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Committee on Anti-Dumping Practices

NOTIFICATION OF LAWS AND REGULATIONS UNDER
ARTICLE 18.5 OF THE AGREEMENT

KOREA

The following communication, dated 3 March 1997, has been received from the Permanent Mission of Korea.

Pursuant to Article 18.5 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, I hereby notify the Committee on Anti-Dumping Practices of changes in the relevant provisions of Korea's Customs Act and its sub-legislation, which was revised in 1996.

LAWS AND REGULATIONS OF THE CUSTOMS ACT CONCERNING ANTI-DUMPING

1. THE CUSTOMS ACT

Article 10 (Anti-Dumping Duty)

(1) In cases where it is confirmed through an investigation that the importation of foreign products at a price lower than the normal value (hereinafter referred to as "dumping") causes or threatens to cause material injury to, or causes material retardation of the establishment of a domestic industry (hereinafter referred to as "material injury, etc.") and it is deemed necessary to protect such an industry, a duty in an amount not more than the difference between the normal value and the dumping price (hereinafter referred to as the "margin of dumping") of such products (hereinafter referred to as "anti-dumping duty") may be imposed on such products in addition to the customs duty, as prescribed in Article 7, by designating the products, supplier, or supplying country of such products through the Ordinance of the Prime Ministry.

(2) If it is confirmed that there is sufficient evidence (in cases where the undertakings as referred to in Paragraph (3) are not fulfilled, or a demand for the presentation of materials on the fulfilment of the undertakings and a demand to allow the verification of the materials presented is not complied, the best information available shall apply) to presume that there has been the fact of dumping and material injury, etc., caused thereby, for the products against which an investigation is initiated to determine whether or not an anti-dumping duty, as referred to in Paragraph (1), is to be imposed, and if it is deemed necessary to prevent the injury caused during the period of investigation, the Minister of Finance and Economy may, even before the investigation is concluded, adopt a measure to impose a provisional anti-dumping duty in addition to the customs duty or to order to provide a security, which is not greater than the amount equivalent to the margin of dumping estimated provisionally, by designating the products, supplier, or supplying country and period (hereinafter referred to as "provisional measures" in this Article).

(3) In cases where an investigation to determine whether or not the anti-dumping duty, as referred to in Paragraph (1), is to be imposed has been initiated and a preliminary affirmative determination of dumping and consequent injury to a domestic industry has been made, the exporter of the products concerned or the Minister of Finance and Economy may offer or suggest undertakings to revise the price or to cease exports at the dumping price so that the injury caused by the dumping 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 any anti-dumping duty; provided that, if the Minister of Finance and Economy deems the investigation to be necessary, or the exporter requests to continue the investigation, the investigation may be continued.

(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) In cases where the request for the imposition of an anti-dumping duty is withdrawn, the determination on whether or not the anti-dumping duty, as referred to in Paragraph (1), is to be imposed, is made or the undertakings referred to in Paragraph (3) are accepted, 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 provision 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 which are necessary for the 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 Minister, 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 of dumping and industrial injury, as referred to in Paragraph (7), it shall lose its effect after five years from the date of the enforcement of such a modification except the cases where the imposition period is provided independently by the Ordinance of the Prime Minister.

(9) Matters concerning the normal value, dumping price, examination on the material injury, etc., the undertakings, the time-limit by which the anti-dumping duty or provisional measure is applied, method of imposition, etc., as referred to in Paragraphs (1) to (7) shall be determined by the Presidential Decree.

2. THE DECREE OF THE CUSTOMS ACT

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 in charge of such an industry, may request to the Minister of Finance and economy to impose an anti-dumping duty, under the conditions prescribed by the Ordinance of the Prime Minister. Such a request is substituted by the request for an investigation to the Trade Commission which is prescribed in Article 37 of the Foreign Trade Act (hereinafter referred to as "the Trade Commission") required for imposing such an anti-dumping duty.

(2) In applying the provisions of Article 10(1) of the Act, a domestic industry means the total domestic production industry producing the like product of the product imported at a price lower than its normal value (a production industry managed by a producer who has such special relations with suppliers or importers of the product as prescribed by the Ordinance of the Prime Minister and a production industry managed by such a producer who is an importer of the product as prescribed by the ordinance of the Prime Minister may be excluded; hereinafter the same shall be applied in this Paragraph) or the domestic production industry which accounts for a considerable portion of the total domestic production of the like product.

