as long as the exchange rate used reflects the true relative value of the currencies, it should not matter whether the normal value in the exporting country currency is converted to the importing country's currency or the export price in the importing country's currency is converted to the exporting country's currency. Nevertheless, it has been argued that the domestic sales price should be compared with the export price after converting the proceeds from exports into the currency of exporting country.<sup>29)</sup> On the face of it, since the purpose of the anti-dumping investigation is to determine whether an exporter receives more or less for its export sales than for its domestic sales, it may seem appropriate to look at what the exporter receives.<sup>30)</sup> However, the argument would be valid if the dumping

---

29) See note 15 above.

30) See note 15 above.

determination involves only the calculation of dumping margin.

However, since the anti-dumping investigation also determines whether the dumped imports cause material injury to the producers of like products in the importing country, it would also be reasonable to convert the normal value in the exporting country currency into the currency of an investigating country. Pursuant to Article 3.2 of the Agreement, "the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product of the importing Member." To determine whether there has been price undercutting by the dumped imports, it is arguably better to keep the price of imports in the importing country's currency and compare it with the price of a domestic like product of the importing country so that the determination of price-undercutting is done in the importing country's currency. To preserve the consistency in the price comparison, the comparison for dumping margin should also be done in the importing country's currency. Therefore, in this line of argument, the normal value in exporting country's currency should be converted to the importing country's currency.

All in all, the conversion in either direction does not seem to give definite advantage; the advantage is based more on practical convenience than on the ground of fair comparison.

A serious distortion arises not from the direction of the conversion of currency, but from the appropriate choice of the exchange rate on the date of sale. An investigating authority easily fall to choose the exchange rate on the date other than the appropriate date of sale. Although the Agreement requires that investigating authorities should compare sales made as nearly as possible at the same time and at the same volume, the volume of export sales on a given period may

differ from home market sales to export sales.<sup>31)</sup> As a result, the investigating authority is faced with the choice of the exchange rate either on the date of sale of like products in the home market or the exchange rate on the date of sale in the export market. When the dates of sales do not coincide and when exchange rates are varying rapidly, the two exchange rates could be substantially different.

Sale	Export Price (US\$)	Exchange Rates on the Date of Sale in the Export Market Won/Dollar	Sale	Exchange Rates on the Date of Sale in the Home Market Won/Dollar	Home market Korean Won Prices
A(Jan)	\$1,000	1,000	C(Jan.)	1000	1 mil.
B(Oct.)	\$1,000	<b>1,500</b>	D(Nov.)	<b>2000</b>	2 mil.

The above example illustrates the distortion arising from using inappropriate exchange rate for conversion. In the above table, only one unit is sold in each of the sales A, B, C, and D. Between B (October) and D(November), there was a significant appreciation of the exchange rate. The exchange rate on the date of sale in the home market is applied to calculate the normal value in U.S. dollars:

$$NV = 1/2 (1 \text{ mil. Won} + 2 \text{ mil. Won}) / \{ 1/2 \times (1,000 \text{ Won}/\$ + 2,000 \text{ Won}/\$) \} = \$1,000.$$

Since the average export price is \$1,000, the estimated dumping margin is zero.

Alternatively, the normal value is calculated using the exchange rate

31) As note 1, above, at Article 2.4.

on the date of export market sale:

$$NV = 1/2 (1 \text{ mil. Won} + 2 \text{ mil. Won}) / \{ 1/2 \times (1,000 \text{ Won}/\$ + 1,500 \text{ Won}/\$) \} = \$1,200.$$

Therefore, the dumping margin is 200 dollars.

The above analysis shows that an estimated dumping margin varies significantly depending on whether the exchange rate on the date of sale in the home market or on the date of sale of the dumped goods in the importing country is used. Under an exceptional circumstance where the dates and volumes of export sales and the dates and volumes of home market sales match or the exchange rates do not change during the investigating period, the above discrepancy does not arise. However, in reality exchange rates do not match and an inappropriate choice of the exchange rate for conversion results in a spurious dumping margin.

