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Committee on Subsidies and Countervailing Measures

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NOTIFICATION OF LAWS AND REGULATIONS  
UNDER ARTICLE 32.6 OF THE AGREEMENT

KOREA

The following communication, dated 15 March 1995, has been received from the Permanent Mission of Korea.

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With reference to Article 32.6 of the Agreement on Subsidies and Countervailing Measures and in response to the invitation contained in document G/SCM/N/1/Suppl.1, I have the honour to notify the Committee on Subsidies and Countervailing Measures of the relevant provisions of Korea's Customs Act and its sub-regulations.

NOTIFICATION OF LAWS AND REGULATIONS  
UNDER ARTICLE 32.6 OF THE AGREEMENT

1. The Customs Act

Article 13 (Countervailing Duty)

(1) In cases where it is confirmed through an investigation that the importation of products for which any subsidies or bounties (hereinafter referred to as "subsidies, etc.") are granted directly or indirectly in a foreign country upon their manufacture and production, causes or threatens to cause material injury to, or causes material retardation of the establishment of, a domestic industry (hereinafter in this Article referred to as "material injury, etc."), and it is deemed necessary to protect such a domestic industry, a duty in an amount not more than the amount of the subsidies, etc. (hereinafter referred to as "countervailing duty") may be imposed on such products in addition to the customs duty, as prescribed in Article 7, by designating the products and exporter or exporting country of such products through the Ordinance of the Prime Ministry.

(2) In cases where it is confirmed that there is sufficient evidence (in case where the undertakings, as referred to in paragraph 3, are withdrawn or not complied with, or the materials requested concerning the fulfilment of the undertaking are not presented, sufficient materials shall apply) to presume that the importation of the products with subsidies, etc. for which an investigation is initiated to determine whether or not the countervailing duty, as referred to in paragraph 1, is to be imposed, have caused material injury, etc. to the domestic industry, and where it is deemed necessary for protecting the domestic industry, the Minister of Finance and Economy may, even before the investigation is concluded, adopted a measure to impose a provisional countervailing duty or to order the provision of a security, that is not greater than the amount equivalent to the presumed amount of the subsidies, etc. (hereinafter referred to as "provisional measures" in this Article), by designating the exporter or exporting country of the products and the period, etc.

(3) In cases where the investigation to determine whether or not the countervailing duty, as referred to in paragraph 1, is to be imposed, is initiated, or the provisional measures, as referred to in paragraph 2, are taken, the government of the country exporting products concerned or the Minister of Finance and Economy may offer or suggest undertakings to adopt any proper measure to abolish or curtail the subsidies, etc. for the products, or to eliminate the injurious effect of the subsidies, etc. on the domestic industry, and the exporter of the products may, with the consent of the government of the exporting country, offer an undertaking to revise the price or to cease exporting so that the injurious effect to the domestic industry caused by the subsidies, etc. could be eliminated.

(4) If the undertakings, as referred to in paragraph 3, are accepted, the Minister of Finance and Economy shall have the investigation suspended or terminated without taking any provisional measures or imposing the countervailing duty, and, if the provisional measures were taken, the Minister of Finance and Economy shall withdraw such measures; provided that, if the Minister of Finance and Economy deems it necessary or the government of the exporting country requests to have the investigation on the injury continued, the investigation may be continued.

(5) The provisions of Article 10 (5) to (8) shall be applied *mutatis mutandis* to the cases, as referred to in paragraphs (1) to (4).

\*(5) The imposition of the anti-dumping duty under paragraph (1) and the provisional measures, as referred to in paragraph (2), shall be applied to the products imported after such measures are adopted;

provided that, if the international agreement or the Presidential Decree provides otherwise, the anti-dumping duty may be imposed on the products to which such provisional measures are applied.

\*(6) If the determination on whether or not the anti-dumping duty, as referred to in paragraph (1), is to be imposed, is made, the provisional anti-dumping duty paid pursuant to the provisional measures shall be refunded, or the security provided pursuant thereto shall be released; provided that, in the case as referred to in the proviso of paragraph (5), if the anti-dumping duty is higher than the provisional anti-dumping duty, the difference shall not be collected, and if the anti-dumping duty is lower than the provisional anti-dumping duty, the difference shall be refunded.

\*(7) The Minister of Finance and Economy may, if necessary, conduct a review on the imposition of the anti-dumping duty, as referred to in paragraph (1), and on the undertakings, as referred to in paragraph (3), and take measures, such as an imposition of the anti-dumping duty, modification of the contents of the undertakings, refundment, etc., as a result of such a review.

\*(8) Except in cases where the expiry date is determined separately by the Ordinance of the Prime Ministry, the imposition of the anti-dumping duty, as referred to in paragraph (1), or the undertakings accepted under paragraph (3), shall lose its effect after five years from the imposition of the anti-dumping duty or the enforcement of the undertakings, and if its contents are modified as a result of the review, as referred to in paragraph (7), it shall lose its effect after five years from the date of the enforcement of such a modification.\*

(6) Matters concerning the amount of the subsidies, etc., the investigation on material injury, etc., the undertakings, the expiry time, and the imposition method of countervailing duty and provisional measures, etc. as referred to in paragraphs (1) to (4), shall be provided for by the Presidential Decree.

2. The Enforcement Decree of the Customs Act

Article 4-20 (Subsidies, etc.)

(1) The term "subsidies, etc." used in Article 13 (1) of the Act, means specific benefits conferred by a financial contribution from a government or any public body, etc. except for the subsidies etc. as prescribed in the Ordinance of the Prime Ministry.

(2) The term "specificity" used in paragraph (1) means the cases where subsidies are granted to an enterprise or industry or group of enterprises or industries. The concrete principles on the determination of the specificity shall be prescribed by the Ordinance of the Prime Ministry.

