The following communication has been received from the Permanent Mission of the Republic of Korea.
Amendment of the Presidential Decree of
The Korean Customs Act on Anti-Dumping/Countervailing Duty

In pursuance of paragraph 6 of Article 16 of the Anti-Dumping Code and paragraph 5 of Article 19 of the Subsidies Code, the Government of the Republic of Korea is pleased to submit for the Committee's information the amendment of the Presidential Decree of the Korean Customs Act relevant to the Codes.

The attached texts of the Presidential Decree were revised at the end of 1988 and entered into force on 1 January 1989. The main purpose of the amendment is to make Korea's relevant laws more consistent with the GATT provisions concerned as well as clarify various technical provisions of the Presidential Decree.

Petitioners are limited to domestic producers of like products or an association of whose members produce a like product.

The sun-set clause is introduced so as to restrict the duration of anti-dumping/countervailing measures to three years unless the applied period of such measures is fixed particularly, taking into account special change in economic circumstances, business environment, etc.

There is now clarification on investigation procedures. All petitions received by the Minister will be looked over by the Customs and Tariff Deliberation Committee within 3 months of receipt in order to decide the necessity of initiating an investigation. An initiated investigation should be completed within 6 months from the date of initiation unless it has been deemed necessary to extend the investigation period due to complicated circumstances, etc.
This version should be read in conjunction with previous Korean legislation which was presented in ADP/1/Add. 13/Rev.1 and SCM/1/Add. 13/Rev.2. (In this notification, the new provisions of the Decree are underlined.)
Amendment of the Presidential Decree of
The Korean Customs Act on Anti-Dumping/Countervailing Duty

Article 4-2 (Normal Value and Dumping Price)

(1) The term "normal Value" mentioned in Paragraph(1) of Article 10 of the Act means the price actually paid or payable in the ordinary course of trade for the like product when destined for consumption in the exporting country. However, when there are no sales of the like production or when, because of the particular market situation, such sales do not permit a proper application of the aforementioned definition, the normal value shall be interpreted as the price of the like product when exported to any third country which may be the highest such export price but should be a representative price, or as the cost of production in the country of origin plus a reasonable amount for administrative, selling and any other costs, and for profit (hereinafter-referred to as "constructed value").

(2) In cases where products are not imported directly from the country of origin but imported through a third country, the normal value shall be the price actually paid or payable for the like product in the domestic market of the third country. However, the price actually paid or payable in the ordinary course of trade in the country of origin shall be deemed the normal value if the products are merely trans-shipped through the third country, or such products are not produced in the third country, or there is no transaction value which can be properly considered the normal value.
(3) In cases where the product concerned is imported from a country with a state-controlled, non-market economy, the normal value shall be, notwithstanding the provision of paragraphs (1) and (2), the price actually paid or payable in the ordinary course of trade for the like product on the domestic market of any market economy third country other than the Republic of Korea, or the export price to any third country, including Republic of Korea, or the constructed value. However, if these prices cannot be recognized as normal value, the price actually paid or payable in the ordinary course of trade on Korea's domestic market shall be deemed the normal value.

(4) The term "dumping price" mentioned in Paragraph (1) of Article 10 of the Act means the price actually paid or payable on products imported from foreign countries for less than the normal value defined in Paragraph (1) to (3). However, if the price actually paid or payable is unreliable because of an association or a compensatory arrangement between the exporter and the importer or a third party, the dumping price may be constructed on the basis of the price at which the imported product is first resold to an independent buyer. If the product is not resold to an independent buyer, or not resold in the condition as imported, the dumping price shall be computed according to reasonable standards set by the Minister of Finance.
Article 4-3 (Comparison of Normal Value and Dumping Price)

(1) The normal value and the dumping price shall be compared, if possible, at the same time and at the same level of trade (normally at the ex-factory level). In order to effect a fair comparison between the normal value and the dumping price, due allowance shall be made by Minister of Finance in each case, on its merits, for the differences in physical characteristics in quantities and conditions of sale, in taxation and other factors influencing price comparison.

