

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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COMMUNICATION FROM THE REPUBLIC OF KOREA

The following communication from the Republic of Korea was received on 27 October 1988.

Submission by the Republic of Korea on Anti-Dumping Code

In document MTN.GNG/NG8/W/3 and 10, the Korean delegation has outlined views on possible improvement to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (Anti-Dumping Code).

With the aim of facilitating the work of the MTN Negotiating Group, the Korean delegation is presenting the concrete negotiating text for further consideration on the above issues.

With this end in mind and without prejudice to the possibility of submitting additional proposals for negotiation in the future, the Korean delegation desires that the text be used as a basis for negotiations in this Negotiating Group.

Code No.	Current Anti-Dumping Code	Proposed Amendment
Article 1.		
Article 2.1	<p>For the purpose of this Code a product is to be considered as being dumped, i.e. <u>introduced into the commerce</u> of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.</p>	<p>- Introduced into the commerce -</p> <hr/> <p>(Footnote to Article 2.1) A product shall not be considered to have been introduced into the commerce of a country unless the product has been imported into such country, or a contract has been made for the importation of the product into such country. The fact that the product has been offered for sale in a country, whether or not the offer was irrevocable, shall not be sufficient for the product to be considered to have been "introduced into the commerce" of that country.</p>
Article 2.2	<p>Throughout this Code the term "<u>like product</u>" ("product similaire") shall be interpreted 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.</p>	<hr/> <p>(Footnote to Article 2.2) Components or parts shall not be considered like products to the product produced from the components or parts ("finished product") unless each component or part, considered individually, has characteristics closely resembling those of the finished product. No anti-dumping duties may be imposed upon imports of components or parts based solely on findings of (1) dumping of the finished product, and (2) material injury or threat of material injury to the domestic industry producing the finished product, unless the components or parts are found to be like products to the finished product. In addition, no anti-dumping duties may be imposed upon imports of a finished product based solely on findings (1) dumping of a component or part,</p>

Code No.	Current Anti-Dumping Code	Proposed Amendment
Article 2.2 cont'd		(Footnote cont'd) and (2) material injury or threat of material injury to the domestic industry producing component or part, unless the finished product is found to be like product to component or part.
Article 2.3	In the case where products are not imported directly from the country of origin but are exported to the country of importation from an intermediate country, the price at which the products are sold from the country of export to the country of importation shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely trans-shipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.	(Article 2.3 should be amended as follows:) In the case where products are not imported directly from the country of origin but are exported to the investigating country from an intermediate country, the price at which the products are exported from the intermediate to the investigating country shall normally be compared with the comparable price in the intermediate country. However, comparison may be made with the price in the country of origin, if, for example, the products are merely trans-shipped through the intermediate country, or there is no comparable price for them in the intermediate country. A product produced in an intermediate country from parts or components produced in, or exported from, a country whose exports of the product, or of the parts or components of the product, are subject to anti-dumping duties in the investigating country shall not be subject to anti-dumping duties by the investigating country unless it is found that imports of the product from the intermediate country are being dumped in the investigating country and that such imports are causing or threatening material injury to the domestic industry producing the like product in the investigating country.

Code No.	Current Anti-Dumping Code	Proposed Amendment
Article 2.4	<p>When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to any third country which may be the highest such export price but should be a representative price, or with the cost of production in the country of origin plus <u>a reasonable amount for administrative, selling and any other costs and for profits. As a general rule, the addition for profit shall not exceed the profit normally realized on sales of products of the same general category in the domestic market of the country of origin.</u></p>	<p>- Constructed value methodology -</p> <p>(Footnote to Article 2.4) The amount for administrative, selling and other costs shall be based on the actual costs incurred by the exporter in the domestic market of the country of origin.</p> <p>(Delete final sentence of Article 2.4 and replace with the following:)</p> <p>The addition for profit shall be based on, and shall not exceed, the actual profit earned by the exporter on sales in the exporting country of products of the same general category as the product under consideration.</p> <p>- Export price to a third country -</p> <p>(Following paragraph will be added to the end of Article 2.4:)</p> <p>In determining the margin of dumping, however, the third country sales value shall be used, before a comparison based on the cost of production. Before a comparison based on the cost of production is used the exporter shall be given sufficient time to provide the price of the like product exported to a third country selected on the basis of the following criteria:</p> <p>(a) the product exported to such third country has a greater degree of similarity to the product exported to the country of importation than the product exported to other third countries;</p>