(3) "The amount of subsidies, etc." as prescribed in Article 13 (6) shall be calculated on the basis of the actual benefits by means of such methods as prescribed by the Ordinance of the Prime Ministry.

Article 4-21 (Countervailing Duty)

(1) The provisions of Articles 4-2 (1) to (3), 4-3 to 4-5, 4-7, 4-8, 4-10 to 4-15 shall *mutatis mutandis* apply to the investigation and imposition of the countervailing duty, as prescribed in Article 13 of the Act. In this case, the term "Article 10 (1) of the Act" used in Articles 4-2 (1) and (2) 4-4 (1) and (7), and 4-8 (1) and (5), shall mean "Article 13 (1) of the Act"; the term "anti-dumping duty" used in Article 4-2 (1), 4-3 (3), 4-4(2), (7) and (8), 4-8 (1), (5) and (6), 4-11 (1), 4-12 (1) (text and sub-paragraph 2) and (2), 4-14 (1) (text and sub-paragraphs 1 and 2), (2) and (3), 4-15 (2) (sub-paragraph 4), shall mean "countervailing duty"; the term "exporter" used in Articles 4-2 (2), 4-3 (1) (sub-paragraph 3) and (3), 4-8 (1), 4-10 (2), 4-11 (1), (5), (7), (9) and (10) and 4-14 (7), shall mean "government of the exporting country or exporter"; the term "products imported at a price lower than the normal value" used in Article 4-2 (2), shall mean "subsidized products"; the term "fact of dumping" used in Articles 4-3 (1) (text) and (2) (sub-paragraph 2), 4-4 (1) and (2), and 4-12 (1) (sub-paragraph 2), shall mean a "fact of importation of the subsidized products"; the term "margin of dumping" used in Articles 4-3 (2) (sub-paragraph 3), 4-4 (4), 4-7 (3) (sub-paragraph 1) and 4-14 (1) (sub-paragraph 3), shall mean the "amount of subsidies, etc."; the term "dumped goods" used in Articles 4-3 (2) (sub-paragraph 3), 4-4 (4), 4-7 (1) (sub-paragraphs 1 and 2), (2) (text, sub-paragraphs 1, 3 and 4) and (3) (sub-paragraphs 1 and 2), shall mean "subsidized goods"; the term "Article 10 (2) of the Act" used in Articles 4-4 (3), 4-5(2), 4-10(4) and 4-13 (2), shall mean "Article 13 (2) of the Act"; the term "provisional anti-dumping duty" used in Articles 4-5 (3) and 4-11 (8), shall mean "provisional countervailing duty"; the term "dumping" used in Article 4-7 (2) (sub-paragraph 2) shall mean "importation of subsidized goods"; the term "anti-dumping measures" used in Articles 4-8 (5) and 4-11 (9) and (10) shall mean "countervailing measures"; the term "dumped" used in Article 4-8 (9) shall mean "imported by subsidies, etc."; the term "anti-dumping duty rate" used in Article 4-14 (3), shall mean "countervailing duty rate"; the term "amount of provisional anti-dumping duty" used in Articles 4-10 (4), 4-11 (8) and 4-13 (1) and (2) shall mean the "amount of provisional countervailing duty"; the term "Article 10 (3) of the Act" used in Articles 4-11 (1) and (5), 4-12 (1) (sub-paragraph 3) and 4-15 (1) (sub-paragraph 2), shall mean "Article 13 (3) of the Act"; the term "Article 10 (4) of the Act" used in Article 4-11 (1), (8) and (10), shall mean "Article 13 (4) of the Act"; the term "Article 10 (5) of the Act" used in Article 4-12 (1) (text) and (2). shall mean Article 10 (5) of the Act which is applied *mutatis mutandis* under Article 13 (5) of the Act"; the term "dumped" used in Article 4-12 (1) (sub-paragraph 2), shall mean "imported by subsidies, etc."; the term "Article 10 (6) of the Act" used in Article 4-13 (1) shall mean "Article 10 (6) of the Act which is applied *mutatis mutandis* under Article 13 (5) of the Act"; the term "amount of anti-dumping duty" used in Articles 4-13 (1) and (2) and 4-14 (1) (sub-paragraph 3), shall mean the "amount of countervailing duty"; the term "Article 10 (7) of the Act" used in Articles 4-14 (1) and (6) and 4-15 (1) (sub-paragraph 3) shall mean the "Article 10 (7) of the Act which is applied *mutatis mutandis* under Article 13 (5) of the Act"; the term "dumping price" used in Article

4-14 (3) shall mean the "import price of subsidized products"; the term "anti-dumping measures" used in Articles 4-14 (6) and (7) and 4-15 (1) (sub-paragraph 3), shall mean "countervailing measures"; and the term "Articles 10 (1) and (2) of the Act" used in Article 4-15 (1) (sub-paragraph 1) shall mean "Article 13 (1) and (2) of the Act", respectively.

\*Article 4-2 (Request for the Imposition of an Anti-Dumping Duty)

(1) Any interested party to a domestic industry suffering material injury, etc. as prescribed in Article 10 (1) of the Act, or the Minister of the competent Ministry taking charge of such an industry, may request the Minister of Finance and Economy to impose the anti-dumping duty, under the conditions as prescribed by the Ordinance of the Prime Ministry, and such a request shall be substituted by the request for an investigation required for imposing such an anti-dumping duty to the Trade Commission, as prescribed in Article 37 of the Foreign Trade Act (hereinafter referred to as the "Trade Commission").

(2) With regard to the application of the provisions of Article 10 (1) of the Act, the domestic industry means the domestic production industry that accounts for all or a major portion of the total domestic production of the products that are the same in kind and quality and the products similar with those imported at a price that is lower than the normal value (with the exception for any production industry managed by a person having such special relations with an exporter or importer of the products as prescribed by the Ordinance of the Prime Ministry, and by a producer who is the importer of such products, as prescribed by the Ordinance of the Prime Ministry; hereinafter the same shall apply in this paragraph).