(2) Allowance for differences in physical characteristics pursuant to the latter half of Paragraph 1 shall be based on those differences influence on the market value in the exporting country. However, if the data is not available or is not suitable for the purpose of comparison, allowance shall be based on the differences in production costs which account for such differences in physical characteristics.

(3) Allowance for differences in quantity of sale pursuant to the latter half of Paragraph (1) shall be limited to those differences originating from the curtailment of costs through mass production, or discounts which are provided to all purchasers in the ordinary course of trade.

(4) Allowances for differences in conditions of sale pursuant to the latter half of Paragraph (1) shall be limited to differences which are directly related to the sales under consideration. The allowance shall normally be determined on the basis of the cost of such differences to the seller, but where appropriate, the influence of such differences on the market value of the merchandise can be considered.
(5) When the interested party requests allowances of value because of differences in physical characteristics, quantity of sale and conditions of sale, etc., he shall prove those differences influence the market price or cost of manufacture directly.

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

(1) The term "domestic industry" in Paragraphs 1 and 2 of Article 10 of the Act, shall mean the domestic producers as a whole or those whose output of the like products constitutes a major proportion of the total domestic production of those products provided. However, those producers who are related to the exporters or importers of the products concerned and who are themselves importers of such products may be excluded.

(2) The term "any person having an interest in domestic industry" in Paragraph(2) of Article 10 of the Act shall mean a domestic producer of a like product, an association of whose members produce a like product, or any other natural or legal person or association allowed as a petitioner by the Minister of Finance, who files a petition for the application of an anti-dumping duty on behalf of a domestic industry.

(3) A person who intends to request the imposition of an anti-dumping duty pursuant to the provisions of Paragraph(2) of Article 10 of the Act shall file with the Minister of Finance at least three copies of a petition stating therein the particulars enumerated in the following subparagraphs, together with at least three copies each of supporting documents which sufficiently substantiate the facts regarding the dumped import, material injury inflicted, etc.
1. Name, specifications, characteristics, usage, and producer of the product concerned;

2. Exporting country, exporter, export statistics and possibility of export, and domestic importer, import statistics and possibility of import of the product concerned;

3. Ex-factory price and market price in the exporting country and the export price to Korea and to third countries of the product concerned;

4. Name, specifications, characteristics, usage, producer, ex-factory price, market price and cost of production of a like product in Korea;

5. Data substantiating the dumping allegation and the material injury inflicted on domestic industries by the dumped import;

6. Grounds for the request for confidential treatment of the above data, if necessary;

7. Other particulars deemed necessary by the Minister of Finance.

(4) Any data submitted pursuant to Paragraph (3) of which confidential treatment is deemed appropriate by the Minister of Finance, or which is provided on a confidential basis by interested parties, shall not be disclosed without specific approval of the party submitting it.

(5) The Minister of Finance may request parties providing confidential data pursuant to Paragraph (4) to furnish non-confidential summaries thereof. However, in the event that such parties indicate that such data is not susceptible to summary, a statement of the reasons why summarization is not possible must be provided.
(6) If the Minister of Finance finds that a request for confidentiality pursuant to Paragraph (4) is not warranted or if the supplier of the data is either unwilling to make the data public or to authorize its disclosure in generalized or summary form pursuant to Paragraph (5), the Minister of Finance is free to disregard such data unless it can be demonstrated to the Minister's satisfaction from appropriate sources that the data is correct.

Article 4-5(Investigation of Dumped Import and Injury to Domestic Industries, etc.)

(1) When the Minister of Finance is requested to impose an anti-dumping duty pursuant to Paragraph 2 of Article 10 of the Act, the Minister shall have the Customs and Tariff Deliberation Committee decide the necessity of initiating an investigation within 3 months from the receipt of the request.

