

Responding to Foreign Anti-Dumping Investigations: Exclusion of Korean PVC Shrink Film Products from Colombian Anti-Dumping Duties

Fuelled by a protracted global economic recession, antidumping investigations, countervailing duty investigations, safeguard measures and other trade protection measures have become globally prevalent – particularly, antidumping and countervailing duty investigations. A growing number of Korean exporters have fallen victim to this global protectionist sentiment, and Shin & Kim recently represented a Korean exporter in successfully excluding its export products from antidumping duties imposed by the Republic of Colombia.

In March 2013, the Ministry of Commerce, Industry and Tourism of Colombia initiated an antidumping investigation into certain PVC Film products exported from China and Korea pursuant to a petition submitted by Filmtex S.A.S., one of the leading manufacturers of PVC Film products in Colombia. The subjects of the investigation included PVC Rigid Film, PVC Flexible Film, and PVC Shrink Film products exported to Colombia between February 1, 2012 and December 31, 2012. Shin & Kim advised a Korean exporter of PVC Shrink Film, in response to the Colombian authority's antidumping investigation.

By the time the investigation was formally initiated, the Colombian authority had already calculated a dumping margin of 112.91% for PVC Rigid Film products exported from Korea, based on the information submitted by Filmtex. Because PVC Shrink Film shared the same HS Code with PVC Rigid Film – a PVC Film product almost certain to be found a 'dumped product' – the chances of a favorable outcome were slim. Shin & Kim argued that dumping could not be established with respect to its client's PVC Shrink Film, focusing on the fact that PVC Rigid Film and PVC Shrink Film are not 'like products'; when compared to PVC Rigid Film, PVC Shrink Film has to undergo extra processing, has a different function, and above all, has a different market.

After reviewing the arguments submitted by the exporters, importers, and the domestic manufacturers (i.e., the petitioners) of PVC Film products, the Colombian authority rendered its final antidumping determination this month (November 2013). As predicted, the final determination was a finding of dumping for most of the PVC Film products exported from China and Korea, and heavy antidumping duties were imposed on the impugned PVC Film products. However, the Colombian authority excluded PVC Shrink Film from the antidumping duties, thereby allowing Shin & Kim's client to preserve the price competitiveness of its exports in the emerging Colombian market.

When an importing state initiates an antidumping investigation over an exported product, the exporter of the investigated product is recommended to seek expert advice from the very outset of the investigation. In most antidumping investigations, the exporters are pressured to prepare and submit volumes of materials containing detailed information about the exported product, such as its nature, export structure, normal value and export price, within one to two months, which can be overwhelming. An exporter subject to an antidumping investigation should retain competent legal representation from the outset, so that it may establish and maintain a coherent and consistent position throughout the investigation proceeding from beginning to end. In the instant case, Shin & Kim quickly determined that the Colombian authority's main target was PVC Rigid Film, and concentrated on clearly distinguishing the difference between PVC Rigid Film and PVC Shrink Film so as to firmly establish that they are not 'like products'. Shin & Kim further stressed that PVC Shrink Film must not be considered a 'dumped product' based on the dumping margin of the PVC Rigid Film calculated by the Colombian authority. Consequently, Shin & Kim was able to sufficiently differentiate PVC Shrink Film from other PVC Film products (including PVC Rigid Film), most of which were finally determined as 'dumped products' by the Colombian authority.

Should you have any questions regarding any of the foregoing, please feel free to contact us at any time.

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