(3) As used in paragraph (1), the term "an interested party to the domestic industry" means a domestic producer belonging to the domestic industry that is affected by any material injury, etc., and an individual or a corporation or an organization in which the domestic producer is a member or which represents the interest of such domestic producer, and which is prescribed by the Ordinance of the Prime Ministry.

\*Article 4-3 (Initiation of the Investigation on Dumping and Material Injury, etc.)

(1) The Trade Commission shall, upon receiving the request for an investigation as prescribed in the latter part of Article 4-2 (1), determine whether it will initiate an investigation on the dumping and material injury, etc., and notify the Minister of Finance and Economy of the result of the determination thereof and the following matters, within one month after receiving such a request.

1. Products subject to investigation (in case where there are many products subject to investigation, products selected according to the Ordinance of the Prime Ministry);
2. Period subject to investigation; and
3. Exporters subject to investigation (in case where there are many exporters subject to investigation, exporters selected according to the Ordinance of the Prime Ministry).

(2) In making a determination as to the initiation of the investigation in accordance with paragraph (1), if the request for investigation falls under any of the following sub-paragraphs, the Trade Commission may reject such a request.

1. Where a person who has filed the written request is ineligible to request an imposition under Article 4-2 (1);

2. Where sufficient evidentiary materials regarding the facts of the dumping and material injury, etc. are not presented;
3. Where the margin of dumping or the quantity of dumped products is below the standard set by the Ordinance of the Prime Ministry, or where the material injury, etc. is deemed to be insignificant:
4. Where the application for an investigation does not satisfy the standard of representativeness of the domestic industry set by the Ordinance of the Prime Ministry; and
5. Where it becomes unnecessary to initiate the investigation, e.g. a measure to eliminate any adverse effect on the domestic industry has been taken prior to the initiation of the investigation.

(3) The Minister of Finance and Economy shall notify the person request an investigation, the government of the exporting country and the exporter of such products, and other interested parties, of the matters concerning an imposition of the anti-dumping duty and the determination on the initiation of the investigation, within ten days after he receives the notification mentioned in paragraph (1), and publish it in the official gazette.

\*Article 4-4 (Investigation on Dumping and Material Injury, etc.)

(1) In conducting an investigation on dumping and material injury, etc. in accordance with Article 10 (1) of the Act, the Administrator of the Customs Administration shall investigate whether or not any dumping exists, and the Trade Commission shall investigate whether or not any material injury, etc. was caused. In this case, the Administrator of the Customs Administration and the Trade Commission (hereinafter referred to as the "investigating authority") may, if necessary, have any public officials of the related administrative agencies or the concerned experts participate in the investigation activities.

(2) The investigating authority shall make a preliminary investigation on whether or not there is sufficient evidence to presume the existence of dumping and material injury, etc. within three months after matters concerning the imposition of the anti-dumping duty and the determination on the initiation of the investigation are published in the official gazette under Article 4-3 (3), and the Administrator of the Customs Administration shall submit a report on the result of such a preliminary investigation, and the Trade Commission shall submit a written resolution on the preliminary determination to the Minister of Finance and Economy.

(3) The Minister of Finance and Economy shall determine whether or not it is required to take such measures as prescribed in Article 10 (2) of the Act and shall decide on the issues concerning the contents thereof within one month after the report on the results of the preliminary investigation and the written resolution on the preliminary determination as referred to in paragraph (2) are submitted; provided that, however, if it is deemed necessary, the period for such a decision may be extended or a maximum of 20 days.

(4) Where the margin of dumping or the quantity of dumped products is below the standard set by the Ordinance of the Prime Ministry, or where material injury , etc. is deemed insignificant as a result of the preliminary investigation, as mentioned in paragraph (2), the Minister of Finance and Economy may suspend or terminate the final investigation as referred to in paragraph (5).

(5) In so far as there exist no special reasons prescribed by the Ordinance of the Prime Ministry, the investigating authority shall initiate the final investigation on the date following the date on which it receives the report on the results of the preliminary investigation or the written resolution on the preliminary determination, as referred to in paragraph (2), and submit to the Minister of Finance and Economy the report of the results of the final investigation or the written resolution on the final determination within three months from the date on which the final investigation is initiated.

(6) If it is necessary to extend the investigation period in connection with the investigations referred to in paragraphs (2) to (5), or if any interested party requests an extension of the investigation period by presenting justifiable reasons, the investigating authority may extend it for a maximum of one month after consulting with the Minister of Finance and Economy.

(7) Within one month after the report on the results of the final investigation and the written resolution on the final determination, as referred to in paragraph (5), the Minister of Finance and Economy shall determine whether or not the anti-dumping duty is to be imposed, and shall determine the particulars thereof, and shall take measures that impose the anti-dumping duty as prescribed in Article 10 (1) of the Act; provided that, however, if deemed necessary, the period may be extended for a maximum of 20 days.

(8) The Minister of Finance and Economy shall take measures that impose the anti-dumping duty, as referred to in paragraph (7), within one year from the date of publication of the official gazette mentioned in Article 4-3 (3); provided that, if it is determined that a special reason exists, the period, in which the measure which imposes the anti-dumping duty is adopted, may be extended for a maximum of six months, notwithstanding the provisions of Articles 4-3 (1), 4-4 (2), (5) to (7).

\*Article 4-5 (Withdrawal of the Request for the Imposition of the Anti-Dumping Duty)

(1) If an applicant for an investigation under Article 4-2 (1) wishes to withdraw the application, he shall request the withdrawal thereof to the Trade Commission. In this case, if the Trade Commission receives such a withdrawal before it decides on the initiation of the investigation, it may cease determining whether or not the investigation is to be initiated under Article 4-3 (1), and upon receiving such a request after such a determination, it shall notify the Minister of Finance and Economy.