(2) An investigation team shall be organized under the Customs and Tariff Deliberation Committee to investigate allegations of dumping pursuant to Paragraph (3) of Article 10.

(3) When the Minister of Finance deems the investigation prescribed in Paragraph (3) of Article 10 necessary, he may request the submission of relevant organizations, exporters, importers, or other interested parties.

(4) When a customs collector, the head of a foreign exchange bank, the head of other relevant organizations or the head of interested groups deem an import has been dumped, they shall report the particulars thereof to the Minister of Finance.
(5) The Minister of Finance cannot use the information data or facts which have been obtained from interested parties in the process of investigation for unrelated purposes.

(6) In case of the investigation of material injury, etc. pursuant to the provisions of Paragraph(3) of Article 10 of the Act, the following particulars shall be included.

1. Volume of the dumped product (including investigation as to whether the import of the product has increased significantly, either absolutely or relatively, in comparison with domestic production or consumption);

2. Price of the dumped product (including investigation as to whether there has been significant price undercutting compared with the price of like product in the domestic market);

3. The facts regarding material injury such as the influence on production volume, utilization of capacity, stock, sales, market share, price (including the depressing of price or prevention of price increases), profit, return on investment, cash flow, employment, wages, growth, etc;

4. Other facts related to the possible threat of material injury.

(7) In the course of investigation pursuant to the provisions of Paragraph(3) of Article 10 of the Act, the interested parties may request that the Minister of Finance provide an opportunity to express their opinions through public debate or consultation with those parties with adverse interests.

(8) The Minister of Finance shall, upon request by interested parties concerned with the investigation of the product pursuant to the provisions of Paragraph(3) of Article 10 of the Act, provide opportunities for them
to see any relevant supporting data (excluding that which is treated as confidential) presented pursuant to the provisions of Paragraphs (2) and (3) of Article 4-4 and Paragraph (1) of Article 4-6, unless there are special circumstances otherwise. In this case, such requests shall be made by written document including a list of data and the reasons for the request.

(9) If the interested party requests by written document, the Minister of Finance shall notify the interested party of the investigation's progress.

(10) The sentence "there is a special reason to extend the time period", included in the latter half of Paragraph (6) of Article 10 of the Act, refers to the cases where the investigation cannot be finished within one year due to the complexity of the investigation, or where the interested party requests the extension of the investigation period after presentation of adequate reasons.

(11) In the course of the investigation, pursuant to Paragraph (3) of Article 10 of the Act, if any interested party refuses to provide or otherwise does not provide necessary information, or significantly impedes the investigation, and this investigation or verification is impossible, anti-dumping measures may be made on the basis of the information available.

(12) An investigation team shall complete the investigation within 6 months from the date of initiation pursuant to Paragraph 3 of Article 10 and submit the result of the investigation to the Committee, unless a preliminary report had been submitted and the Committee decides to extend the investigation period due to the complexity of the investigation or a justifiable request for an extension by the interested parties.
(13) When the investigation pursuant to Paragraph 3 of Article 10 is suspended or terminated, the Customs and Tariff Deliberation Committee shall report the results and the necessity of anti-dumping measures to the Minister of Finance within 1 month from the date of the suspension or termination.

Article 4-6 (Undertaking of Price Revision, Cessation of Export, etc.)

(1) An interested party who offers an undertaking pursuant to Paragraph (8) of Article 10 of the Act or who requests the continuation of the investigation must file a written document to that effect with the Minister of Finance.

