

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG8/W/3  
20 May 1987

Special Distribution

---

Group of Negotiations on Goods (GATT)

Original: English

Negotiating Group on MTN Agreements  
and Arrangements

COMMUNICATION FROM THE REPUBLIC OF KOREA

The following communication, dated 18 May 1987, has been received from the Republic of Korea with the request that it be circulated to members of the Group.

---

Agreement on Implementation of Article VI  
of the General Agreement on Tariffs and Trade  
(Anti-Dumping Code)

Introduction

Under the agreed Negotiating Plan for this Group, participants are called upon to make suggestions indicating the issues that they wish to raise and to be taken up in the negotiations with the aim of improving, clarifying or expanding agreements and arrangements negotiated in the Tokyo Round of Multilateral Negotiations during the Initial Phase of the negotiating process.

With this end in mind and without prejudice to the possibility of submitting additional proposals for negotiation in the future, and with the intention of promoting expanded accession of developing countries to this particular agreement, the delegation of the Republic of Korea suggests negotiations on the following issues in the context of the Agreement of Implementation of Article VI of the General Agreement on Tariffs and Trade (the Anti-Dumping Code).

A. Article 2.1: Introduced into the commerce of another country  
(in the context of the concept of sale)

Since there is no definition of the concept of "introduced into the commerce of another country", the concept lends itself to such a broad interpretation by Signatories that it allows circumstances where injury can be found in the absence of actual imports. (Being able to find injury in the absence of actual imports seems to be an excessive approach.)

The Code would be significantly clarified through the negotiation of a consensus interpretation of this phrase.

B. Article 2.2: Like product

Despite the existing definition of "like product", it is feared that the term might be so arbitrarily interpreted as to allow including input products (components and parts) in the same investigation as the product itself.

Korea believes that the operation of the Code would be more effective through the negotiation of an amendment or a footnote to this Article clarifying the scope for application of the concept of "like product" in this context.

C. Article 2.4: Export price to a third country

Certain Signatories almost never use "export price to a third country", which is in general more predictable than constructed value, as a basis for determining normal value. This practice may detrimentally affect the interests of exporting countries where the costs and the profit margin used by the investigating authorities in computing constructed value are in excess of those involved in equivalent export transactions to other third countries.

Korea believes that the operation of the Code would become more equitable through the negotiation and implementation of an amendment to this Article to redress such practice.

D. Article 2.4: Constructed value

a) Administrative, selling and other costs

In determining constructed value, certain Signatories often add an amount for administrative, selling and other costs of a type which are not included in the export price, and the proportion of the amount added to cover general expenses is often remote from the activities of the particular company under investigation, or from the relevant realities in exporting countries. (For example, even if the exporter does not incur any

expenses relating to advertising for its export sales because such expenses are paid by the importer, the importing country may add all of the expenses associated with advertising in the domestic market.) Thus, constructed value may be determined at an artificially high level which inflates the dumping margins.

Korea proposes negotiating a footnote to this provision to redress this kind of inequitable practice.

b) Profit

When constructed value is used, there is a danger that dumping margins could be artificially inflated by using a profit margin which is too high. This danger becomes a reality in a certain Signatory's practice imposing a statutory minimum profit margin which Korea believes would not be termed "realistic" if a consensus is sought among Signatories, or in certain Signatories' practice where the method of determining profit may involve the use of information supplied by other companies.

Korea believes that there should be negotiation of a new consensus on this point.

E. Article 2.6: Comparison of normal value and export price

When normal value and export price are not on a comparable basis, the Code provides that due allowance shall be made to effect price comparability. In practice, however, certain Signatories have invoked their technical rules to deny allowances even where the result of denying allowances is to put normal value and export price on different bases.

The Code would be improved through the negotiation of an interpretative footnote to Article 2.6, after "the differences in conditions and terms of sale", which illustrates the items of costs, though not in an exhaustive manner, for which allowances shall be made.

F. Article 3: Determination of injury

To clarify the concept of "threat of material injury", Korea proposes to incorporate the recommendation concerning this concept adopted by the Committee on Anti-Dumping Practices on 31 October 1985, to the extent appropriate, into the Anti-Dumping Code.

With regard to material injury, Korea believes that there should be negotiation of a consensus on whether to recognize the practice of "cumulation" of imports and proposes to examine the possibility of developing (adopting) a market penetration threshold below which importations will be exempted from finding of injury.

G. Article 3.2, 3.4: Price undercutting

a) Meeting competition

In certain Signatory countries, the investigating authorities do not give any weight to evidence that domestic producers have driven prices down themselves and that the imports are merely following these price declines.

b) Comparison between dumping margins and undercutting margins

A causal link between the price of the dumped imports and the injury to domestic producers would not seem to be present where the margin of price undercutting is substantially larger than the dumping margin.

Korea believes that the operation of the Code would become more equitable through the negotiation and implementation of footnotes to Article 3.2 and Article 3.4 that would address these concerns.

H. Article 4.1: Domestic industry

Since there is no definition of "a major proportion" of the total domestic production of the like products, there are substantial differences in the interpretation of this concept from country to country.

The term "domestic industry" would be clarified through the negotiation of an additional footnote to Article 4.1 which would quantify "a major proportion" in this paragraph.

I. Article 5.1: Initiation of investigation

Under the current practice of a certain Signatory, the investigating authorities appear to assume that a case is brought on behalf of the domestic industry unless a majority of the industry actively opposes the case.

To ensure the functioning of the Code as is originally proposed, Korea proposes negotiating an amendment to Article 5.1 to require the request for investigation to contain evidence that it is brought on behalf of the domestic industry as defined in Article 4.

J. Article 6.8: Facts available

At times this provision is used when exporter's replies are late or incomplete even in limited ways. The paragraph might be redrafted to reduce the scope for employing arbitrary methods, or to prevent the punitive use of "the facts available" only because a response is late or does not fully meet the standard of requirement set out by the importing Signatory.

Korea proposes negotiation of an amendment to this Article to address this concern.

K. Article 7: Price undertaking

The acceptance of undertakings to raise prices provides protection to the local industry while not unduly penalizing exporters. The acceptance of an undertaking should be a right granted to exporters and should not be rejected on political grounds. The current language of the Code provides too much discretion to investigating authorities.

The operation of the Code would become more equitable through the negotiation and implementation of an amendment to this Article to address this concern.

L. Article 9.1: Duration of anti-dumping duties

There is no fixed time limit to the duration of the imposition of duties. The Code would be more meaningful if there were a "sunset" provision.

M. Article 9.2: Reviews

In certain Signatory countries, it takes a very long time (often one year or more) for the investigating authorities to start a review upon request, and dumping determinations are usually based on an investigation period which has terminated a year or more before the imposition of measures. Therefore, dumping determinations may continue to be based on out-of-date information for a considerable period of time.

Korea believes that the operation of the Code would be strengthened through the negotiation of a time limit requirement for decision on requests and a new provision enabling exporters to request expedited reviews in certain circumstances. The Code would also be more meaningful if there were a requirement for an obligatory review on the initiative of the investigating authorities after a certain period of time.