MULTILATERAL TRADE NEGOTIATIONS THE URUGUAY ROUND

RESTRICTED

MTN.GNG/NG8/W/40/Add.1
22 November 1988

Special Distribution

Group of Negotiations on Goods (GATT)
Negotiating Group on MTN Agreements and Arrangements

Original: English

EXPLANATIONS BY THE REPUBLIC OF KOREA ON THE OCCASION OF SUBMITTING CONCRETE NEGOTIATING TEXT ON THE ANTI-DUMPING CODE (28 OCTOBER 1988)

Addendum

1. Introduced into the commerce of one country

We have proposed an addition of a footnote to Article 2.1 to make clearer the definition "introduced into the commerce of a country". We are proposing that 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.

The purpose of this footnote is to refrain investigating authorities from basing anti-dumping measures on offers to sell, where there are no actual sales or imports.

2. Like products

Concerning the like product issue, we are proposing a footnote to Article 2.2 and to the amendment of Article 2.3.

The proposals are to clarify the interpretation of the Code, bearing in mind the discussions among some participants concerning this issue.

Our proposals are to refrain countries from applying anti-dumping duties to products manufactured within the importing country and an intermediate country from components imported from a country subject to an anti-dumping duty unless such imports are found to be dumped and causing or threatening material injury to the domestic industry producing the like product in the investigating country.

Secondly, the proposed amendment is designed to prevent imposition of anti-dumping duties on imports of a finished product, when there is an anti-dumping order on components of the finished product, but none on the product itself. We have also made a few changes in the language of Article 2.3 to make its meaning clearer.

GATT SECRETARIAT
UR-88-0581

3. Improvement of the method of conducting a comparison based on the cost of production (constructed value methodology)

In Article 2.4, reasonable amount for administrative selling and any other cost shall be added to the cost of production. There have been many inconsistencies across the signatories in applying that reasonable amount. To reduce the inconsistencies, and, in many cases, the addition of unreasonably large amounts for administrative, selling and other costs, we are proposing a footnote to Article 2.4 that 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.

The addition of reasonable amounts for profit to the cost of production in Article 2.4 has also shown inconsistencies in its application across signatories.

We are proposing an amendment to Article 2.4 to the effect that 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.

4. Export price to a third country

The Code provides that, when home-market sales do not permit a proper comparison, the normal value used for comparison shall be determined by reference to either the prices of sales to third countries or constructed value. The Code indicates no preference between these two alternatives.

Problems arise because user countries generally shift into the constructed value bases without regard to the provision that normal values may be based on sales to third countries. This practice may detrimentally affect the interests of exporting countries where the costs and the profit margins used by the investigating authorities in computing constructed value are in excess of those incurred and realized by the exporter in the domestic market of the country of origin.

Under the Code dumping is normally related to the pricing practices of a company of one signatory in the market of another signatory. If there is an inadequate number of home-market sales to permit proper comparison, it would be reasonable to first review the export prices to third countries and that prices of like products to third countries should be the basis for establishing normal value, if there is sufficient evidence available to substantiate the prices of like products exported to third countries.

To reflect this order of preference, we are proposing an amendment to Article 2.4 that, before a comparison based on the cost of production is used, the exporter shall be given sufficient time to provide the comparable price of the like product exported to a third country.

5. Comparison of normal value and export price

Article 2.6 calls for all comparisons to be made normally on an ex-factory basis and at the same level of trade with due allowances made for the difference in conditions and terms of sale. However, the actual

administration of importing countries may diverge in the granting of allowances for the differences in conditions and terms of sale. There is a tendency by investigating authorities to ignore quantity differentials, and trade level adjustments or to minimize such deductions. In some instances, a distinction has been made between direct and indirect costs and only direct costs have been allowed.

There are instances where substantial costs incurred in the domestic market (e.g. advertising costs and distribution overheads) have not been qualified for an allowance. This leads to an artificially inflated normal value. Where a company sells both in the export and in its home market through distribution subsidiaries, all costs (including overheads) should be subtracted from the export price side as well as be subtracted from the normal value. If different allowances are calculated for normal value and the export price, it artificially establishes a dumping margin even if the home market price and the export price are identical.