(2) Upon receiving the notification as referred to in paragraph (1), the Minister of Finance and Economy may prevent the initiation of, or terminate, the investigation as prescribed in Article 4-4, after consulting with the investigating authority and the head of the administrative agency concerned, and if any provisional measures are taken under Article 10 (2) of the Act, the measures may be withdrawn.

(3) If the Minister of Finance and Economy withdraws any provisional measure under the latter part of paragraph (2), he shall refund the provisional anti-dumping duty paid, or release any security provided pursuant to such a provisional measure.

\*Article 4-7 (Determination on Material Injury, etc.)

(1) In cases where the Trade Commission investigates and determines the material injury, etc. as prescribed in Article 4-4, the investigation and the determination shall be based on the substantial evidence including the following matters:

1. Import quantity of the dumped products (including whether or not the importation of such products has increased significantly in absolute terms or in relative terms compared to the domestic production or consumption);

2. Prices of the dumped products (including whether or not such prices have decreased significantly in comparison with the domestic product that is same in kind and quality or with a similar domestic product);
3. The degree of dumping margin (including whether or not the import price of dumped product has declined significantly in comparison with the normal value in the exporting country);
4. Output, operating rate, inventories, sale quantity, market share, prices (including the effect of lowering prices or of preventing price increases), profits, investment yield, cash flow, employment, wage, growth, capital supply, investment capacity, and technical development of the domestic industry; and
5. Actual or potential impact of such matters as referred to in sub-paragraphs 1 and 2 on the domestic industry.

(2) In case of an investigation and determination of the material injury, etc. under paragraph (1), a determination on the threat of material injury shall be made on the basis of the facts, such as the following matters, in addition to the matters referred to in the sub-paragraphs of paragraph (1), and the injury to be caused by the dumped products must be clearly foreseen and imminent:

1. A significant rate of increase in dumped imports that indicates a likelihood of a substantial increase in the importation;
2. A substantial increase in the production capacity which may result in an increase in dumping;
3. Whether or not the price of dumped products is likely to decline, or prevent increase of, the price of the product same in kind and quality or the similar product and the likelihood of an increase in the demand for more imports; and
4. Conditions of the inventories of the dumped product and the product same in kind and quality or the similar product.

(3) With regard to the investigation and determination of the material injury, etc., the Ministry of Finance and Economy may assess the injury cumulatively when products imported from more than one country are subject to investigation simultaneously and when:

1. The margin of dumping and the quantity of imports satisfy the standard set in the Ordinance of the Prime Ministry; and
2. The dumped products are in a condition to compete with each other and the like domestic product.

\*Article 4-8 (Request for the Cooperation of Interested Parties on the Materials)

(1) If it is deemed necessary for the investigation and for the determination on whether or not the anti-dumping duty is to be levied under Article 10 (1) of the Act, the Minister of Finance and Economy or the investigating authority may ask for cooperation, such as a presentation of relevant materials, etc. to the relevant authorities, domestic producers, exporters, importers, or interested parties.



(2) Materials presented under paragraph (1) and Article 4-2 (4), for which confidential treatment is deemed to be proper because of the nature of the materials, or materials requested by the applicant for investigation or by the interested parties to be treated in confidence for a justifiable reason, shall not be disclosed without an express consent of the person who has presented such materials.

(3) The Minister of Finance and Economy or the investigating authority may demand the person, who has presented confidential materials under paragraph (2), to submit a non-confidential summary of such materials. In this case, if such a person is unable to submit such a summary, he shall submit a document stating the reason thereof.

(4) If the request for a confidential treatment under paragraph (2) is deemed to be unwarranted, and if the person presenting materials refuses to make the materials public or to submit the non-confidential summary as referred to in paragraph (3) without any justifiable reason, the Minister of Finance and Economy or the investigating authority may disregard such materials unless it can be sufficiently demonstrated that they are accurate.

(5) Upon the conducting of an investigation and determination on whether the anti-dumping duty is to be imposed as prescribed in Article 10 (1) of the Act, if any interested party fails to present the necessary materials, or refuses or impedes the investigation of the investigating authority, or if it is difficult to conduct the investigation or to verify materials for other reasons, the Minister of Finance and Economy or the investigating authority may decide whether or not any measure to prevent the dumping should be taken on the basis of the materials available.

(6) The Minister of Finance and Economy and the investigating authority may not use any information and materials acquired from, and fact acknowledged by, the interested parties in connection with the anti-dumping proceedings for purposes other than the proceedings.

(7) If an interested party requests to see materials other than those treated confidentially, any documentary evidence presented under Article 4-2 (4), or the material presented or informed about under paragraphs (1) and (9) and Article 4-11, the Minister of Finance and the investigating authority shall accept such a request, unless there is a particular reason for denying the request. In this case, the request of the interested parties for seeing the materials shall be made in a written form stating the reason thereof and listing the materials.

(8) The Minister of Finance and Economy or the investigating authority may give him an opportunity to state his opinion through a public hearing, etc. or to consult with interested parties with opposing interests if necessary or at the request of any interested party.

(9) If the customs collector, the head of a bank dealing with foreign exchange services, another agency concerned, or an interested organization deems that imported products are dumped in his judgement, he shall notify the Minister of Finance and Economy and the investigating authority.

\*Article 4-10 (Application of Provisional Measures)

(1) The provisional measures as prescribed in Article 4-4 (3) may apply to a case where the preliminary investigation as prescribed in paragraph (2) of the above Article is concluded, and on and after the day on which at least 60 days have passed after such an investigation is initiated.

(2) The application period for the provisional measures as prescribed in Article 4-4 (3) shall not exceed four months; provided that, however, if an exporter representing a significant percentage of the trade involved, requests such an application period may be extended to six months.