(2) The Minister of Finance can accept the interested Party’s proposal of an undertaking when the contents of the proposal, pursuant to Paragraph (8) of Article 10 of the Act, state the intention to review the export price immediately or to cease export to Korea within a period of 6 months or less, fixed after consultation with the Minister of Finance from the enforcement date of the undertaking (including the reduction of export volume, herein the same). However, in the case of the undertaking of the cessation of export, the export volume from the enforcement date of undertaking to the date of the cessation of export cannot exceed the level which the Minister of Finance considers pertinent.
(3) The Minister of Finance, pursuant to Paragraph (2), shall notify the concerned authorities and interested parties of the contents of the undertaking when an undertaking is proposed. In this case, the concerned authorities and interested parties can reply to the Minister of Finance in writing on the contents of the undertaking for up to 20 days after their receipt of the aforementioned notification.

(4) When it is determined by an investigation of injury initiated at the request of the exporter pursuant to the latter half of Paragraph (9) of Article 10 of the Act that there is no injury or threat of injury, and if such a determination is considered because of the undertaking, the Minister of Finance shall continue the enforcement of the undertaking for a reasonable period. In this case, if the interested party denies the enforcement of the undertaking, the Minister of Finance can take anti-dumping measures on the basis of the information available.

(5) The Minister of Finance may, after the acceptance of the undertaking pursuant to the provisions of Paragraph (8) of the Act, take measures to invalidate such an undertaking when it is deemed that material injury, etc. would not occur even without the undertaking.
Article 4-7 (Review of undertakings and anti-dumping measures)

(1) The Minister of Finance can review, if deemed necessary, the imposition of anti-dumping duties determined pursuant to Paragraph 1 of Article 10 of the Act, or the necessity for the continuation of an undertaking accepted pursuant to Paragraph 9 of Article 10 of the Act.

(2) An interested party can request, with the supporting written evidence, the Minister of Finance to initiate a review of the imposition of an anti-dumping duty determined pursuant to Paragraph 1 of Article 10 of the Act or the necessity for the continuation of an undertaking accepted pursuant to Paragraph 9 of Article 10 of the Act, if such a case falls under one of the following Sub-paragraphs. However, this request can not be filed before at least one year has elapsed since the date of imposition of the anti-dumping duty or enforcement of the undertaking.

1. When a change in circumstance is sufficient to initiate a review

2. When there exists a possibility that domestic industries could be injured if the anti-dumping measure is terminated.

(3) Article 4-5 shall be applied MUTATIS MUTANDIS when there is a request or review pursuant to Paragraph 2.

(4) In case where the review is carried out pursuant to Sub-paragraph 2 of Paragraph 2, the effect of the anti-dumping measures shall continue during the period of review even though the application period for such measures had been terminated.
(5) When the Minister of Finance deems that the effectiveness of an undertaking has lapsed or the undertaking threatens to be ineffective as the result of review pursuant to Paragraphs (1) and (2) or a change in circumstances, he can ask the interested party for a change in the undertaking. However, if can take the necessary anti-dumping measures on the basis of the information available.

(6) Any person who has an interest in a domestic industry pursuant to Paragraph (2) of Article 10 of the Act can request the retroactive imposition of an anti-dumping duty pursuant to the latter half of Paragraph (11) of Article 10 of the Act with the supporting data described in each Sub-paragraph of Paragraph 11 of Article 10 of the Act, 30 days prior to the date of final determination as proclaimed by the Minister of Finance.

(7) When there are cases falling under the following Sub-pragraphs, the Minister of Finance shall publish the contents in the Gazette and shall notify the interested parties in writing of such contents. However, in case of Sub-paragraph 7, the publication in the Gazette and the notification shall be made at least six months before the anti-dumping measures become invalidated.

1. When deciding whether or not to take measures pursuant to the provisions of Paragraphs (1) and (7) of Article 10 of the Act;

2. When initiating an investigation pursuant to the provisions of Paragraph (3) of Article 10 of the Act;
3. When extending the period of an investigation pursuant to the provisions of Paragraph (6) of Article 10 of the Act;

4. When accepting an undertaking pursuant to the provisions of Paragraph (9) of Article 10 of the Act, and suspending, completing or continuing the investigation;

5. When deciding to invalidate the effectiveness of an undertaking pursuant to Paragraph (5) of Article 4-6;

6. When deciding to continue an undertaking pursuant to Paragraphs (1) and (2), or to cease the imposition of anti-dumping duty according to the result of a review.