To reduce these inconsistencies in applying comparison between the export price and the domestic price in the exporting country, we amend Article 2.6 to allow for more fully and explicitly quantity differentials, differences in levels of trade, differences in selling expenses, and differences in taxation.

6. Determination of injury

We have amended Article 3.2 and add a new section to Article 3 to tackle three issues concerning determination of injury.

Firstly, we are proposing minimum market penetration threshold of 2 per cent.

Secondly, we have proposed that dumping shall not be determined where dumped imports were priced to meet competitive market prices set by domestic or foreign producers which are not under investigation for dumping. We have also proposed that the relationship between the size of the dumping margin and the margins of underselling of the domestic products shall also be taken into account in determining material injury.

Thirdly, we are proposing that cumulation is allowed when imports from two or more countries subject to investigation compete with each other and with the like products produced by the domestic industry of the investigating country.

However, it is proposed that imports from a country whose imports constitute 2 per cent or less of the total market for the like product may not be cumulatively considered with imports from other countries under investigation.

Imports already subject to anti-dumping duties or countervailing duties, or imports subject only to a countervailing duty investigation, may not be considered cumulatively with the imports under investigation.

7. Domestic industry in the determination of injury

We have proposed an amendment of Article 4.1 to define a major proportion of the total domestic production of the like products to be at least 50 per cent by value of the total domestic production of the like products.

8. Initiation of investigation

Article 5.1 provides that an investigation should normally be initiated upon a written request by or on behalf of the industry affected.

There are instances in which the investigating authorities appear to have assumed that a written request has been made on behalf of "the domestic industry" although the complainants may not represent all of the production of like products in the country or those of them whose collective output represents a major proportion of the total production of those products. Investigating authorities appear to assume also that a case is brought on behalf of a "domestic industry" unless a majority of the industry actively opposes the written request.

The assumption of the investigating authorities that a case is brought on behalf of the domestic industry as a whole unless a majority of the industry actively opposes the case places a burden on those that do not support imposition of an off-setting duty.

To remedy these problems, Korea has proposed to amend Article 5.1 to stipulate that it is the obligation of the authorities to satisfy themselves that the request is made on behalf of the industries affected.

9. Facts available

We have proposed an amendment to Article 6.8 to incorporate the Recommendations of the Anti-Dumping Committee on the "facts available".

10. Price undertaking

An anti-dumping action under the Code is intended to eliminate the margin of dumping and the alleged injury to the domestic industry rather than penalize exporters because of their past pricing behaviour. Article 7 of the Anti-Dumping Code provides for the termination of an investigation if there is receipt of a price undertaking from the exporters which satisfies the investigating authorities that the injurious effect of the dumping is eliminated.

To facilitate the acceptance of a price undertaking by the investigating authorities, we have proposed by amending Article 7.2 that 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.

11. Duration of anti-dumping duties

Under the Anti-Dumping Code, anti-dumping duties shall remain in force only as long as they are necessary to counteract the dumping that is causing injury.

Normally the need for their continuance is established during administrative reviews by the investigating authorities. But there may be circumstances in which the anti-dumping measures remain in force only because none of the parties have evidence to support the need for a review. To ensure that anti-dumping duties are not maintained indefinitely without review, we have proposed to amend Article 9.1.

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 the elimination of the anti-dumping duty would result in material injury, or threat of material injury to the domestic industry.

12. Reviews

Article 9.2 of the Anti-Dumping Code states "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".

In practice, it takes a very long time to obtain a review. Since there are no clear guidelines for granting a review, certain signatories often do not respond expeditiously to begin a review after an application is filed. Once a review is started, it may take one year or more to conclude and in certain signatory countries a review may not be requested for one year after the measures are implemented. In practice, it may take three years or more from the time a measure is imposed to obtain a review.

To improve this situation, we have proposed to amend Article 9 of the Code.

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. 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 to the domestic industry producing the like product if the anti-dumping duties were to be removed.

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.

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 will complete the review within twelve months of the date on which the authorities announced their decision to conduct the review.