(3) Notwithstanding the provisions of paragraph (2), if it is deemed necessary, the Minister of Finance and Economy may prolong the application period of the provisional measures in accordance with the international agreement.

(4) If an order is issued to provide a security under Article 10 (2) of the Act, the security shall be provided in value exceeding the amount equivalent to the provisional anti-dumping duty.

\*Article 4-11 (Undertakings to Revise the Price, to Cease Exporting, etc.)

(1) If an exporter of any products, for which an investigation has been initiated to determine whether or not the anti-dumping duty is to be imposed, wishes to propose undertakings under Article 10 (3) of the Act, or to request that the injury investigation be continued under Article 10 (4) of the Act, it shall submit such a request in writing to the Minister of Finance and Economy.

(2) If the undertakings proposed under paragraph (1) contain particulars to the effect that the price would be revised immediately, or the export would be ceased within a period, which is determined after consulting with the Minister of Finance and Economy and which does not exceed six months from the date of the undertakings, or that the quantity of export would be reduced to a certain level from the date of the undertakings, the Minister of Finance and Economy may accept such undertakings; provided that, in the case of undertakings to cease exports, the quantity of the products exported between the date of the undertakings and the date of the cessation of the exportation may not exceed such a level as the Minister of Finance deems proper.

(3) The Minister of Finance shall, upon receiving a proposal of undertakings as referred to in paragraph (1), notify the contents of such proposed undertakings to the head of the related administrative agency, investigation authority, and interested parties. In this case, the head of the related administrative agency, investigation authority, and interested parties may, upon receiving the notification of the contents of such undertakings, present in writing to the Minister of Finance any comments on such undertakings within 20 days from such a notification.

(4) In the cases prescribed by the Ordinance of the Prime Ministry and where it is deemed difficult to secure a fulfilment of undertakings, the Minister of Finance and Economy may not accept such understandings as proposed under paragraph (1).

(5) The Minister of Finance and Economy, if necessary, may suggest the understandings, as prescribed in Article 10 (3) of the Act, to an exporter designated by it. In this case, such an exporter shall notify the Minister of Finance and Economy of whether or not it accepts such undertakings within one month after they were suggested.

(6) The Minister of Finance and Economy may not accept or suggest the undertakings under paragraphs (2) or (5) before the report on the results of the preliminary investigation and the written resolution on the preliminary determination, as prescribed in Article 4-4 (2), are submitted.

(7) When the Minister of Finance and Economy has accepted the undertakings under paragraph (2), or has been notified of an acceptance of the undertakings under paragraph (5), he may demand the exporter to submit periodically materials for the fulfilment of such understandings, and also to allow a verification of such materials.

(8) In the event that the Minister of Finance and Economy withdraws any provisional measures under Article 10 (4) of the Act, he shall refund the provisional anti-dumping duty paid, or release any security offered by such provisional measures; provided that, as a result of an investigation as prescribed in Article 4-4, if it is ascertained that there exists material injury, etc., the Minister of Finance and

Economy may have the discretion on whether to refund the provisional anti-dumping duty paid by such provisional measures, or to collect the amount equivalent to the provisional anti-dumping duty.

(9) If the exporter fails to fulfil the undertakings accepted under Article 10 (4) of the Act, or to submit the materials as referred to in paragraph (7), or refuses to allow a verification of such materials, the Minister of Finance and Economy may continue the anti-dumping measures on the basis of any information available.

(10) As a result of the continuous investigation under the provision of Article 10 (4) of the Act, if it is ascertained that there exists no material injury, etc., or that there exists no margin of dumping, the Minister of Finance and Economy may nullify the effect of the undertakings; provided that, if the non-existence of material injury, etc. is caused by the undertakings in its judgement, the Minister of Finance and Economy may have the undertakings continued during such a period as deemed adequate, and if the exporter refuses to fulfil the undertaking, the Minister of Finance and Economy may continue the anti-dumping measures on the basis of any information available.

\*Article 4-12 (Retroactive Imposition of the Anti-Dumping Duty)

(1) The anti-dumping duty may be imposed on the following products among the products to which the provisional measures have been applied under the provision of Article 10 (5) of the Act:

1. Products imported during the period in which the provisional measures have been applied in the case where a final determination of material injury is made, or where a final determination of a threat of material injury is made but it is deemed that a final determination of material injury would be made in the absence of the provisional measures;
2. Products imported not more than 90 days prior to the date of application of provisional measures in the case where it is necessary to impose retroactively the anti-dumping duty to prevent a recurrence of the material injury, etc. caused by a massive importation in a relative short time period, and where there is a history of dumping which caused the material injury, etc. or the importer was, or should have been, aware of the fact that the dumping and material injury etc., was caused thereby;
3. Products imported not more than 90 days prior to the date of application for the provisional measures (excluding the products imported prior to the violation of the undertakings) in the case where it is admitted that the material injury etc., is caused by an importation of the products, to which the provisional measures have been applied, in violation of the undertaking as prescribed in Article 10 (3) of the Act; and
4. Other products imported during such a period as determined by the Minister of Finance and Economy under the conditions as prescribed by the international agreement.

(2) Any interested parties to the domestic industry, as prescribed in Article 4-2, may request an imposition of the anti-dumping duty as prescribed in the provision of Article 10 (5) of the Act by producing evidence that the products concerned fall under any of the sub-paragraphs of paragraph (1) within seven days after the final investigation, as prescribed in Article 4-4 (5), is concluded.

\*Article 4-13 (Liquidation of the Provisional Anti-Dumping Duty Amount, etc.)

(1) In the cases that fall under Article 4-12 (1), where the amount of the anti-dumping duty, which was imposed on the products imported during the period in which the provisional measures have been

applied under Article 10 (6) of the Act, is equal to or more than that of the provisional anti-dumping duty, the amount of the anti-dumping duty shall be the same as that of the provisional anti-dumping duty, and the difference shall not be assessed, but if the anti-dumping duty is lower than the provisional anti-dumping duty, the provisional anti-dumping duty equal to such a difference shall be refunded.