With regard to the choice of the exchange rate for conversion the Agreement requires that when conversion of currency is needed, "such conversions should be made using *the rate of exchange on the date of sale*, provided that when a sale of foreign currency on forward market is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used."<sup>32)</sup> (emphasis added). The date of sale should be understood as the date of sale of the product in the market. If the price of a home market product denominated in the exporting country currency is converted into the currency of the importing country, the exchange rate on the date of sale in the home country should be used. In converse, if the price of an export product in the

---

32) As note 1, above, at Article 2.4.1.

importing country currency is converted into the exporting country currency, the exchange rate on the date of sale in the importing country should be used. The exchange rate used for converting the price of a product should be chosen to reflect the true relative value of the currencies at the time of the sale of the product, because the price, which is the subject of the conversion, is the value of the product in a currency at the time of the sale of a product.

In the U.S., the Section 773A of the Tariff Act of 1930 provides that "the administering authority shall convert foreign currencies into U.S. dollars using the exchange rate in effect on the date of sale of the subject merchandise." Therefore, in accordance with the statute, the administering authority should first determine what the subject merchandise is and determine its date of sale. However, the Department's policy guideline provides that "the investigating authority will convert foreign currencies at the exchange rates on *the date of the U.S. sale*, subject to certain conditions."<sup>33)</sup> (emphasis added). Clearly the U.S. Department of Commerce is interpreting "the subject merchandise" as the merchandise sold in the U.S. market. As a result, the U.S. effectively converts the normal value in the exporting country currency to U.S. dollars using the exchange rate at the time of the sale of the comparable export merchandise in the U.S. market. However, the exchange rate used by the U.S. for conversion would be inappropriate because the sales date and the sales volume of the comparable export merchandise in the U.S. market would not be nearly identical to those of the exporting country sales.

As a result of using inappropriate exchange rates, a distortion in fair comparison occurs. The distortion is especially large under a

---

33) As note 18, above, at, p. 9435.



rapidly changing exchange rate condition where the exchange rates on the date of home country sale and those on the date of the comparable export sale of the subject merchandise are different. The problem, however, does not arise if the exchange rate at the time of the home market sale of the merchandise is used to convert the normal value in the home market currency to the importing country's currency. The exchange rate at the time of the sale of the subject merchandise is the appropriate exchange rate. In the opposite case where a comparison is made in the home market currency, the prices of exports in the importing country's currency should be converted to home market currency using the exchange rate at the time of the sale of the export merchandise in the importing country.

---

## VI. Suggestions to Modify the Currency Conversion Clause

The currency conversion clause of the Anti-dumping Agreement should be amended to remove the potential pitfalls. The currency conversion clause is by nature technical, and without a detailed and technical specification on conversion, the clause could be potentially misused.

First, the Agreement should clarify whether the exchange rate on the date of sale in the export market or on the date of sale in the home market is used for conversion. The Agreement should be amended so that when the conversion is done, an investigating authority is required to use *the rate of exchange on the date of sale of the subject merchandise whose price is being converted*. The comparison of the normal value and the export price inherently poses a difficult problem because the sales in the export market and the home market do not occur at the same time and at the same level. The exchange rate used to convert the price of the merchandise should reflect the relative value of the currencies at the time of the sale of the subject merchandise. The Agreement should be modified to clearly disallow the use of the incorrect exchange rate which result in a spurious dumping margin.

Second, the adjustment for a sustained movement should make it clear that it is only the sustained appreciation of the home market currency in response to which the exporters are allowed a sixty-day grace period. Article 2.4.1 of the Agreement is intended to induce fair administration of anti-dumping laws in consideration of managerial constraints faced by exporters. The dumping margin calculated without

considering the time lag needed by exporters to respond to changing exchange rate environment would fail to meet the "fair comparison" standard, in violation of Article 2.4. The adjustment for a sustained movement is an exception to using daily exchange rate or smoothed daily exchange rates. Therefore, the provision should make it clear that the adjustment is limited to the case of exporting country currency's sustained appreciation.

Finally, fluctuation in the exchange rate should be clearly defined in Article 2.4.1 to avoid varying practices among countries. A movement of exchange rates that is regarded as fluctuation in a month's time span cannot be regarded as fluctuation if the time span is expanded to three months or to a year. For example, the U.S. is using the eight-week moving average as a benchmark rate to determine whether the rate is fluctuating or normal. The EU's method of using a simple monthly average of daily exchange rates results in discrete exchange rate jumps, which could potentially result in another distortion. In contrast, the use of moving average method as in the U.S. is advantageous because it smoothes the fluctuation in the exchange rates when a fluctuation is identified.