Code No.	Current Anti-Dumping Code	Proposed Amendment
Article 2.4 cont'd		(b) the volume of sales by quantity to such third country is the largest sales volume to any third country; and (c) the market in such third country is most comparable, in terms of its organization and structure, to the market in the country of importation of the product under consideration.
Article 2.5		
Article 2.6	In order to effect a fair comparison between the export price and the domestic price in the exporting country (or the country of origin) or, if applicable, the price established pursuant to the provision of Article VI:I(b) of the General Agreement, the two prices shall be compared at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for the differences in conditions and terms of sale, for the differences in taxation, and for the other differences affecting <u>price comparability</u> . <u>In the cases referred to in paragraph 5 of Article 2</u> allowance for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made.	- Comparison of normal value and export price - ---- <u>price comparability</u> . In particular, (a) Due allowances shall be made if the investigative authorities determine that the price difference results, in whole or in part, from: (i) the fact that the individual order quantities of the exporter's sales to one market are larger than the quantities of the exporter's sales to the other market; (ii) the fact that the aggregate volume of the product purchased by an individual customer in one market is larger than the aggregate volume of the product purchased by an individual customer in the other; or (iii) the fact that the total volume of the product sold in one market is larger than the total volume sold in the other, and that the difference in such volumes results in identifiable cost savings.

Code No.	Current Anti-Dumping Code	Proposed Amendment
Article 2.6 cont'd		<p data-bbox="978 421 1414 1312">(b) Where sales at different levels of trade are compared, due allowances shall be made if the investigative authorities determine that the price difference results, in whole or in part, from the differences in the levels of trade. The adjustment for differences in levels of trade may be determined from evidence that expenses incurred on sales at one level of trade would not have been incurred had the sales been made at the level of trade of the sales in the other market being compared. The fact that sales have not been made at both levels of trade in the same market shall not prevent an adjustment. The adjustment may be based, however, on evidence of the differences in prices between sales at both levels of trade in the home market or in any export market, if sales were made at both levels of trade in that market, or on evidence of the costs incurred by unrelated parties who purchase at one level of trade and resell at the other.</p> <p data-bbox="978 1335 1414 1697">(c) Due allowances shall be made if the investigative authorities determine that the price difference results, in whole or in part, from differences in the selling expenses incurred on the sales under consideration. The adjustment shall reflect the differences in all selling expenses, and shall not be limited to the differences in direct selling expenses.</p> <p data-bbox="978 1720 1414 1933">All price comparisons shall be made net of any indirect taxes that are imposed directly upon the product when sold in one market, but which are rebated or not collected when the product is sold in the other market.</p> <p data-bbox="978 1955 1414 2011"><u>In the cases referred to</u> _____, should also be made.</p>

Code No.	Current Anti-Dumping Code	Proposed Amendment
Article 2.7		
Article 3.1		
Article 3.2	With regard to volume of the dumped imports investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing <u>country</u> . <u>With</u> regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.	<p>- Determination of injury -</p> <p>(Insert following sentence between "country" and "with":)</p> <p>An affirmative finding of material injury or threat of material injury shall not be made where dumped imports represent 2 per cent or less, by value, of the total market, for the like product in the investigating country.</p> <p>- Price undercutting: (a) meeting competition; (b) comparison between dumping margin and undercutting margin -</p> <p>(Following paragraph will be added to the end of Article 3.2:)</p> <p>No determination of injury shall be made, however, where it can be shown that dumped imports were priced to meet competitive market prices set by domestic or foreign producers which are not under investigation for dumping.</p> <p>In determining whether dumped imports are causing material injury, the relationship between the size of the dumping margin and the margins of underselling of like domestic products shall also be taken into account.</p>
Article 3.4		
3.5		
3.6		
3.7		

