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Committee on Subsidies and Countervailing Measures

NOTIFICATION OF LAWS AND REGULATIONS UNDER
ARTICLE 32.6 OF THE AGREEMENT

KOREA

The following communication, dated 10 March 1997, has been received from the Permanent Mission of Korea.

With reference to Article 32.6 of the Agreement on Subsidies and Countervailing Measures, I have the honour to notify the Committee on Subsidies and Countervailing Measures of the laws and regulations of the Republic of Korea regarding countervailing duties, as revised during 1996. For the convenience of the Members reviewing them, the revisions have been underlined.

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.") was granted directly or indirectly in a foreign country upon their manufacture, production or exportation, 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 the exporter or exporting country of such products through the Ordinance of the Prime Minister.

(2) In cases where it is confirmed that there is sufficient evidence (in cases where the undertakings, as referred to in Paragraph 3, are withdrawn or not complied with, or the materials requested concerning the fulfilment of the undertaking are not presented, the best information available shall apply) to presume that the importation of the products with subsidies, etc., for which an investigation was 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, adopt a measure to order the imposition of 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.

(3) In cases where the investigation to determine whether or not the countervailing duty, as referred to in Paragraph 1, is to be imposed, has been initiated and a preliminary affirmative determination of the fact of granting the subsidies, etc., and injury to a domestic industry caused by the importation of products with subsidies, etc., has been made, the government of the country exporting the 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 concerned may, with the consent of the government of the exporting country, offer an undertaking to revise the price so that the injurious effect of the subsidies, etc., on the domestic industry 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).

Article 10 (Anti-Dumping Duty)

(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) is 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 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 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.
- (6) Matters concerning the amount of subsidies, etc., the investigation on material injury, etc., the undertakings, and the expiry time and 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 DECREE OF THE CUSTOMS ACT (The Presidential Decree)

Article 4-24 (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. prescribed in the Ordinance of the Prime Minister.
- (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 specificity shall be prescribed by the Ordinance of the Prime Minister.
- (3) "the amount of subsidies, etc." as prescribed in Article 13(6) of the Act shall be calculated on the basis of the actual benefits by means of such methods as prescribed by the Ordinance of the Prime Minister.

Article 4-25 (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), (7) and (9), and 4-8(1) and (5), shall mean "Article 13(1) of the Act"; the term "anti-dumping duty" used in Articles 4-2(1), 4-3(3), 4-4(2), (7), (8) and (9), 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), and 4-15(2) (sub-paragraph 4)), shall mean "countervailing duty"; the term "supplier" used in Articles 4-2(2), 4-3(1) (sub-paragraph 3) and (3), 4-8(1), 4-10(2), and 4-14(8), shall mean "government of the exporting country or exporter"; the term "exporter" used in Article 4-11(1), (3), (6) and (7) shall mean "government of the exporting country or exporter"; the term "products imported at a price lower than its normal value" used in Article 4-2(2) shall mean "subsidized products"; the term "fact or 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(1) (sub-paragraph 3) and (3) (sub-paragraph 1) 4-11(7), and 4-14(1) (sub-paragraph 3), shall mean the "amount of subsidies etc."; the term "dumped products" used in Articles 4-3(2) (sub-paragraph 3), 4-4(4) and 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 products"; the term "Article 10(2) of the Act" used in Articles 4-4(3) and (9), 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(5), shall mean "provisional countervailing duty"; the term "dumping" used in Articles 4-7(2) (sub-paragraph 2) and (4), 4-10(1), and 4-11(4), shall mean "importation of subsidized products"; the term "anti-dumping measures" used in Article 4-8(5) shall mean "countervailing measures"; the term "prompt measures to prevent the dumping" used in Article 4-11(6) and (7), shall mean "prompt measures for countervailing duties"; 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(5), 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 4-4(9), 4-11(1) and (3), 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), (5) and (7), shall mean "Article 13(4) of the Act"; the term "dumping export" used in Article 4-11(2) shall mean "export of subsidized products"; 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 "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(7) and 4-15(1) (sub-paragraph 3), shall mean "countervailing measures"; and the term "Article 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 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 interests of such a domestic producer as prescribed by the Ordinance of the Prime Minister.

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 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 the 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).

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 receives 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 4-7 (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.

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 materials, 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 4-10 (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 promptly 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; and
 - 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 of 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 Paragraphs (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 twenty 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

- (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.

- (2) 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 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 products 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 REGULATION OF THE CUSTOMS ACT (The Ordinance of the Prime Minister)

Article 5 (Subsidies, etc.)

(1) The term "subsidy as prescribed by the Ordinance of the Prime Minister", as used in the provision of Article 4-24(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 4-24(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 subsidies, etc., as prescribed in Article 4-24(3) of the Decree, 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 4-25 of the Decree. In this case, the term "Article 4-2(2) of the Decree" used in Article 4(1), (2) and (3) (text) shall mean "Article 4-2(2) of the Decree which is applied *mutatis mutandis* pursuant to Article 4-25(1) of the Decree"; the term "Article 4-2(4) of the Decree" used in Article 4(3) (sub-paragraph 1) shall mean "Article 4-25(2) of the Decree"; 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 4-25(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 4-25(1) of the Decree"; the term "supplier" used in Articles 4-2(1) and 4-8(2) shall mean "government of the exporting country or exporter"; 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 4-25(1) of the Decree"; the term "Article 4-2(1) of the Decree" shall mean "Article 4-2(1) of the Decree which is applied *mutatis mutandis* pursuant to Article 4-25(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 4-25(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 4-25(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 4-25(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 4-25(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* pursuant to Article 4-25(2) of the Decree"; the title of Article 4-7 "undertakings to revise the price, to cease exporting, etc." shall mean "undertakings to revise the price"; 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 4-25(1) of the Decree"; the term "Article 4-7(1) (sub-paragraph 1)" shall mean "an undertaking that the exporter will increase the export price to a level which may eliminate material injury, etc."; the term "Article 4-11(2) of the Decree" used in Article 4-7(2) shall mean "Article 4-11(2) of the Decree which is applied *mutatis mutandis* pursuant to Article 4-25(1) of the Decree"; the term "Article 4-11(2) (proviso) of the Decree" used in Article 4-7(3) (text) shall mean "Article 4-11(2) (proviso) of the Decree which is applied *mutatis mutandis* pursuant to Article 4-25(1) of the Decree"; the term "Article 4-11(3) of the Decree" used in Article 4-7(4) shall mean "Article 4-11(3) of the Decree which is applied *mutatis mutandis* pursuant to Article 4-25(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* pursuant to Article 4-25(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 "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 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 "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 "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 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) 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 4-5 (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.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 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 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) 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.

(2) The term "standard set by the Ordinance of the Prime Minister" 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 4-25(1) of the Decree, shall be interpreted to refer to the case in which the amount of subsidy is not less than 1% of the price of the product, unless otherwise provided for in an international agreement.