(2) In the cases where any security is provided under Article 10 (2) of the Act, and which fall under Article 4-12 (1), the amount of the anti-dumping duty to be imposed retroactively in the period, in which the provisional measures have been applied, shall not exceed that of the provisional anti-dumping duty.

\*Article 4-14 (Review on the Anti-Dumping Duty and Undertaking)

(1) If it is deemed necessary, or if any interested party, or the competent Minister in charge of the industry concerned files a request for review together with any documentary evidence showing any of the following sub-paragraphs, the Minister of Finance and Economy may conduct the review with respect to the products on which the anti-dumping has been imposed, or for which the undertakings have been carried out, as prescribed in Article 10 (7) of the Act;

1. Where the circumstances have changed enough to modify the contents of such a measure after the enforcement of the anti-dumping duty or the undertakings;
2. Where the injury to the domestic industry might be caused by the termination of the anti-dumping duty or the undertakings; and
3. Where the anti-dumping duty is paid in excess of the actual margin of dumping.

(2) The request for a review as referred to in paragraph (1) may be made only one year after the anti-dumping duty or the undertaking is put in force, and it shall be made six months before the anti-dumping duty or the undertaking expires. In this case, the Minister of Finance and Economy shall determine the necessity of such a review within one month after he receives the request for a review.

(3) In addition to the review conducted under paragraph (1), the Minister of Finance may conduct a review on whether or not the rate of anti-dumping duty imposed or the undertaking in force is proper, and to this end, he shall conduct an annual review on the dumping price in connection with the anti-dumping duty or contents of the undertaking (including the contents changed as a result of the review) in the month under which the date of the enforcement thereof falls.

(4) Upon the determination of the necessity of a review under paragraph (1) or (3), the Minister of Finance and Economy may consult with the head of the related administrative agency and the investigating authority, and when it is determined that a review is necessary, the investigating authority shall carry out an investigation thereon. In this case, the investigation shall be limited only to the changed parts, which are the reasons for conducting such a review.

(5) The investigating authority shall finish the investigation, as referred to in paragraph (4), and submit to the Minister of Finance and Economy a written report on the results thereof or a written resolution on the determination within six months from the initiation of the review; provided that, if it is necessary to extend the investigation period or if the interested parties request to have the investigation period extended, the investigating authority may extend the investigation period to a maximum of four months after consulting with the Minister of Finance and Economy.

(6) The Minister of Finance and Economy shall take the measures as prescribed in Article 10 (7) of the Act within one month after the written report and the written resolution on the determination

are submitted; provided that, however, if deemed necessary, such a period may be extended for a maximum of 20 days.

(7) In the cases where a review is conducted for the reason stated in sub-paragraph 2 of paragraph (1), such measures shall remain in force during the review period even if the anti-dumping measures expires during the review period.

(8) As a result of the review as referred to in paragraphs (1) or (3), if the Minister of Finance and Economy finds that the undertakings have lost, or might lose their effectiveness in its judgement, it may demand that the exporter carrying out such an undertaking revise the undertakings, and if the exporter refuses to do so, the Minister of Finance and Economy may adopt the anti-dumping measure on the basis of any information available.

\*Article 4-15 (Notification and Public Notice to the Interested Parties, etc.)

(1) In any of the following cases, the Minister of Finance and Economy shall publish the details thereof in the official gazette, and notify the interested parties of the details in writing:

1. Where he has determined to either adopt or not adopt the measure as prescribed in Article 10 (1) and (2) of the Act;
2. Where he accepts the undertakings as prescribed in Article 10 (3) of the Act and suspends, terminates, or continues the investigation;
3. Where he initiates a review as prescribed in Article 10 (7) of the Act, or he modifies the contents of the anti-dumping measures as a result of such a review; and
4. Where he has decided to initiate the investigation under Article 4-3 (1).

(2) In any of the following cases, the Minister of Finance and Economy or an investigating authority shall notify the interested parties of the details thereof:

1. Where the request for investigation is rejected under Article 4-3 (2), or the investigation is suspended or terminated under Article 4-4 (4);
2. Where the period of investigation is extended under Article 4-4 (6) and the provision of Article 4-14 (5);
3. Where the period is extended under Article 4-4 (8);
4. Where the request for imposition of the anti-dumping duty is withdrawn under Article 4-5, thereby suspending the determination on whether to initiate the investigation or terminating the investigation;
5. Where the application period of the provisional measure is extended under Article 4-10 (2) or (3); and
6. Where the Minister of Finance and Economy suggests undertakings under Article 4-11 (5).

(3) Upon a written request of the interested parties with regard to the investigation in the course of the investigation, as prescribed in Article 4-4, the Minister of Finance and Economy or the investigating authority shall notify them of the details of the investigation in progress.\*

(4) If a person, who has an interest in the domestic industry, suffered from material injury, etc., caused by the importation of subsidized products, wishes to make a request, as referred to in Article 4-2(1), which is applied *mutatis mutandis* under paragraph (1), he shall submit to the Trade Commission an application stating the following matters together with the relevant evidentiary materials:

1. Names of items, dimensions, characteristics, uses, producers, and production quantity of such products;
2. Exporting country, exporters, and the results and the possibility of exportation of such products, and importers, results and possibility of importation in Korea;
3. Ex-factory price and market price of such products in the exporting country, and the export price of such products exported to Korea and third countries;
4. Names of items, dimensions, characteristics, uses, producers, production quantity, factory and market prices, and the cost calculation of the products same in kind and quality or the cost calculation of similar products in Korea;
5. Matters pertaining to the material injury, etc. of the domestic industry caused by the importation of subsidized products;
6. Contents of subsidies, etc. as granted by the exporting country for the manufacture, production, or export of the products and consequent markdown effect on the export price of the products;
7. The degree of support for an application for the investigation expressed by the domestic producers of the product same in kind and quality or similar products;
8. If it is required to deal confidentially with matters stated in, and materials appended to, the written request, the reason therefor; and
9. Other matters as deemed necessary by the Minister of Finance and Economy.