(3) For the purpose of Paragraph (1), the term "an interested party to the domestic industry" means a domestic producer belonging to a domestic industry that is affected by material injury, etc., and an individual or a corporation or an organization of which the domestic producer is a member or which represents the interest of such a domestic producer as prescribed by the Ordinance of the Prime Minister.

(4) Any person who wishes to request an investigation under Paragraph (1) shall submit to the Trade Commission a written request including the following matters and sufficient documentary evidence attesting the fact that the dumped product has been imported and that the material injury etc., has been caused by the import of such a product in triplicate. In this case, the Trade Commission shall notify the Minister of Finance and Economy and the heads of related administrative agencies that it has received a request for investigation:

1. Names of items, dimensions, characteristics, uses, names of producers, and production quantity of such a product;

2. Supplying country and suppliers, actual export record, possibility of exportation and importers, actual import record, possibility of importation in Korea of such a product;
3. Ex-factory price and the market price of such a product in the supplying country, and the export price of such a product in Korea and third countries;
4. Names of items, dimensions, characteristics, uses, names of producers, production quantity, factory and market prices, and the cost calculation for the like product in Korea;
5. Matters pertaining to the material injury, etc., of the domestic industry caused by the importation of such a product;
6. The degree of support for the application of an investigation expressed by the domestic producers of the like product;
7. If it is required to treat matters stated in and material appended to confidentially, the written request, the reason therefor; and
8. Other matters as deemed necessary by the Minister of Finance and Economy.

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 or not it will initiate an investigation on the dumping and material injury, etc., and shall notify the Minister of Finance and Economy within a month of receiving such a request the result of the determination thereof and the following matters:

1. Products subject to an investigation (in case there are many products subject to an investigation, products selected according to the Ordinance of the Prime Minister);
2. Period subject to an investigation; and
3. Suppliers subject to an investigation (in case where there are many suppliers subject to investigation, suppliers selected according to the Ordinance of the Prime Minister).

(2) In determining whether or not to initiate an investigation in accordance with Paragraph (1), the Trade Commission may reject such a request if the request for an investigation falls under any of the following sub-paragraphs:

1. In case a person who has filed the written request is ineligible to request imposition under Article 4-2(1);
2. In case sufficient documentary evidence on a dumping and material injury, etc., is not submitted;
3. In case the margin of dumping or the quantity of the dumped product is below the standard set by the Ordinance of the Prime Minister, or in case the material injury etc., is deemed to be insignificant;
4. In case the application for an investigation does not satisfy the standard of representativeness of the domestic industry set by the Ordinance of the Prime Minister; and
5. In case it becomes unnecessary to initiate an investigation, e.g., a measure has been taken prior to the initiation of an investigation to eliminate any adverse effect on the domestic industry.

(3) When the Trade Commission has determined the initiation of an investigation referred to in Paragraph (1), it shall notify the person requesting an investigation, the government of the supplying country and the suppliers of such a product and other interested parties of the matters concerning the determination on the initiation of the investigation and shall publish them in the official gazette within ten days after the determination.

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

(1) The Trade Commission takes charge of the investigation on dumping and material injury, etc., referred to in Article 10(1). In this case, the Trade Commission may, if it is deemed necessary, have public officials of related administrative agencies or concerned experts participate in the investigation.

(2) The Trade Commission shall complete a preliminary investigation on whether or not there is sufficient evidence to presume the existence of a dumping and a material injury, etc., and shall submit a report on the results of this investigation to the Minister of Finance and Economy 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 as referred to in Article 4-3(3).

(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 a month of the submission of a report on the results of a preliminary investigation as referred to in Paragraph (2); however, provided that it is deemed necessary, the period for such a decision may be extended for a maximum of twenty days.

(4) In case the margin of dumping or the quantity of dumped product is below the standard set by the Ordinance of the Prime Minister or the material injury, etc., is deemed insignificant after a preliminary investigation referred to in Paragraph (2), the Trade Commission shall terminate the final investigation referred to in Paragraph (5).

