

MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

RESTRICTED

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and Countervailing Measures

ELEMENTS OF THE FRAMEWORK FOR NEGOTIATIONS

Proposal for Improvements in the
Rules on Countervailing Measures

Communication from Korea

The following is a compilation of Korean proposals submitted in the Negotiating Group on MTN Agreements and Arrangements. This proposal supplements Korea's former submissions MTN.GNG/NG10/W/34 and has been prepared to ensure consistent discussions between the two separate Negotiating Groups on the same or related topics - anti-dumping/ countervailing duty procedures. Korea reserves the right to submit additional proposals at a later stage.

1. Imported into the territory of another signatory (in the context of the concept of sale)

With respect to the concept of sale, we are proposing that a product should not be considered to have been imported into the territory of a country unless the product has been actually 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, should not be sufficient for the product to be considered to have been "imported into the territory" of that country.

The purpose of this proposal is to restrain investigating authorities from basing countervailing measures on offers to sell, where there are no actual sales or imports.

2. Like product

The present Code provides that "the term like product shall be interpreted to mean a product that is identical ... 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". The definition of "like products" is clear and not objectionable.

Under this Code components or parts are not "like products" to the imported finished product which is the subject of the countervailing duty investigation. Components or parts should not be included unless they are identified as forming part of the investigation and there is evidence of dumping and injury to the domestic industry producing those components or parts.

With this in mind, we are proposing that components or parts should 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 countervailing duties may be imposed upon imports of components or parts based solely on findings of (1) subsidization to 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 countervailing duties may be imposed upon imports of a finished product based solely on findings of (1) subsidization to a component or part, and (2) material injury or threat of material injury to the domestic industry producing a component or part, unless the finished product is found to be a like product to a component or part.

3. Domestic industry in the determination of injury

Paragraph 5 of Article 6 of the Code defines what constitutes the domestic industry in determining injury. The domestic industry is either "the domestic producers as a whole of the like products" or "those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products". Under this definition, two conditions are of equal relevance and relate to what constitutes the domestic industry in terms of quantity of production. If in one instance the domestic industry is the whole of the industry producing all of the like products, then in the other instance those producing "a major proportion" must have a legitimate relevance to total production of those products within a country.

Therefore, we propose an amendment of this provision 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.

4. Minimum market penetration threshold

We are proposing a minimum market penetration threshold of 2 per cent. An affirmative finding of material injury or threat of material injury should not be made where subsidized imports represent 2 per cent or less, by value, of the total market, for the like product in the investigating country.

5. Cumulation

The practice of accumulating imports from numerous countries in countervailing proceedings may be unnecessarily restrictive and may unfairly deprive individual exporting countries of a meaningful injury determination based upon the impact of their own trade practices. Certainly the cumulative injury assessment increases the likelihood of affirmative findings of injury particularly for small suppliers.

Another issue relates to cumulative injury assessment "across the codes ("cross-cumulation"). Article VI:5 of the GATT prohibits the application of both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidies. And Article 6:4 of the Code states: "There may be other factors which at the same time are injuring the industry, and the injuries caused by other factors must not be attributed to the subsidized imports."

We are proposing that cumulation be 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 an anti-dumping duty investigation, may not be considered cumulatively with the import under investigation.

6. Public interest

The current Code requires signatories to consider only the impact of allegedly subsidized 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 other interests in the domestic economy, including the interests of producers purchasing for production the imported or like product, etc.

7. Price undertaking

A countervailing action under the Code is intended to eliminate the margin of subsidization and the alleged injury to the domestic industry rather than penalize exporters because of their past pricing behaviour. Article 4:5 of the Code provides for the suspension/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 subsidy is eliminated.

To facilitate the acceptance of a price undertaking by the investigating authorities, we are proposing that price undertakings should 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 should 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.

8. Total amount of subsidy and removal of injury

The current Code states that it is "desirable" that duties be less than the total amount of the subsidy, 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 the 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.

9. Duration of countervailing measures

Under the present Code, countervailing duties shall remain in force only as long as they are necessary to counteract the subsidization which 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 countervailing measures remain in force only because none of the parties have evidence to support the need for a review. To ensure that countervailing duties are not maintained indefinitely without review, we are proposing that a countervailing duty imposed as a result of an investigation conducted under this Code should 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 should 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. In this context, the same sunset clause should be applicable to undertakings.

10. Reviews

Article 4:9 of the 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 are proposing that 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 countervailing duties have been fulfilled, and at one year intervals thereafter. The authorities should conduct such a review if evidence is submitted that the subsidy rate will differ from the rate found in the most recent investigation or review, or that there would be no material injury to the domestic industry producing the like product if the countervailing duties were to be removed.

The authorities should respond to any request for a review within three months of the date the request for the review was filed, and such response should 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 should also state the reasons for denying the requested review. If the authorities decide to conduct a review, they should complete the review within twelve months of the date on which the authorities announced their decision to conduct the review.