3. The Ordinance of the Prime Ministry

Article 5 (Subsidies, etc.)

(1) The term "subsidy as prescribed by the Ordinance of the Prime Ministry", as used in the provision of Article 4-20 (1) of the Decree, means the subsidy which is prescribed as a subsidy for research, regional development, or environment by an international agreement in spite of its specificity.

(2) In any of the following cases, it is deemed that there exists specificity as prescribed in Article 4-20 (2) of the Decree:

1. Where subsidies, etc. are granted on a limited basis to certain enterprises;
2. Where subsidies, etc. are used by a limited number of enterprises;
3. Where subsidies, etc. are granted to a specific area; and
4. Where the standard of specificity confirmed by an international agreement can be satisfied.

(3) In order to calculate the amount of the subsidies, etc. the following criteria shall apply:

1. In the case of equity participation, it shall be the amount equal to the difference between such equity participation and the usual investment practice.
2. In the case of a loan, it shall be the amount equal to the difference between the amount paid according to the interest rate of such a loan and the amount paid according to the market interest rate.
3. In the case of a loan guarantee, it shall be the amount equal to the difference between the amount paid on such a loan and the amount that would be paid on comparable commercial loans absent such loan guarantees.
4. In the case of the provision or purchase of goods and services, it shall be the amount equal to the difference between such a price and their market price.
5. Otherwise, it shall be the amount determined on the basis of such criteria as accepted by an international agreement.

Article 5-2 (Countervailing Duty)

(1) The provisions of Articles 4, 4-2 (1) and (3), 4-3, 4-5, 4-7, 4-8 shall *mutatis mutandis* apply to the investigation and imposition of the countervailing duty, as prescribed in Article 13 of the Act and Article 4-21 of the Decree. In this case, the term "Article 4-2 (2) of the Decree" used in Articles 4 (1) and (2) and (3) (text), shall mean "Article 4-2 (2) of the Decree which is applied *mutatis mutandis* pursuant to Article 4-21 (1) of the Decree"; the term "Article 4-2 (4) of the Decree" used in Article 4 (3) (sub-paragraph 1) shall mean "Article 4-21 (2)"; the term "dumped product" used in Article 4 (3) (sub-paragraphs 1 and 2) shall mean "subsidized product"; the term "Article 4-2 (3) of the Decree" used in Article 4 (4), shall mean Article 4-2 (3) of the Decree which is applied *mutatis mutandis* pursuant to Article 4-21 (1) of the Decree"; the term "Article 4-3 (1) (sub-paragraphs 1 and 3) of the Decree" used in Article 4-2 (1) shall mean "Article 4-3 (1) (sub-paragraphs 1 and 3) of the Decree which is applied *mutatis mutandis* pursuant to Article 4-21 (1) of the Decree"; the term

"Article 4-3 (2) (sub-paragraph 4) of the Decree" used in Article 4-2 (3) shall mean "Article 4-3 (2) (sub-paragraph 4) of the Decree which is applied *mutatis mutandis* pursuant to Article 4-21 (1) of the Decree"; the term "Article 4-3 (1) of the Decree" shall mean "Article 4-2 (1) of the Decree which is applied *mutatis mutandis* pursuant to Article 4-21 (1) of the Decree"; the term "Article 4-5 (1) of the Decree used in Article 4-3 (1) shall mean "Article 4-5 (1) of the Decree which is applied *mutatis mutandis* pursuant to Article 4-21 (1) of the Decree"; the term "Article 4-4 (2) or (5) of the Decree" used in Article 4-3 (2) shall mean "Article 4-4 (2) or (5) of the Decree which is applied *mutatis mutandis* pursuant to Article 4-21 (1) of the Decree"; the term "Article 4-8 (2) of the Decree" used in Article 4-5 (1) shall mean "Article 4-8 (2) of the Decree which is applied *mutatis mutandis* pursuant to Article 4-21 (1) of the Decree"; the term "Article 4-8 (8) of the Decree" used in Article 4-5 (2), shall mean "Article 4-8 (8) of the Decree which is applied *mutatis mutandis* pursuant to Article 4-21 (1) of the Decree"; the term "Article 4-10 (2) of the Decree" used in Article 4-5 (3) shall mean "Article 4-10 (2) of the Decree which is applied *mutatis mutandis* to Article 4-21 (1) of the Decree"; the term "Article 4-11 (1) of the Decree" used in Article 4-7 (1) (text) shall mean "Article 4-11 (1) of the Decree which is applied *mutatis mutandis* pursuant to Article 4-21 (1) of the Decree"; the term "Article 4-11 (4) of the Decree" used in Article 4-7 (2) (text) shall mean "Article 4-11 (4) of the Decree which is applied *mutatis mutandis* pursuant to Article 4-21 (1) of the Decree"; the term "Article 4-14 (1) of the Decree" used in Article 4-8 (text) shall mean "Article 4-14 (1) of the Decree which is applied *mutatis mutandis* to Article 4-21 (1) of the Decree"; the term "anti-dumping measures" used in Article 4-8 (sub-paragraph 2) shall mean "countervailing measures".

\*Article 4 (Application for the Investigation for the Imposition of an Anti-Dumping Duty)

(1) The term "product same in kind and quality" used in Article 4-2 (2) of the Decree means a product that is identical in all respects, including physical characteristics, quality, recognition by the users, etc. (including products altered insignificantly in appearance) to the imported product, and the term "similar product" means a product which, although not the product same in kind and quality, can be substituted for the imported product due to an identical function and due to characteristics and constituent parts that are similar to such imported product.