(5) Insofar as there exist no special reasons prescribed by the Ordinance of the Prime Minister, the Trade Commission shall initiate a final investigation on the day after it submits a report on the results of the preliminary investigation referred to in Paragraph (2) and shall submit a report of the results of the final investigation to the Minister of Finance and Economy within three months of the day on which the final investigation was 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 an interested party requests an extension of the investigation period with justifiable reasons, then the Trade Commission may extend it for a maximum of a month.

(7) Within a month of the submission of the report on the results of the final investigation, 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; however, provided that it is deemed necessary, the period may be extended for a maximum of twenty days.

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

(9) If the Trade Commission considers it necessary, it may request to the Minister of Finance and Economy to take preliminary measures prescribed in Article 10(2) of the Act, to impose the anti-dumping duty prescribed in Article 10(1) of the Act or to propose the undertakings prescribed in Article 10(3) of the Act when it submits the results of the investigation as referred to in Paragraph 2 and Paragraph 5.

Article 4-5 (Withdrawal of the Application for the Imposition of the Anti-Dumping Duty)

(1) If an applicant for an investigation under Article 4-2(1) wishes to withdraw his application, he shall submit the intention in writing to the Trade Commission. In this case, if the Trade Commission receives such a withdrawal before it submits a report on the results of the preliminary investigation prescribed in Article 4-4(2), it may cease contemplating to determine whether or not to initiate an investigation under Article 4-3(1) or terminate the investigation prescribed in Article 4-4 after consulting with the Minister of Finance and Economy and the head of the administrative agency concerned, and if it received such a withdrawal after it submits a report on the results of the preliminary investigation prescribed in Article 4-4(2), then it shall notify the Minister of Finance and Economy.

(2) In receiving the notification referred to in Paragraph (1), the Minister of Finance and Economy may prevent the initiation of, or terminate, the investigation prescribed in Article 4-4, after a consultation with the Trade Commission and the heads of the administrative agencies 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 measures referred to in 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 4-6 (Comparison between the Normal Value and the Dumping Price)

(1) For the purpose of Article 10(1) of the Act, the term "normal value" means the price of the like product which is consumed in the ordinary course of trade in a country that supplies the product; however, provided that the like product is not traded, or it is impossible to apply the price used in the ordinary course of trade in such a country because of the particular market situation, etc., then a comparable price which is representative of the export prices of the like product from such a country to third countries, or a price that includes the cost of production in the country of origin, a reasonable amount for administrative and selling costs, and profits (hereinafter referred to as the "constructed value") shall be considered the normal value.

(2) If the product is imported through a third country and not directly from a country of origin, the price used in the ordinary course of trade in the third country shall be considered the normal value; however, provided that the product is simply shipped through or no actual production of the like product takes place or there is no price that is deemed as the price used in the ordinary course of trade in the third country, then the price used in the ordinary course of trade in the country of origin shall be considered the normal value.

(3) Notwithstanding the provisions of Paragraphs (1) and (2), if the product concerned is imported from a country in which the state controls the economy and a market economy system is not established, the price of the like product consumed in the ordinary course of trade in market economy countries excluding Korea or such market economy countries' export price to third countries including Korea or constructed value shall be considered to be the normal value; however, provided that in such cases as prescribed by the Ordinance of the Prime Minister, as when a country, which does not have the market economy system, is in the process of undergoing a transition to a market economy system, then the price used in the ordinary course of trade, etc., as prescribed by Paragraphs (1) and (2), may be considered the normal value.

(4) For the purpose of Article 10(1) of the Act, the term "dumping price" means the actual price paid or to be paid for a product for which an investigation is initiated, as prescribed in Article 4-3; however, provided that it is impossible to establish a dumping price on the basis of an actual price paid or to be paid because of special relations or compensatory arrangements between the supplier and the importer or a third person prescribed by the Ordinance of the Prime Minister, then it means any of the following prices:

1.the price at which the imported product is resold for the first time to a purchaser who has no such special relation or compensatory arrangement;

2.the price based on such reasonable criteria as determined by the Ordinance of the Prime Minister in cases where the products are not resold to a purchaser who has no such special relation or compensatory arrangement, or where the products are not resold in the condition that they were imported.

(5) A comparison between the normal value and the dumping price shall be made at the same time and level (normally at the ex-factory level) of trade as possible. In this case, if any physical characteristics, quantity and condition of sales, difference in taxation, fluctuation of exchange rates, etc., of the product concerned affect the comparability of the price, the normal value and the dumping price may be adjusted according to the Ordinance of the Prime Minister.

