

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

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SUBMISSION BY THE REPUBLIC OF KOREA  
ON THE ANTI-DUMPING CODE

Addendum

At the meeting of 20 November 1989 the Korean delegation submitted the following proposals as a contribution to further intensive discussions for the improvement of the Anti-Dumping Code without prejudice to the possibility of submitting further proposals, and with the wish that this text, together with document MTN.GNG/NG8/W/40 be used as a basis for negotiations.

A. Export Price and subsidiary expenses (Article 2:5)

In order for a determination of dumping to be reasonable and fair, the adjustments to sales in each market must be performed in a consistent and balanced manner. In a certain signatory, however, the practice has developed of using the prices of sales to related parties in the home market, but not those of sales to related parties in the importing country. The signatory also deducts certain expenses incurred by related subsidiaries in the import country, but does not make comparable adjustments for subsidiaries in the home market. Since these practices can increase dumping margins, or create margins where none, in fact, exist, the Code must be amended to prevent such distorted practices. This amendment proposes to redress these inequities by establishing a preference for the actual export price. Under the amendment, the actual export price can be rejected only if the price is affected by a relationship of ownership or control between the exporter and the importer. This amendment also provides guidance concerning the treatment of further processing in the country of importation.

(Proposed amendment)<sup>1</sup>

Article 2:5 should be amended as follows:

In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of [association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the

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<sup>1</sup> Bracketed text to be deleted and underlined text to be inserted.

basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.] a relationship of ownership or control between the exporter and the importer, the export price may be constructed on the basis of the price at which the imported product is first resold to an independent buyer, or if the products are not resold to an independent buyer, on such reasonable basis as the authorities may determine. In constructing the export price based upon sales to an independent buyer, an adjustment shall be made for any change in value attributed to the product by further process of manufacture or assembly after importation, by deducting the value of any additional materials or labour to the extent necessary, but not more than the extent necessary, to make the value of the product that is resold to an independent buyer equivalent to the value of the product imported.

Footnote to Article 2:5

Similarly, in constructing the domestic price of the product in the exporting country, or any substitutes for domestic price under Article 2:4, based upon sales to an independent buyer, an adjustment shall be made for any change in value attributed to the product by further process of manufacture or assembly, by deducting the value of any additional materials or labour to the extent necessary, but not more than the extent necessary, to make the value of the product that is resold to an independent buyer equivalent to the value of the product as sold to the related party.

B. Price adjustments after an investigation (new Article 2:8)

In view of the fact that anti-dumping laws, by definition, are intended to prevent sales below fair value, price changes after an anti-dumping investigation are fully consistent with the purpose of anti-dumping laws. Accordingly, the Code should establish that such price changes should not be deemed fictitious, in the absence of other evidence.

(Proposed amendment)

Create new Article 2:8 as follows:

Exporters are expected to revise domestic and export prices after an investigation to avoid dumping. Accordingly, the occurrence of price changes in any market after an investigation shall not be deemed fictitious, in the absence of other evidence.

C. Exchange Rates (new Article 2:9)

Signatories have developed conflicting practices concerning the comparison of sales denominated in different currencies during periods of fluctuating or rapidly changing exchange rates. The Code should establish a consistent rule requiring administering authorities to ignore margins caused by temporary exchange rate fluctuations, and providing that an exporter shall have a reasonable period in which to adjust prices in response to sustained exchange rate fluctuations.

(Proposed amendment)

Create new Article 2:9 as follows:

Margins or any increase in margins caused by temporary exchange rate fluctuations shall be ignored. Margins or any increase in margins caused by sustained exchange rate fluctuations shall be ignored, unless an exporter fails to change prices within X days.

D. Public Interest (Article 3:1 and 3:5)

The current Anti-dumping Code requires signatories to consider only the impact of allegedly dumped imports on domestic producers of products like those under investigation. The interests of industries that may benefit from low-priced imports, as well as other countervailing public interests, are not taken into account. The Code should be amended to require the administering authorities to take into account the beneficial effect that competitively priced imports may have on the broader public interest of the importing country, including industries purchasing such imports for production.

(Proposed amendment)

Article 3:1 should be amended as follows:

A determination of injury for purposes of Article VI of the General Agreement shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and their effect on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products and on other interests in the domestic economy, including the interests of producers purchasing for production the imported or like products.