To distinguish fluctuation in the exchange rate movement from a normal exchange rate movement, the Agreement should clearly specify the benchmark rate as well as the allowed deviation of the daily rate from the benchmark rate. This method of smoothing the daily exchange rate should be adopted uniformly by investigating authorities. The potential for abuse is too great to leave the practices to individual authorities.

---

## References

- Chae, Wook. 1996. "An Economic Assessment of Anti-dumping Rules, From the Perspective of Competition Laws and Policy." KIEP Working Paper No. 96-05.
- Horlik, Gary N. and Eleanor C. Shea. 1995. "The World Trade Organization Anti-dumping Agreement." *Journal of World Trade*, Vol. 29.
- Jackson, John H. 1990. "Dumping in International Trade: Its Meaning and Context." John H. Jackson and Edwin A. Vermulst eds. *Anti-dumping Law and Practice: A Comparative Study*.
- Palmeter, David N. 1988. "Exchange Rates and Anti-dumping Determination." *Journal of World Trade*, Vol. 22.
- Stanbrook, Clive and Bentley, Philip. 1996. *Dumping and Subsidies: The Law and Procedures Governing the Imposition of Anti-dumping and Countervailing Duties in the European Community*. Kluwer Law International.
-

## 國文要約

반덤핑 마진은 수출가격과 정상가격을 공통의 화폐 단위에서 비교하여 얻은 차이를 말한다. WTO 반덤핑협정은 가격 비교의 목적으로 화폐가치의 변환이 필요할 경우에 이를 허용하고 있다. 그러나 조사 당국이 적절한 환율을 적용하여 화폐변환을 하지 않을 경우에 덤핑마진 계산이 왜곡될 수 있으며, 이에 따라 덤핑마진 판정이 WTO 반덤핑협정 2.4항의 위반된 결과를 가지고 올 수 있다. 특히, 반덤핑 마진의 왜곡된 계산은 환율 변동이 심할 경우에 더욱 크게 발생한다. 본 논문은 환율 변화로 인한 반덤핑 마진 계산의 왜곡을 방지하기 위해서 환율 변동과 관련된 현 WTO 반덤핑 규정의 개정을 제안하고 있다.

## 發刊資料 目錄

---

### ■ Working Papers/資料論文

---

- 90-01 Regional Economic Cooperation Bodies in the Asia-Pacific :  
Working Mechanism and Linkages Cheong-Soo Kim
- 90-02 Strategic Partnering Activity by European Firms through the  
ESPRIT Program L.Y. Mytelka
- 91-01 Models of Exchange Rate Behavior : Application to the Yen  
and the Mark Sung Y. Kwack
- 91-02 Anti-dumping Restrictions against Korean Exports : Major Focus on  
Consumer Electronic Products Tae-Ho Bark
- 91-03 Implications of Economic Reforms in CEECs for DAEs :  
with Emphasis on the Korean Case Yoo-Soo Hong
- 91-04 The ANIEs-an Intermediate Absorber of Intraregional Exports? Jang-Hee Yoo
- 91-05 The Uruguay Round Negotiations and the Korean Economy Tae-Ho Bark
- 92-01 Changing World Trade Environment and New Political Economics  
Jang-Hee Yoo
- 93-01 Economic Effects of Import Source Diversification Policy(ISDP)  
In-Soo Kang
- 93-02 Korea's Foreign Direct Investment in Southeast Asia  
Jai-Won Ryou · Byung-Nak Song
- 93-03 German Economy after Unification-Facts, Prospects and Implications for Korea  
Sung-Hoon Park

1990년~현재까지의 모든 발간자료 목록은 연구원  
Homepage (<http://www.kiep.go.kr>)에 수록되어 있음.