(6) If any interested party demands price adjustments referred to in Paragraph (5) because of a difference in physical characteristics or quantity and condition of sales, he shall establish the fact that that difference has had a direct effect on the market price or on the manufacturing costs.

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 product (including whether or not the importation of such a product has increased significantly in absolute terms or in relative terms compared to the domestic production or consumption of the product);
- 2.Price of the dumped product (including whether or not such a price has decreased significantly in comparison with the like product produced domestically);
- 3.Degree of the dumping margin (including whether or not the import price of a dumped product has declined significantly in comparison with the normal value established 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 a material injury, etc., under Paragraph (1), a determination on the threat of material injury shall be made on the basis of facts including the following matters in addition to the matters referred to in sub-paragraphs of Paragraph (1) and the injury by the dumped product shall 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 the dumped product is likely to decline or to prevent the increase of the price of the like product and the likelihood of an increase in the demand for more imports; and
4. The inventory of the dumped product and the status of the inventory of the like product.

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

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

(4) The Trade Commission shall investigate factors other than dumped imports which have caused injuries to the domestic industry and shall not consider the material injury etc. caused by these factors as caused by the dumped imports.

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 of whether or not an anti-dumping duty is to be levied under Article 10(1) of the Act, the Minister of Finance and Economy or the Trade Commission may ask for the cooperation, such as a presentation of relevant material, etc., to the relevant authorities, domestic producers, suppliers, 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 material, or material 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 the express consent of the person who has presented the material.

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

(4) In a case where a person who has presented material refuses to make the material public although his request for a confidential treatment under Paragraph (2) is deemed unwarranted or where he refuses to submit the non-confidential summary referred to in Paragraph (3) without a justifiable reason, the Minister of Finance and Economy or the Trade Commission may disregard such material unless the accuracy of the material has been sufficiently demonstrated.

(5) In conducting an investigation and determining whether or not the anti-dumping duty is to be imposed as prescribed in Article 10(1) of the Act, if it is difficult to conduct the investigation or to verify the material for the reason that an interested party will not present related material or refuses or impedes the investigation of the Trade Commission, or for other reasons, the Minister of Finance and Economy or the

Trade Commission may decide whether or not to take any measures to prevent the dumping on the basis of the facts available.

(6) The Minister of Finance and Economy and the Trade Commission may not use any information and material acquired, and facts acknowledged from the interested parties in connection with the anti-dumping proceedings for other purposes.

(7) In a case where an interested party requests to read related documentary evidence submitted under Article 4.2(4) and material submitted or informed under Paragraphs (1) and (9) and Article 4-11 other than those treated confidentially, the Minister of Finance and Economy and the Trade Commission 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 reading the material shall be made in writing, stating the reasons thereof and a list of the material requested.

(8) The Minister of Finance and Economy or the Trade Commission may give the interested parties an opportunity to state their opinion through a public hearing, etc., or to consult with interested parties of opposing interests if it is deemed necessary or there is a request of any interested party.

(9) If the customs collector, the heads of banks dealing with foreign exchange services, other agencies concerned, or interested organizations consider that an imported product has been dumped, he shall notify the Minister of Finance and Economy and the Trade Commission.

Article 4-9 (Imposition of the Anti-Dumping Duty)

(1) The anti-dumping duty prescribed in Article 10(1) of the Act may be imposed by means of setting anti-dumping duty rates or base import prices determined for each supplier or supplying country; however, with respect to those suppliers on whom it is difficult to conduct an investigation or to verify material for the reason that they fail to submit the material prescribed in Article 4-8, or refuse to make the material public without a justifiable reason, or for other reasons, the anti-dumping duty may be imposed by means of setting a single anti-dumping duty rate or base import price.

(2) With respect to suppliers not selected as the subject of an investigation under Article 4-3(1), the anti-dumping duty shall be imposed by means of setting an anti-dumping duty rate or a base import price calculated by a weighted average of anti-dumping duty rates or the base import prices for suppliers selected for the investigation; however, with respect to those who have submitted the material prescribed in Article 4-8 among the suppliers who exported during the period subject to the investigation but were not selected for the investigation, the provision of Paragraph (1) shall be applied.

