

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG10/W/21
17 June 1988

Special Distribution

Group of Negotiations on Goods (GATT)

Original: English

Negotiating Group on Subsidies
and Countervailing Measures

STATEMENT MADE BY THE DELEGATION OF KOREA AT
THE MEETING HELD ON 1-2 JUNE 1988

Regarding Article XVI

1. Subsidies are supposed to affect international trade, bringing about an inefficient allocation of resources by increasing exports or substituting imports, and to distort the market process in favour of subsidized product by artificially increasing revenues or decreasing costs.
2. In view of the above, Article XVI of the GATT, recognizing the risk of prejudicing seriously the interests of other signatories, provides for disciplines regarding the use of subsidies. However, it does not intend to prohibit subsidies as such but intends to restrain only the negative effects of them.
3. Thus, opinions overstressing both the trade-distorting effects and the necessity to strengthen disciplines on subsidies of all kinds or attempts to condemn subsidies per se, interpret Article XVI in a way that is too broad and misleading. It is incorrect to say that generally all subsidies distort resource allocation.

4. In certain industries where the private production costs incurred by the firm exceed the true social cost, the supply of the goods concerned is liable to be lower and the price higher than the socially desirable level. In such cases intervention by the government (this may be called subsidy or incentive) is welcome and justified. Here, subsidies as one of practical and effective policy measures increase the social utility and help to ensure an efficient resource allocation.

There are many examples of this class of subsidies :governmental supports for R&D reducing the risks to private firms, and enabling them to introduce new technologies which enhances the welfare of human beings through increased quality of life ; assistance for preventing environmental pollution ; and other subsidies for desirable social and economic policy objectives, as referred to in Article 11 of the Code.

It is very difficult to regard this kind of assistance as "subsidies to increase exports or to reduce imports" mentioned in Article XVI. As their effects on trade are implicit, unintentional and incidental, it is clear that they should be tolerated.

5. In conclusion, Article XVI is not aimed to restrain all types of subsidies but to discipline those subsidies which affect trade or have negative effects on it. Therefore, subsidies which because of their nature, are important instruments of fair economic or social policies of governments shall not be restricted or condemned on account of their incidental effects on trade.

In addition, as the nature, objective or intention of subsidies are very important, any new attempts to categorize subsidies from a biased viewpoint by overemphasizing their effects and intentionally disregarding their nature are to be most strongly discouraged.

Regarding Article VI

6. Article VI of GATT bestows on the importing country the right to resort to exceptional counter-measures (countervailing duties) against the unfair use of subsidies by the exporting country. Indeed the Article is something of an anomaly, namely an "exception" to GATT, as it is allowing certain measures that would otherwise be a violation of GATT.
7. It is extremely difficult to discern in each case whether an activity of the exporting country is unfair or not, whether counter-measures of the importing country are legitimate remedies or retaliatory protectionist overreactions. It therefore becomes essential to prevent misuse and/or abuse of countervailing duties.
8. In short, Article VI was written to allow the importing country exceptional counter-measures on the condition of not offsetting comparative advantage and not impeding international trade, rather than to give them the right to countervail without limitation.
9. At present, there are two problems as regards abuse of countervailing duties.

Different meanings between subsidies in Article VI and subsidies in Article XVI have caused a lot of confusion and uncertainty in the world trade. While Article XVI disciplines "subsidies which increase exports or reduce imports", Article VI makes it possible to countervail "subsidies which are granted on the manufacture, production or export." Because of different interpretations of the notion of subsidies, there have been many instances of countervailing against subsidies of a nature irrelevant to trade.

Non-observance of the consultation provision of Article 3 of the Code makes "unilaterality" of countervailing actions prominent. Discharging the obligation to consult is essential in order to avoid unilateral action and arrive at mutually agreed solutions.

Relationship between Article XVI and Article VI

10. Article XVI and Article VI each have a different legislative history and purpose. Any a priori relationship between them does not exist. This "natural" non-relationship has caused serious confusion and uncertainties, requiring corrective measures.
11. First of all, recognizing that a major cause of disputes is the different meanings of "subsidy" in the two Articles, and the absence of any agreed or commonly applied definition of subsidy, Korea believes that there is an overwhelming need for a definition of subsidy which can be applied uniformly under the two Articles.

Although it would be technically difficult to elaborate a single definition appropriate for all situations, there should, at a minimum be a consensus on the essential elements constituting a subsidy, as criteria for determining the existence of a subsidy.

On the basis of such a consensus, the next step required would be to try to clarify subsidies which are subject to the disciplines of Article XVI on account of their effects on trade, as well as to delineate the class of subsidies governed by Article VI through discussion of additional criteria for countervailability.

It would be desirable to elaborate a positive list of permitted domestic subsidies as a guideline for preventing abuse of countervailing actions and for practical convenience, so as to reduce a good deal of present disputes and difficulties.

12. Secondly, in order to establish a relationship between the two Articles the present interpretation that for countervailing under Article VI, it is irrelevant, whether or not subsidies are authorized under Article XVI, should be reconsidered.

Korea has, of course, no intention of denying the basic principle that a provision cannot be applied so as to result a violation of any other provision of GATT.

However, it should be fully recognized that, given that Article VI and Article XVI discipline the same or closely related phenomena, the present practice of applying Article VI without any regard to Article XVI has brought about many difficulties.

The desirable solution would be to agree that disciplines on subsidies are defined under Article XVI while relevant cases, countervailing actions justified under Article VI.