- 
- 93-04 A Note On Korea's Anti-dumping System and Practices Wook Chae
- 93-05 Structural Changes in Korea's Exports and the Role of the EC Market  
Chung-Ki Min
- 93-06 Tax Implications of International Capital Mobility Joo-Sung Jun
- 93-07 Leveraging Technology for Strategic Advantage in the Global Market :  
Case of the Korean Electronics Industry Yoo-Soo Hong
- 93-08 Changing Patterns of Korea's Trade in Goods and Services Jin-Soo Yoo
- 94-01 Current Status and Prospects for Korea-Russian Economic Cooperation  
Chang-Jae Lee
- 94-02 Development of Foreign Trade Relations Between Korea and Russia  
Je-Hoon Park
- 94-03 Technology Transfer : The Korean Experience Yoo-Soo Hong
- 95-01 Issues in Capital Account Liberalization in Asian Development Countries  
Jae-Jung Kwon
- 96-01 Globalization and Strategic Alliance Among Semiconductor Firms in  
the Asia-Pacific : A Korean Perspective Wan-Soon Kim
- 96-02 Toward Liberalization of International Direct Investment in Korea :  
Retrospects and Prospects Yunjong Wang · June-Dong Kim
- 96-03 International Trade in Software Su-Chan Chae
- 96-04 The Emerging WTO and New Trade Issues - Korea's Role and  
Priorities in the WTO System Chan-Hyun Sohn
- 96-05 An Economic Assessment of Anti-Dumping Rules : From the  
Perspective of Competition Laws and Policy Wook Chae
- 96-06 Cultural Differences in the Crusade Against International Bribery  
Joon-Gi Kim · Jong-Bum Kim
- 96-07 Competition Policy and Transfer Pricing of Multi-national Enterprise  
Young-Soo Woo
- 97-01 Impact of Foreign Direct Investment Liberalization :  
The Case of Korea June-Dong Kim
- 97-02 APEC's Eco-Tech : Prospects and Issues Jaebong Ro · Hyungdo Ahn
- 97-03 기업지배구조에 관한 OECD 논의와 우리경제에의 시사점  
王允鍾 · 李晟鳳
- 
- 97-04 Economic Evaluation of Three-Stage Approach to APEC's Bogor Goal  
of Trade Liberalization Inkyo Cheong
-

- 
- 97-05 EU의 企業課稅와 韓國企業의 直接投資戰略 李晟鳳
- 97-06 In Search of an Effective Role for ASEM : Combating International Corruption  
Jong-Bum Kim
- 97-07 Economic Impact of Foreign Debt in Korea Sang-In Hwang
- 97-08 Implications of APEC Trade Liberalization on the OECD Countries:  
An Empirical Analysis Based on a CGE Model  
Seung-Hee Han · Inkyo Cheong
- 97-09 IMF 救濟金融 事例 研究: 멕시코, 태국, 인도네시아의 事例를 중심으로  
金元鎬 · 李景姬 · 盧相旭 · 權耿德 · 元容杰 · 金完仲
- 97-10 韓 · EU 主要通商懸案과 對應方案 李鍾華
- 97-11 러시아의 外國人投資 現況 및 制度的 與件 鄭鎔株
- 98-01 韓 · 日 主要通商懸案과 對應課題 程 勳 · 李鴻培
- 98-02 Bankruptcy Procedure in Korea : A Perspective Mikyung Yun
- 98-03 美國의 兩者間 投資協定 : 韓 · 美 投資協定の 意義 및 展望 金寬濤
- 98-04 The Role of Foreign Direct Investment in Korea's Economic Development:  
Productivity Effects and Implications for the Currency Crisis  
June-Dong Kim · Sang-In Hwang
- 98-05 Korea's Trade and Industrial Policies: 1948-1998  
Chan-Hyun Sohn · Jun-Sok Yang · Hyo-Sung Yim
- 98-06 ASEM Investment Promotion Action Plan (IPAP) Revisited: Establishing the  
Groundwork for Regional Investment Initiative Chong Wha LEE
- 98-07 해외투자사례연구시리즈 ① 외환위기 이후 한국해외현지법인의  
구조조정실태와 애로사항: 英國 申東和
- 98-08 해외투자사례연구시리즈 ② 외환위기 이후 한국해외현지법인의  
구조조정실태와 애로사항: 인도네시아 金完仲
- 98-09 해외투자사례연구시리즈 ③ 외환위기 이후 한국해외현지법인의  
구조조정실태와 애로사항: 美國 朴英鎬
- 98-10 해외투자사례연구시리즈 ④ 외환위기 이후 한국해외현지법인의  
구조조정실태와 애로사항: 中國 金琮根
- 98-11 해외투자사례연구시리즈 ⑤ 외환위기 이후 한국해외현지법인의  
구조조정실태와 애로사항: 泰國 權耿德
- 98-12 APEC's Ecotech: Linking ODA and TILF Hyungdo Ahn · Hong-Yul Han
- 98-13 경제난 극복의 지름길 : 외국인투자 金準東 外
- 98-14 最近 國際金融環境變化와 國際金融市場動向 王允鍾 外
-