(3) In a case where the anti-dumping duty is imposed by designating supplying countries under Article 10(1) of the Act, if a new supplier of the supplying countries, who exports after the period subject to investigation prescribed in Article 4-3(1), has a special relationship prescribed by the Ordinance of the Prime Minister with a supplier who is subject to the anti-dumping duty by Paragraph (1), an anti-dumping duty shall be imposed on the basis of the anti-dumping duty rate or the base import price applied to the supplier; however, provided that such a new supplier can show that he has not such special relations, the anti-dumping duty may be imposed by means of setting an individual anti-dumping duty rate or an individual base import price calculated as a result of an investigation. In this case, the method, procedure, etc., of the investigation may be different from those applied to the persons who were subject to an investigation as prescribed by the Ordinance of the Prime Minister.

(4) The base import price, referred to in Paragraphs (1) to (3), shall be determined within the range calculated by adding the import-related expenses to the normal value established in the supplying country and adjusted according to Article 4-6(5).

Article 4-10 (Application of Provisional Measures)

(1) The provisional measures prescribed in Article 4-4(3) may be applied to a case where there is positive judgement for dumping and industrial injury as a result of the preliminary investigation prescribed in Paragraph (2) of the same Article and where at least sixty days have passed since the initiation of an investigation.

(2) The application period for the provisional measures prescribed in Article 4-4(3) shall not exceed four months; however, provided that a supplier of significant importance in the trade of the product requests, such an application period may be extended to a maximum of six months.

(3) Notwithstanding the provision 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 to provide a security is issued under Article 10(2) of the Act, the security provided shall be equivalent to the provisional anti-dumping duty in value.

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

(1) If an exporter of a product, for which an investigation has been initiated in order to determine whether or not the anti-dumping duty is to be imposed, wishes to propose an undertaking under Article 10(3) of the Act or wishes to request the continuation of an injury investigation under Article 10(4) of the Act, he shall submit such a request in writing to the Trade Commission. In this case, the Trade Commission shall notify the Minister of Finance and Economy of the contents submitted immediately thereafter.

(2) If the undertaking proposed under Paragraph (1) contains particulars to the effect that the price is to be revised immediately or the export is to discontinue within six months, then the Minister of Finance and Economy may accept the undertaking; however, provided that it is deemed difficult to secure a fulfilment of the undertaking according to the provision of the Ordinance of the Prime Minister, the Minister of Finance and Economy need not accept such an undertaking.

(3) The Minister of Finance and Economy, if it is deemed necessary, may propose an undertaking prescribed in Article 10(3) of the Act, by designating exporters.

(4) The Minister of Finance and Economy may not accept an undertaking under Paragraph (2) or propose an undertaking under Paragraph (3) before there is positive judgement of a dumping and an industrial injury which has been caused by the dumping as a result of the preliminary investigation.

(5) 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; however, provided that as a result of an investigation prescribed in Article 4-4, a final determination of material injury was made or though final determination of a threat of material injury was made, in the absence of provisional measures, the effect of the dumped imports would have led to a determination of material injury, the Minister of Finance and Economy need not refund the provisional anti-dumping duty paid by such provisional measures or may collect the amount equivalent to the provisional anti-dumping duty.

(6) If the exporter fails to fulfil the undertakings accepted under Article 10(4) of the Act, the Minister of Finance and Economy may promptly take anti-dumping measures by using the best information available.

(7) If it is ascertained, through a continuous investigation under the provision of Article 10(4) of the Act, that there exists no material injury, etc., or that there exists no margin of dumping, the Minister of Finance and Economy shall nullify the effect of the undertaking; however, provided that the non-existence of a material injury etc. or dumping margin is deemed to have been generated by the undertaking, the Minister of Finance and Economy may have the undertaking continued for an adequately set period, and if the exporter refuses to fulfil the undertaking, the Minister of Finance and Economy may promptly take anti-dumping measures by using the best information available.

