

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG10/W/11

22 October 1987

Special Distribution

Group of Negotiations on Goods (GATT)

Negotiating Group on Subsidies
and Countervailing Measures

Original: English

COMMUNICATION FROM KOREA

The following communication has been received from the delegation of Korea with the request that it be circulated to members of the Group.

INTRODUCTION

Under the agreed negotiating plan for the Group on Subsidies and Countervailing Measures, the participants are to submit proposals on issues to be taken up in the initial phase of the negotiating process. According to this negotiating plan, the Korean Delegation has submitted a proposal (MTN.GNG/NG10/W/5) for the Group's consideration at the June meeting. Its contents are contained in the checklist of issues for negotiations prepared by the GATT secretariat.

The Korean Delegation submits further the following elaborations on some points contained in its proposal without excluding the possibility of additional proposals or comments at a later stage.

At the same time, this delegation takes the occasion to express its preliminary views on issues raised by other delegations.

DOMESTIC INDUSTRY

Korea understands that the definition of "domestic industry" is important to the determination of injury and the initiation of a countervailing duty investigation and would like to comment on two relevant points:

(1) The concept of "like product"

Article 6.5 of the Code provides that in determining injury, the term "domestic industry" refers to the domestic producers as a whole of the

like products. The term "like product" is interpreted, in footnote 18 to Article 6.1, to mean a product which is identical, i.e. alike in all respects, to the product under consideration or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

According to the definition given in the Code, it is clear that components, parts or raw agricultural products are not like products to finished or processed products. It follows that the producers of components, parts or raw agricultural products, and the producers of finished or processed products should be regarded as separate industries and the determination of injury ought to be made separately for each industry.

In particular, it is regrettable that in violation of the Code, some signatories are extending countervailing duties imposed on finished products to components or parts of such finished products.

In view of the present GATT and Code provisions, the following four conditions should be satisfied in order to impose countervailing duty on imported components or parts.

1. initiation of a countervailing duty investigation in respect of components or parts.
2. existence of subsidized imports of the components or parts.
3. existence of injury to domestic industries which produce like components or parts.

4. existence of a causal link between the subsidized imports and the injury.

In addition, Korea emphasizes that attempts to extend the scope of the definition of a domestic industry should not be allowed in light of the unilateral application of countervailing duty and possible abuse therefrom.

(2) The concept of "major proportion"

Article 6.5 of the Code provides that the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.

Apparently, there has been a lack of common interpretation of the term "major proportion". In some cases "major proportion" has been interpreted as referring to 50% of the total output while in some other cases 30% only.

Korea believes that agreement on the term "major proportion" would eliminate disputes concerning the standing of petitioners while it would also prevent abuse of the right of petition.

For example, if the "major proportion" were to be designated as 50%, then a petitioner who represents below 50% would not be allowed to file a petition.

INITIATION OF INVESTIGATION

Article 2.1 of the Code provides that an investigation shall normally be initiated upon a written request by or on behalf of the industry affected.

In some signatories the investigating authorities seem to accept a request for investigation even in the absence of evidence that the request is filed by or on behalf of the domestic industry affected, unless a majority of the industry actively opposes such request.

Korea's past experience indicates that the initiation of a countervailing duty investigation itself, irrespective of its findings, could adversely affect the decision making of the relevant parties to the investigation.

In order to protect exporters from undue initiation of the countervailing duty investigation, and prevent the investigation being used as a protectionist measure, Korea sees it as necessary to require the petitioners to verify when filing a petition, that the petition has been filed by or on behalf of the industry affected.

CUMULATIVE INJURY ASSESSMENT

Indiscriminate cumulative injury assessment increases the likelihood of affirmative findings of injury compared to an injury assessment on a exporter-by-exporter basis. It is not clear whether the cumulative injury assessment practice is consistent with the GATT and the Code.

If it is true that small exporters are less likely to cause injury to an importing country than large exporters, it would be fair to give preferable treatment to the small exporters. Korea believes that effort should be made to reach agreement over how to protect small exporters from the indiscriminate imposition of countervailing duty.

A possible remedy would be to determine for each exporter whether the subsidized imports of the exporter have significantly contributed to the material injury made to the domestic industry. If the findings are negative, the exporter should be exempted from the investigation.

It may also be useful in addressing this problem to establish a market share level. If the market share of an exporter is below the established level, the investigating authorities should demonstrate the need to initiate an investigation against the imports from the exporter.

DE MINIMIS SUBSIDY

Article 2.12 of the Code provides that an investigation shall be terminated when the investigating authorities are satisfied that either that no subsidy exists or that the effect of the alleged subsidy on the industry is not such as to cause injury.

It stands to reason that in case of a de minimis subsidy, a causal link does not exist between subsidized imports and material injury to a domestic industry.

Korea believes that it would be meaningful to reach agreement on the level below which a subsidy should be deemed to be de minimis.

FACTS AVAILABLE

Article 2.9 of the Code provides that when an interested party fails to provide necessary information, findings may be made on the basis of the facts available. Some signatories resort to this provision in order to justify making adverse factual inferences against the exporters.

In the cases where an interested party has not been able to provide the required information within a prescribed time period, or has not been able to meet the standard of information requested by the investigating authorities (e.g. computer generated formats and printouts), it would be equitable, before resorting to the facts available clause, to extend every opportunity to the exporters to meet the requirements of the investigating authorities.

Korea believes that agreement should be reached on this matter.

REVIEW

Article 4.7 and 4.9 of the Code provides that the investigating authorities shall review the need for both the continuation of any undertaking, or for continued imposition of duty, where warranted. This will be done on their own initiative or if an interested party requests and substantiates a need for

review with positive information.

In practice, it takes a long time to obtain a review and there being no clear guidelines for granting one, certain signatories often do not respond expeditiously to request for review. Once a review is started it may take one year or more to conclude.

The delay in the initiation or conducting of a review fails to take into account the potential changes in competitive circumstances in the market and the disadvantages to the exporters.

Korea believes that there should be agreement on a time limit for undertaking a review request, as well as for a decision once a review has been initiated.

SUNSET CLAUSE

Under the Code, a countervailing duty or an undertaking shall remain in force only so long as necessary to counteract the subsidization which is causing injury.

In practice, the need for continuation is determined after review, but there may be cases in which the protective measures remain in effect only because none of the parties concerned requested a review or the investigating authorities had no evidence to warrant the need for a review.

Korea believes that the introduction of a sunset clause would help to resolve this problem.

DEFINITION OF A SUBSIDY

In so far as the definition of a subsidy is concerned, Korea believes that there must be agreement as to whether a charge on the public account is an indispensable component of a subsidy.

A signatory has proposed to deal with the problem of industry targeting. This signatory said, in its proposal, that "industry targeting consists of a government plan or scheme of coordinated measures to assist specific export-oriented industries."

Korea wonders whether international agreement can be reached on the definition and scope of industry targeting. Without agreement on these definitions, attempts to address the problems related to industry targeting may be futile.

Furthermore, it must be noted that the Code recognizes domestic subsidies as important instruments in the promotion of social and economical policy objectives.

PUBLIC INTEREST CLAUSE

As a signatory pointed out at the June meeting, measures to counteract subsidized imports should not be mandatory under national legislation and therefore, should be subject to a public interest clause.

Korea believes that, before deciding to take countervailing measures, interests of consumers and downstream industries relying on subsidized imports also should be taken into consideration.