- 
- 98-15 Technology-Related FDI Climate in Korea Yoo Soo Hong
- 98-16 構造調整과 國家競爭力 洪裕洙
- 98-17 WTO 무역원활화 논의현황과 정책과제  
—통관절차 및 상품의 국경이동을 중심으로— 孫讚鉉 · 任曉成
- 98-18 주요국의 투자자관계 관리사례 申東和
- 98-19 공기업 매각방식의 주요 유형: 해외매각을 중심으로 尹美京 · 朴英鎬
- 99-01 改革推進 外國事例와 示唆點 金元鎬 外
- 99-02 WTO 뉴라운드의 전망과 대책 蔡 旭 · 徐暢培
- 99-03 Korea-U.S. FTA: Prospects and Analysis Inkyo Cheong · Yunjong Wang
- 99-04 Korea's FTA Policy Consistent with APEC Goals Inkyo Cheong
- 99-05 OECD연구시리즈[3] OECD 부패방지협약과 후속이행조치에 관한 논의와 평가  
張權鎬
- 99-06 Restructuring and the Role of International Financial Institutions:  
A Korean View Yunjong Wang
- 99-07 The Present and Future Prospects of the North Korean Economy  
Myung-Chul Cho · Hyoungsoo Zang
- 99-08 APEC After 10 years: Is APEC Sustainable? Hyungdo Ahn
- 99-09 Inward Foreign Direct Investment Regime and Some Evidences of Spillover  
Effects in Korea June-Dong Kim
- 99-10 OECD연구시리즈[1] 전자상거래 소비자보호에 관한 OECD의 논의와 정책적  
시사점 姜聲鎭
- 99-11 Distressed Corporate Debts in Korea Jae-Jung Kwon · Joo-Ha Nam
- 99-12 Capital Inflows and Monetary Policy in Asia before the Financial Crisis  
Sung-Yeung Kwack
- 99-13 Korean Implementation of the OECD Bribery Convention:  
Implications for Global Efforts to Fight Corruption Jong-Bum Kim
- 99-14 The Asian Financial Crisis and the Need for Regional Financial  
Cooperation Yunjong Wang
- 99-15 Developing an ASEM Position toward the New WTO Round  
Chong Wha LEE
- 99-16 OECD연구시리즈[4] OECD/DAC의 공적개발원조 논의와 동향 權 栗
- 99-17 WEF 국가경쟁력 보고서 분석 王允鍾 · 申東和 · 李炯根
- 99-18 Political and Security Cooperation, Membership Enlargement and the Global  
Information Society: Agenda Solutions for ASEM III Simonetta Verdi
- 99-19 An Assessment of the APEC's Progress toward the Bogor Goals: A Political
-