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

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

- 1.A product imported during the period in which provisional measures have been applied in a case where a final determination of material injury was made, or where, although a final determination of a threat of material injury was made, it was deemed that a final determination of material injury would have been made in the absence of provisional measures;
- 2.A product imported not more than ninety days prior to the date of the application of provisional measures in those cases where it is necessary to retroactively impose the anti-dumping duty to prevent a recurrence of a material injury, etc., caused by the massive importation of a product in a relatively short time period, and in the case where the product was dumped and caused material injury, etc., in the past or where the importer was or could have been aware of the fact of a dumping and a material injury, etc., caused thereby;
- 3.A product imported not more than ninety days prior to the date of the application of provisional measures in the case where it was admitted that a material injury, etc., was caused by the importation of a product to which provisional measures were applied, in violation of the undertaking prescribed in Article 10(3) of the Act. In this case, a product imported prior to the violation of an undertaking is excluded; and
- 4.Other products imported during such a period as determined by the Minister of Finance and Economy under conditions prescribed by the international agreement.

(2) Any interested parties in the domestic industry, prescribed in Article 4-2, may request an imposition of the anti-dumping duty prescribed in the proviso of Article 10(5) of the Act by submitting evidence that the product concerned falls under any of the sub-paragraphs of Paragraph (1) within seven days of the conclusion of the final investigation prescribed in Article 4-4(5).

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

(1) In a case that falls under Article 4-12(1), where the amount of the anti-dumping duty, which was imposed on a product imported during the period, in which provisional measures were 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 charged, and where the anti-dumping duty is lower than the provisional anti-dumping duty, the provisional anti-dumping duty paid, equal to the amount of the difference, shall be refunded.

(2) In a case where any security was provided under the provision of Article 10(2) of the Act, and which falls under Article 4-12(1), the amount of the anti-dumping duty to be imposed retroactively during the period, in which the provisional measures were 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 a review along with other documentary evidence related to a case which falls under the following sub-paragraphs, the Minister of Finance and Economy shall determine whether or not the review prescribed in Article 10(7) of the Act is to be conducted with respect to the product on which the anti-dumping duty has been imposed or for which an undertaking has been carried out.

1. Where circumstances have changed enough to modify the contents of the measures after the enforcement of an anti-dumping duty or an undertaking;

2. Where there is a chance that an injury to the domestic industry might have been caused by the termination of an anti-dumping duty or an undertaking; and

3. Where the anti-dumping duty has been paid in excess of the actual margin of dumping.

(2) A request for a review referred to in Paragraph (1) may be made after a year has passed since an anti-dumping duty or an undertaking has been put into 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 whether or not a review is necessary within a month of receiving the request for the review.

(3) In addition to the review conducted under Paragraph (1), the Minister of Finance and Economy may conduct a review on the appropriateness of the rate of an anti-dumping duty imposed or an undertaking in force and to this end he shall conduct an annual examination of the dumping price in connection with the contents of the anti-dumping duty or 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) In determining the necessity of a review under Paragraph (1) or (3), the Minister of Finance and Economy may consult heads of related administrative agencies and the Trade Commission, and when it is determined that a review is necessary, the Trade Commission shall carry out an investigation thereon. In this case, the investigation may be limited just to those changed parts, which fall under the reasons for conducting such a review.

(5) The Trade Commission shall finish an investigation prescribed in Paragraph (4) and submit the results to the Minister of Finance and Economy within six months of the initiation of a review; however, provided that it is necessary to extend the investigation period or the interested parties request an extension of the period by submitting adequate reasons, the Trade Commission may extend the investigation period to a maximum of four months.

(6) In a case where the measures prescribed in Article 10(7) of the Act are necessary, the Minister of Finance and Economy shall take measures within a month of receiving the results of the investigation; however, provided that it is deemed necessary, such a period may be extended to a maximum of 20 days.

(7) In a case where a review is conducted for reasons stated in Sub-paragraph 2 of Paragraph (1), an anti-dumping measure shall remain in force during the review period even though the effective period of the measure expires during the review.

(8) If it is deemed that an undertaking has lost, or might lose its effectiveness as a result of a review referred to in Paragraphs (1) or (3), the Minister of Finance and Economy may demand that an exporter carrying out such an undertaking revise the undertaking and if the exporter refuses to revise the

undertaking, the Minister of Finance and Economy may implement the anti-dumping measure on the basis of the information available.

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

(1) In 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 take a measure or not to take a measure prescribed in Article 10(1) and (2) of the Act;
2. Where he suspends, terminates, or continues an investigation by accepting an undertaking prescribed in Article 10(3) of the Act; and
3. Where he initiates a review prescribed in Article 10(7) of the Act, or he modifies the contents of anti-dumping measures as a result of such a review; and
4. deleted.