(2) With respect to the producers who have special relations as prescribed in Article 4-2 (2) of the Decree, Article 3-6 (1) shall be applied *mutatis mutandis* provided that, in determining the existence of the special relations, if a producer of the product same in kind and quality or the product similar with the imported product sells the products at a price and with conditions that are the same with, or similar to, the price and conditions of the products sold by the person who does not have such relations, as prescribed in the text of this Article, such a producer may be precluded from being defined as being a producer who has special relations.

(3) The term "a producer who is the importer of the imported product as prescribed by the Ordinance of the Prime Ministry", as used in Article 4-2 (2) of the Decree, means a producer who imports the product, but the term excludes:

1. a producer who imported six months prior to the date of receipt of the application as prescribed in Article 4-2 (4) of the Decree; and
2. a producer whose import quantity is insignificant.

(4) The term "person who is prescribed by the Ordinance of the Prime Ministry", as used in Article 4-2 (3) of the Decree, means association, union, etc. composed of domestic producers of the products same in kind and quality or of a similar product.



\*Article 4-2 (Initiation of the Investigation on dumping and Material Injury, etc.)

(1) In selecting the products and exporters subject to investigation, the sampling method that is statistically valid on the basis of materials available (including the method to select products or exporters based on the percentage of the import volume) will be used in principle.

(2) The term "where the application does not satisfy the standard of representativeness of the domestic industry set by the Ordinance of the Prime Ministry", as used in Article 4-3 (2) (sub-paragraph 4) of the Decree, shall be interpreted as follows:

1. Where the collective production of the product same in kind and quality or the similar product produced by domestic producers expressing support is not more than 50 per cent of the total production of such products produced by the domestic producers expressing either support or opposition; and
2. Where the collective production of domestic producers expressing support is less than 25 per cent of the total domestic production of the product same in kind and quality or the similar product.

\*Article 4-3 (Withdrawal of the Application for the Investigation on the Imposition of an Anti-Dumping Duty)

(1) A person who wishes to withdraw the application of investigation under Article 4-5 (1), shall submit an application of withdrawal stating the reasons thereof and the supporting materials to the Trade Commission.

(2) In the cases where the application of withdrawal was made during the period of preliminary investigation or final investigation, as prescribed in Article 4-4 (2) or (5), respectively, and where the alleged reasons for withdrawal are deemed improper, the Minister of Finance and Economy may defer the determination on whether or not the investigation will be terminated by the application of withdrawal, to the time of conclusion of the preliminary or final investigation.

\*Article 4-5 (Request by the Interested Parties for Confidential Treatment, etc.)

(1) Materials subject to confidential treatment under Article 4-8 (2) of the Decree shall be limited to the materials relating to any of the following matters, the disclosure of which might cause a damage to the interest of the presenters or the interested parties:

1. Costs of production;
2. Accounting materials which have not been made public;
3. Name, address, and trade volume of the trade partners;
4. Matters concerning the provider of confidential information; and
5. Materials deemed proper to be treated confidentially.

(2) Where the investigating authority holds a public hearing, etc. under Article 4-8 (8) of the Decree, it shall notify the Minister of Finance and Economy of the schedule and results thereof.

(3) A person who wishes to extend the application period for the provisional measures under the provision of Article 4-10 (2) shall make such an application at least ten days prior to the expiry date of such provisional measures.

\*Article 4-7 (Undertakings to Revise the Price and to Increase Exports, etc.)

(1) Where an exporter wishes to propose undertakings to the Minister of Finance and Economy pursuant to Article 4-11 (1) of the Decree, such undertakings shall include the following items:

1. An undertaking that the exporter will increase the export price to the level which may eliminate material injury, etc., or will cease export within such a period as determined after a consultation with the Minister of Finance and Economy, or will reduce the quantity of export to a certain level during such a period as determined after a consultation with the Minister of Finance and Economy;
2. Information on the products which are contracted on or shipped prior to the acceptance of the undertaking;
3. An undertaking that the exporter will not take any action to evade the performance of the undertaking through a change in type, shape, name, etc., or through a sale of inferior products, etc.;
4. An undertaking that the exporter will not in fact violate the undertaking by a sale through a third country or a third party, etc.;
5. An undertaking that the exporter will periodically report to the Minister of Finance and Economy with regard to the sales volume and price in the exporting country and export volume and price for the exports to Korea;
6. An undertaking that a verification of the related materials will be allowed; and
7. An undertaking to renegotiate upon a demand by the Minister of Finance and Economy in the event of other changes in the circumstances.

(2) The Minister of Finance and Economy may refuse to accept an undertaking pursuant to Article 4-11 (4) in any of the following cases:

1. Where a person who proposed an undertaking on behalf of a number of exporters fails to prove that an entire agreement among such exporters has been concluded;
2. Where there exists a condition which may make difficult an appropriate confirmation or investigation on the performance of such undertakings; and
3. Where there exists reasonable grounds to refuse to accept the undertaking, such as a history of violation of undertakings in the past, etc.

\*Article 4-8 (Request for a Review)

The interested parties entitled to request a review shall be as follows:

1. Domestic producers of the products same in kind and quality or similar products or their organizations;

2. Producers, exporters, or importers of the product subject to anti-dumping measures or their organizations; and
3. Other persons who the Minister of Finance and Economy deems to have an interest.\*

(2) The term "standard set by the Ordinance of the Prime Ministry" used in Articles 4-3 (2) (sub-paragraph 3), 4-4 (4) and 4-7 (3) (sub-paragraph 1) of the Decree which are applied *mutatis mutandis* pursuant to Article 4-21 (1) of the Decree, shall be interpreted to refer to the case in which the amount of subsidy is not less than 1 per cent of the price of the product, unless otherwise provided for in an international agreement.