---

	Economy Approach to Tariff Reductions	Honggue Lee
99-20	The Relationship between the WTO and APEC: Trade Policy Options for APEC in the 21st Century	Sung-Hoon Park
99-21	Competition Principles and Policy in the APEC: How to Proceed and Link with WTO	Byung-il Choi
99-22	The Relations between Government R&D and Private R&D Expenditure in the APEC Economies : A Time Series Analysis	Sun G. Kim · Wankeun Oh
99-23	Ecotech and FEEEP in APEC	Ki-Kwan Yoon
99-24	OECD연구시리즈[5] 무역과 경쟁정책에 관한 OECD논의와 한국경제에 대한 시사점	尹美京 · 金琮根 · 羅榮淑
99-25	Economic Integration in Northeast Asia: Searching for a Feasible Approach	Inkyo Cheong
99-26	The Mekong River Basin Development: The Realities and Prospects of Korea's Participation	Jae-Wan Cheong
99-27	OECD연구시리즈[6] OECD 규제개혁 국별검토: 미국, 네덜란드, 일본, 멕시코	梁俊哲 · 金鴻律
99-28	Assessment of Korea's Individual Action Plans of APEC	Hyungdo Ahn
99-29	빈곤국 외채탕감 논의와 우리의 대응	張亨壽 · 朴映坤
99-30	How to Sequence Capital Market Liberalization: Lessons form the Korean Experience	Inseok Shin · Yunjong Wang
99-31	Searching for an Economic Agenda for the 3 <sup>rd</sup> ASEM Summit: Two Scenarios	Chong Wha LEE
99-32	The Structural Transformation of the Japanese Enterprise Groups After the Economic Recession of the 1990s: The Impact of Financial Restructuring on the <i>Keiretsu</i> Structure	Yongsok Choi
99-33	Exchange Rate Policies in Korea: Has Exchange Rate Volatility Increased After the Crisis?	Yung Chul Park · Chae-Shick Chung · Yunjong Wang
99-34	Total Factor Productivity Growth in Korean Industry and Its Relationship with Export Growth	Sang-yirl Nam
200-01	Issues in Korean Trade 1999: Trends, Disputes & Trade Policy	Junsok Yang · Hong-Youl Kim
200-02	Competition and Complementarity in Northeast Asian Trade: Korea's Perspective	Sang-yirl Nam
200-03	Currency Conversion in the Anti-dumping Agreement	Jong Bum Kim

---

## 金鍾範

미국 콜럼비아대학 경제학과 졸업(1986)

영국 옥스포드대학 경제학 석사(1988)

미국 캘리포니아대(리버사이드) 경제학 박사(1995)

대외경제정책연구원 책임연구원(1998)

외교통상부 통상전문관(現, E-mail: jbkim98@mofat.go.kr)

## 著書 및 論文

*Korean Implementation of the OECD Bribery Convention* (1999)

"Implication for Global Efforts to Fight Corruption," *UCLA Pacific Basin Law Journal*,  
Vol. 17 (2000)

KIEP Working Paper 200-03

## Currency Conversion in the Anti-dumping Agreement

2000년 4월 25일 인쇄

2000년 4월 30일 발행

발행인 李景台

對外經濟政策研究院

발행처 137-747 서울특별시 서초구 염곡동 300-4

전화: 3460-1178 FAX: 3460-1144

인쇄 오름시스템(주) 전화: 2273-7011 대표 이호열

등록 1990년 11월 7일 제16-375호

【本書 內容의 無斷 轉載·複製를 금함】

ISBN 89-322-4080-9

값 2,000원

89-322-4026-4(세트)

KIEP is on-line. Access <http://www.kiep.go.kr> for details of our latest publications.

## KOREA INSTITUTE FOR INTERNATIONAL ECONOMIC POLICY

# ORDER FORM

■ Fax number: 822-3460-1144

■ Address:

Publication Section, Department of Information & Library Services

Korea Institute For International Economic Policy

300-4 Yomgok-Dong, Seocho-Gu, Seoul 137-747

Seoul, Korea

■ E-mail: [shbae@kiep.go.kr](mailto:shbae@kiep.go.kr)

■ Please call: 822-3460-1080 if you have any questions.

### ALL ORDERS MUST BE PREPAID

Date of Order: \_\_\_\_\_

Name: Mr / Ms \_\_\_\_\_

Department/Institution: \_\_\_\_\_

Street Address: \_\_\_\_\_ City: \_\_\_\_\_

State / Post Code: \_\_\_\_\_ Country: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Quantity	Title/Author/Series No.	ISBN	Price

• Total Cost of book(s) is US\$ \_\_\_\_\_.

• Cost of postage is US\$ \_\_\_\_\_.

\* Postage charge per copy is US\$ 5 within Asia. For all other countries, the postage charge per copy is US\$ 9.

All orders will be shipped by airmail.

### Payment

☐ Check (payable to KIEP)

☐ International Money Order

☐ Visa Card

☐ Master Card

• Card Number \_\_\_\_\_

• Expiry date \_\_\_\_\_

• Signature \_\_\_\_\_

### Standing Order for Residents Outside Korea

Type of Membership (One-Year)	Annual Fee*	
	Institutions	Individuals
All publications (60-70 titles, including periodicals, annually )	US\$ 500	US\$ 250
Only English publications (10-15 titles annually)	US\$ 300	US\$ 150

\* Airmail charges are included.

\* Subject to change without prior notice.