Code No.	Current Anti-Dumping Code	Proposed Amendment
Article 3.8		<p>- Determination of Injury (Cumulation) -</p> <p>(Create newly Article 3.8 with following paragraph:)</p> <p>In making determinations concerning the existence of actual material injury to the domestic industry producing the like product, the investigating authorities may cumulatively assess the volume and effect of imports from two or more countries subject to investigation if such imports compete, in the market for the like product in the investigating country, with each other and with the like products produced by the domestic industry. However, imports from a country whose imports constitute 2 per cent or less of the total market for the like product in the investigating country may not be cumulatively considered with imports from other countries under investigation. Imports already subject to anti-dumping duties or countervailing duties, or subject only to a countervailing duty investigation, may not be considered cumulatively with the imports under investigation.</p>
Article 4.1	<p>In determining injury 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, except that:</p> <p>(i) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the industry may be interpreted as referring to the rest of the producers;</p>	<p>- Domestic industry -</p> <p>In determining injury 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 like products constitutes at least 50 per cent, by value, of the total domestic production of those products except that:</p> <p>(i) _____</p> <p>(ii) _____</p>

Code No.	Current Anti-Dumping Code	Proposed Amendment
	<p>(ii) in exceptional circumstances the territory of a party may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.</p>	
<p>Article 4.2 4.3 4.4</p>		
Article 5.1	<p>An investigation to determine the existence, degree and effect of any alleged dumping shall normally be initiated upon a written request by or on behalf of the industry affected. The request shall include sufficient evidence of (a) dumping; (b) injury within the meaning of Article VI of the General Agreement as interpreted by this code and (c) a causal link between the dumped imports and the alleged injury. If in special circumstances the authorities concerned decide to initiate an investigation without having received such a request, they shall proceed only if they have sufficient evidence on all points under (a) to (c) above.</p>	<p>- Initiation of investigation -</p> <hr/> <p>---- <u>the alleged injury</u>. If the authorities determine that the request is not made on behalf of the industry affected, an investigation shall not be initiated, or, if the requested investigation has already been initiated, it shall be terminated. It is the obligation of the authorities to satisfy themselves that the request is made on behalf of the industry affected.</p>

Code No.	Current Anti-Dumping Code	Proposed Amendment
Article 5.2 - 5.5		
Article 6.1 - 6.7		
Article 6.8	In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final findings, affirmative or negative, may be made on the basis of the facts available.	<p>- Facts available -</p> <p>(Following sentence will be added to Article 6.8:)</p> <p>With respect to the use of facts available, the provisions of the Annex Concerning the Use of Facts Available in Terms of Article 6.8 shall apply.</p> <p>(Annex to the Code should read as follows:)</p> <p style="text-align: center;">ANNEX CONCERNING THE USE OF FACTS AVAILABLE IN TERMS OF ARTICLE 6.8</p>
Article 6.9		
Article 7.1		
Article 7.2	Price undertakings shall not be sought or accepted from exporters unless the authorities of the importing country have initiated an investigation in accordance with the provision of Article 5 of this Code. Undertakings offered need not be accepted if the authorities consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons.	<p>- Price undertaking -</p> <p>Price undertakings shall be accepted unless the authorities determine that the undertaking offered cannot be effectively monitored. If the authorities determine that an undertaking cannot be effectively monitored, they shall provide interested parties notice of that determination, an explanation of the reasons for the determination, and an opportunity to comment, before the determination is made final.</p>
Article 7.3 - 7.7		
Article 8		