(2) In the following cases, the Minister of Finance and Economy or the Trade Commission shall notify the interested parties of the details thereof:

1. Where a request for an 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 proviso 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 to initiate or to terminate 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 proposes undertakings under Article 4-11(3).

(3) When there is a written request made by the interested parties with regard to the investigation prescribed in Article 4-4, in the course of the investigation, the Minister of Finance and Economy or the Trade Commission shall notify them of the details of the investigation in progress.

3. THE REGULATION OF THE CUSTOMS ACT

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

(1) The term "the like product", as 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), or in the absence of such a product, that which has the function, characteristics and constituent parts that closely resemble such an imported product.

(2) With respect to 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 special relations, if a producer of the like product of the imported product sells the product at a price and with conditions that are the same with, or similar to, the price and conditions of the product sold by the person

who does not have such relations as prescribed in the text of this Article, such a producer may be excluded from being defined as 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 Minister", 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 "a person who is prescribed by the Ordinance of the Prime Minister", as used in Article 4-2(3) of the Decree, means an association, union, etc., composed of domestic producers of the like product.

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

(1) In selecting the products and suppliers subject to investigation, as prescribed in Article 4-3(1) (Sub-paragraphs 1 and 3) of the Decree, the sampling method that is statistically valid on the basis of available material (including the method to select the number of suppliers or products based on the percentage of import volume) will be used in principle.

(2) The term "the standard set by the Ordinance of the Prime Minister", as used in Articles 4-3(2) (Sub-paragraph 3), 4-4(4) and 4-7(3) (Sub-paragraph 1) of the Decree, means each of the following sub-paragraphs:

1.the margins of dumping: not less than 2% of the dumping price; and

2.the import volume of the dumped product: where the total volume of imports from the supplying countries, which individually accounts for less than 3% of the imported volume of the like product, exceeds 7% of such an imported volume.

(3) The term "where the application does not satisfy the standard of representativeness of the domestic industry set by the Ordinance of the Prime Minister", as used in Article 4-3(2) (Sub-paragraph 4) of the Decree, means each of the following sub-paragraphs:

1.where the collective production of the like product produced by domestic producers expressing support is not more than 50% 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% of the total domestic production of the like 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) of the Decree, shall submit an application of withdrawal stating the reasons thereof and the supporting materials to the Trade Commission.

(2) In 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) of the Decree, respectively, and

where the alleged reasons for withdrawal are deemed improper, the Minister of Finance and Economy or the Trade Commission 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 4-4 (Comparison between the Normal Value and the Dumping Price)

(1) In calculating the prices in the ordinary course of trade, as prescribed in the text of Article 4-6(1), and the export prices to third countries in the provision of Article 4-6(1), the sale prices shall not be used as a basis if the sales of the like product fall under any of the following cases:

1. where sales are made at prices below the cost of production plus the selling, general and administrative costs (hereinafter, "costs") and the volume of such sales represents not less than 20% of the volume sold in the transactions under consideration for the determination of the normal value, and the sales, excluding the sales below costs, cannot provide for the recovery of costs within a reasonable period of time; and
2. where the sales price between such related parties as prescribed in Article 3-6(1) (each Sub-paragraph) of the Decree was affected by such a relation.

(2) The particular market situation, etc., as prescribed in Article 4-6(1) of the Decree, shall be interpreted as including the cases in which the sales in the supplying country constitute less than 5% of the imports from such a supplying country, and it is improper to calculate the normal value on the basis of such sales, except in the case where the evidence demonstrates that the sales in the supplying country at such a low ratio can be used as the basis of comparison for the dumping price.

(3) With regard to the assessment of the constructed value as prescribed in the provision of Article 4-6(1), the amounts for selling, general and administrative costs and the profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the supplier under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

1. the actual amounts incurred and realized by the supplier under investigation in respect of production and sales in the domestic market of the country of origin of the same general category of products;
2. the weighted average of the actual amounts incurred and realized by other suppliers in no question in respect of production and sales of the like product in the domestic market of the country of origin;
3. any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other suppliers on sales of products of the same general category in the domestic market of the country of origin.

(4) With regard to the application of the text of Article 4-6(3), the market economy country shall be the country that is similar to the supplying country of such a product in terms of its level of economic development, production technology of the product, etc.