Article 3:5 also should be amended as follows:

The effect of the dumped imports shall be assessed in relation to the domestic production of the like product, when available data permit the separate identification of production in terms of such criteria as; the production process, the producers' realizations, profits. When the domestic production of the like product has no separate identity in these terms the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided. The effect of the dumped imports on the public interest shall be assessed in terms of such criteria as the production, competitiveness, and profitability of firms purchasing the imports; the interests of consumers; and the degree of competition or concentration in the domestic industry producing the like product.

E. Advisory rulings (new Article 5:6)

This new provision required the establishment of procedures for the issuance of rulings. Such procedures would permit firms to make business decisions on the basis of greater certainty and predictability, and to take corrective action to avoid dumping.

(Proposed amendment)

Create new Article 5:6 as follows:

Each party shall establish procedures for the issuance of rulings concerning specifically described situations arising under its anti-dumping laws, regulations, and administrative procedures. Rulings with confidential information deleted shall be maintained and made available to the public for inspection.

F. Use of data and methodologies

The current Code grants administering authorities wide discretion regarding the use of data and the specific methodologies used to make adjustments and perform comparisons. This excessive discretion has given rise to abuses, in which unbalanced methodologies systematically skew comparisons against the interests of exporters. This "procedural protectionism" could be redressed, in part, by requiring the use of actual costs for price adjustments, cost and expense allocations recorded in a company's books in accordance with established accounting practices. Reasonable averaging and sampling techniques should be allowed instead of transaction-specific costs. Price comparisons should be required to be based on average prices in both markets, rather than by comparing individual prices in one market to an average in the other. Finally, claims and adjustments should not be disallowed based solely on the relationship between the parties.

(Proposed amendment)

Create footnote to Article 2:6 as follows:

Actual costs shall be used for all price adjustments, allowances, cost of production data, and constructed value data. As a general rule, the cost and expense allocations recorded in a company's books in accordance with generally accepted accounting principles in the country under investigation shall be used. Costs and adjustments reported by exporters using reasonable averaging and sampling techniques shall be accepted by administering authorities. Transaction - specific costs shall be avoided unless those costs are demonstrated to have had a significant effect on the price of the specific transaction. Price comparisons shall generally be based on average prices in both markets over comparable time periods. Individual export price transactions shall not be compared with normal value based on average prices. Claims for adjustments and allowances shall not be disallowed solely because of the relationship of the parties to a transaction.

G. Margin and removal of injury (Article 8:1)

The current Code states that it is "desirable" that duties be less than the dumping margin, if such lesser duty would be "adequate to remove the injury to the domestic industry." Although some signatories follow this practice, others do not. Where duties are imposed at rates higher than those necessary to remove injury, this needlessly raises prices to consumers and restricts trade. The code should be amended to make the limitation of duties to the amount necessary to remove injury a compulsory requirement.

(Proposed amendment)

Article 8:1 should be amended as follows:

The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing country or customs territory. It is desirable that the imposition be permissive in all countries or customs territories Parties to this Agreement [, and that the]. The duty shall be less than the margin, if such lesser duty would be adequate to remove the injury to the domestic industry. A lesser duty would be adequate to remove the injury if it precluded price undercutting, price depression or price suppression as referred to in paragraph 2 of Article 3. If the authorities in the importing country decide to establish basic prices for the complaining producers for purposes of the comparison, such basic prices should be reasonable and not comprise excessive profit margins.

H. Calculation and refund of excess duties paid (Article 8:3)

Some signatories calculate anti-dumping duties after an investigation without regard to the payment of anti-dumping duties, and reimburse any excess payment with interest. In a certain signatory, however, anti-dumping duties are subtracted from the export price. The result is that the export price must be raised by an amount double the amount of the anti-dumping duties imposed before a refund or reimbursement is possible.

(Proposed amendment)

Article 8:3 should be amended as follows:

The amount of the anti-dumping duty must not exceed the margin of dumping as established under Article 2. Therefore, if subsequent to the application of the anti-dumping duty it is found that the duty so collected exceeds the actual dumping margin, calculated without regard to the payment of any anti-dumping duties, the amount in excess of the margin shall be reimbursed as quickly as possible, with reasonable interest.

I. Time limit for collection of duties (new Article 8:6)

This new provision requires the determination of anti-dumping duties to be made no later than three years after the merchandise is imported. In some signatories, entries are often suspended five or six years before a final determination of the actual anti-dumping duties is made.

(Proposed amendment)

Create new Article 8:6 as follows:

The amount of anti-dumping duty liability for each import shall be determined in an expeditious manner, and in no case later than three years after importation. No anti-dumping duties may be collected if the duty to be paid has been determined after the expiration of this three-year period.