Code No.	Current Anti-Dumping Code	Proposed Amendment
Article 9.1	An anti-dumping duty shall remain in force only as long as, and to the extent necessary to counteract dumping which is causing injury.	<p data-bbox="943 421 1386 443">- Duration of anti-dumping duties -</p> <p data-bbox="943 483 1386 1189">An anti-dumping duty imposed as a result of an investigation conducted under this Code shall automatically expire three years from the date of completion of the investigation, unless the authorities concerned receive written evidence from or on behalf of the domestic industry producing the like product that elimination of such duty would result in material injury, or threat of material injury, to the domestic industry. In such a case, the authorities shall conduct a review to determine whether elimination of the anti-dumping duty would result in material injury, or threat of material injury, to the domestic industry and such review shall be considered an investigation for purposes of this Article 9.1.</p>
Article 9.2	The investigating authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or if any interested party so requests and submits positive information substantiating the need for review.	- Reviews -
Article 9.3		<p data-bbox="943 1473 1386 1536">(Following paragraphs will be newly created:)</p> <p data-bbox="943 1570 1386 1839">A request for a review may normally be submitted by an interested party no sooner than one year after public notice is given of the finding by the investigative authorities that all requirements for the imposition of anti-dumping duties have been fulfilled, and at one year intervals thereafter.</p>

Code No.	Current Anti-Dumping Code	Proposed Amendment
Article 9.3 cont'd		<p>The authorities shall conduct such a review if evidence is submitted that the weighted average margin of dumping will differ from the margin of dumping found in the most recent investigation or review by more than 10 per cent of the margin of dumping, or that there would be no material injury or threat of material injury to the domestic industry producing the like product if the anti-dumping duties were to be removed.</p>
Article 9.4		<p>The authorities shall respond to any request for a review within three months of the date the request for the review was filed, and such response shall state the authorities' decision to conduct or not to conduct the review, as the case may be.</p> <p>If the authorities decide not to conduct a review, such response shall also state the reasons for denying the requested review. If the authorities decide to conduct a review, they shall complete the review within twelve months of the date on which the authorities announced their decision to conduct the review.</p>

ANNEX

Concerning the Use of Facts Available
in Terms of Article 6.8

1. As soon as possible after the initiation of the investigation, the investigating authorities shall specify in detail the information required from any directly interested party, and the way in which that information should be structured by the interested party in its response. The investigating authorities shall also ensure that the party is aware that if information is not supplied within a reasonable time span, the investigating authorities will be free to make decisions on the basis of the facts available, including those contained in the complaint by the domestic industry.
2. The investigating authorities may also request that an interested party provide its response in a particular medium (e.g. computer tape) or computer language. Where such a request is made, the investigating authorities shall consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and shall not request the company to use for its response a computer system other than that used by the firm. The investigating authority shall not maintain a request for response in a particular medium or computer language, and the response need not be given in that particular medium or computer language, if the interested party does not maintain computerized accounts or if presenting the response in a particular medium or computer language would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble.
3. All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties and which is supplied in a timely fashion and, where applicable, supplied in a medium or computer language requested by the investigating authorities shall be taken into account when findings are made. If a party does not respond in the preferred medium or computer language because of the circumstances set out in paragraph 2, this shall not be considered to significantly impede the investigation.
4. Where the investigating authorities do not have the ability to process information if provided in a particular medium (e.g. computer tape) the information should be supplied in the form of written material or any other form acceptable to the investigating authorities.
5. Even though the information provided may not be ideal in all respects this factor, in itself, shall not justify the investigating authorities from disregarding it since the interested party may have acted to the best of its ability.

6. If evidence or information is not accepted, the supplying party shall be informed forthwith of the reasons thereof and have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the investigating authorities as not being satisfactory, the reasons for rejection of such evidence or information shall be given in any published findings.

7. If the investigating authorities have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the complaint, they shall do so with special circumspection. In such cases, the authorities shall check the reasonableness of the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not co-operate and thus relevant information is being withheld from the investigating authorities this situation could lead to a result which is less favourable to the party than if the party did co-operate.