(5) The term "such cases as prescribed by the Ordinance of the Prime Minister", as used in the provision of Article 4-6(3) of the Decree, means the cases in which the production and sales of the products are made under a market economy system.

- (6) The term "special relations as prescribed by the Ordinance of the Prime Minister", as used in the provision of Article 4-6(4) of the Decree, means such relations as prescribed in Article 3-6(1) (each Paragraph).
- (7) The price based on reasonable criteria, as prescribed in the provision of Article 4-6(4), shall be interpreted as referring to the price calculated after considering costs incurred between the importation, costs of the resale, and reasonable profits.
- (8) The comparison between normal value and the dumping price under the text of Article 4-6(5) of the Decree, shall, in principle, be made by means of a weighted average of volume and prices.
- (9) The price adjustment due to a difference in physical characteristics under the latter part of Article 4-6(5) of the Decree shall be based on the impact of such physical characteristics on the market price of the supplying country, provided that, in cases where materials on the market price of the supplying country are not available or are improper for the purpose of price comparison, the adjustment may be based on the difference in the costs of production due to a difference in the physical characteristics.
- (10) The price adjustment due to a difference in the quantities of sale under the latter part of Article 4-6(5) of the Decree shall be confined to the cases where there exists a saving in the costs of production due to massive production or where there exists a discount due to a massive sale offered to all the purchasers in the ordinary course of trade.
- (11) The price adjustment due to a difference in the conditions of sale under the latter part of Article 4-6(5) of the Decree shall be confined to the case where such conditions of sale have such a direct relationship to the sale price as to give an impact thereon.
- (12) The price adjustment due to fluctuations of exchange rates under the latter part of Article 4-6(5) of the Decree shall be confined to the cases of continuously regular movements of exchange rates.

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 damage to the interest of the presenters or the interested parties:

- 1.cost 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 4-6 (Imposition of the Anti-Dumping Duty)

(1) The anti-dumping duty under Article 10(1) of the Act shall be imposed according to any of the following methods:

1. where the anti-dumping duty is imposed by a fixed rate method, customs value multiplied by the determined rate which does not exceed the dumping rate that is calculated according to the following formula; and

$$\text{dumping rate} = \frac{\text{adjusted normal value} - \text{adjusted dumping price}}{\text{customs value}} \times 100$$

2. where the anti-dumping duty is imposed by base import price method, the base import price, as prescribed in Article 4-9(4) of the Decree, minus customs value.

(2) In calculating the weighted average anti-dumping duty rate or the base import price under Article 4-9(2), the weight may be placed on each supplier's volume of export. In this respect, any margin of dumping less than 2% of the dumping price may be disregarded.

(3) The Minister of Finance and Economy shall carry out an investigation against such a new supplier, as prescribed in the provision of Article 4-9(3), on a more accelerated basis than an investigation under Article 4-4 of the Decree. In this case, the investigation on material injury, etc., may be substituted by an investigation of material injury, etc., against the supplying country.

Article 4-7 (Undertakings to Revise the Price and to Cease Exporting, etc.)

(1) Where an exporter wishes to propose undertakings to the Trade Commission 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 a level which may eliminate material injury, etc., or will cease exporting within 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 taken 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) Before accepting undertakings, the Minister of Finance and Economy, as prescribed in Article 4-11(2) of the Decree, may ask for opinions of the Trade Commission, the head of the administrative agency concerned and the interested parties.

(3) The Minister of Finance and Economy may refuse to accept an undertaking pursuant to the provision of Article 4-11(2) of the Decree 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.

(4) As prescribed in Article 4-11(3) of the Decree, the exporter who has received the proposal of undertakings from the Minister of Finance and Economy shall notify whether or not such a proposal is accepted within one month.

Article 4-8 (Request for a Review)

Interested parties entitled to request a review shall be as follows:

1. domestic producers of the like product or their organizations;
2. producers, suppliers, 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.

Article 4-9 (Request for Confidential Treatment of Interested Parties)

(1) Among materials presented under Article 4-21 of the Decree, the material which is requested to be treated in confidence by the person who submitted it with a justifiable reason, shall not be disclosed without an express consent of the person who presented such materials.

(2) Materials which are treated in confidence under Paragraph (1) shall be applicable to the cases as referred to in Article 4-5.