7. When the anti-dumping measures are invalidated pursuant to Article 4-8

**Article 4-8 (The effect of Anti-Dumping Measures)**

The imposition of an anti-dumping duty pursuant to Paragraph 1 of Article 10 or the undertaking accepted pursuant to Paragraph 9 of Article 10, unless the applied period is fixed, is invalidated 3 years after the date in which the imposition of the anti-dumping duty or the undertaking was fixed.

**Article 4-13 (Countervailing Duty)**

(1) The provisions of Article 4-4(1), (2), and (4) through (6), Article 4-5 through Article 4-7 shall apply MUTATIS MUTANDIS to the investigation or imposition of countervailing duty regulated in Article 13 of the Act.
In this case, "Article 10(1), (2) of the Act" mentioned in Article 4-4(1), shall be deemed "Article 10 (2) of the Act applied MUTATIS MUTANDIS pursuant to Article 13 (1), (2) of the Act", Article 10(2) of the Act "mentioned in Article 4-4(2) and Article 4-7(6) shall be deemed" Article 10 (2) of the Act applied MUTATIS MUTANDIS pursuant to Article 13 (2) of the Act", 

"Anti-dumping duty" mentioned in Article 4-4(2), 4-5(5), 4-7(1), (2), (6), (7) 6, and Article 4-8 shall be deemed "countervailing duty", "paragraph 3" of Article 4-4(4) shall be deemed "paragraph 2", 

"Article 10(3) of the Act" mentioned in Article 4-5(2), (3), (6) through(8), (11), (13), and Article 4-7(7) 2 shall be deemed "Article 10(3) of the Act applied MUTATIS MUTANDIS pursuant to Article 13(2) of the Act", 

dumped" mentioned in Article 4-5(4) shall be deemed "subsidized", "dumped product" mentioned in Article 4-5(6) 1, 2 shall be deemed "subsidized product", 

"Article 10(6) of Act" mentioned in Article 4-5 (10), Article 4-7 (7) 3 shall be deemed " Article 10(6) of the Act applied MUTATIS MUTANDIS pursuant to Article 13(2) of the Act", 

"anti-dumping measures" mentioned in Article 4-5(11), Article 4-6(4), and Article 4-7(5) shall be deemed "countervailing measures", 

"Article 10 (8) of the Act" mentioned in Article 4-6 (1), (2), and (5) shall be deemed " Article 13(3) of the Act", 

"Article 10 (9) of the Act" mentioned in Article 4-6(1), (4), Article 4-7(1), (2), (6), (7) 4, and Article 4-8 shall be deemed " Article 10(9) applied MUTATIS MUTANDIS pursuant to Article 13(2) of the Act".
"Article 10 (1) of the Act" mentioned in Article 4-7 (1), (2), and Article 4-8 shall be deemed "Article 13(1) of the Act", "Article 10(11) of the Act" mentioned in Article 4-7(6) shall be deemed "Article 10(11) of the Act applied MUTATIS MUTANDIS pursuant to Article 13(2) of the Act", "Article 10(1). (7) of the Act mentioned in Article 4-7 (7) I shall be deemed "Article 13(1) of the Act".

(2) When a person who is concerned with the domestic industry to which the importation of subsidized goods has caused material injury intends to make a request as prescribed in Article 10(2) of the Act applied MUTATIS MUTANDIS pursuant to the provisions of Article 13(2) of the Act, he shall submit to the Minister of Finance a petition stating therein the following matters, together with relevant supporting data thereto:

1. Name, size, features, use and producer of the goods in question.

2. Exporter, exporting country, export volume, possibility of export, and importer, import volume, possibility of import of the goods in question.

3. Ex-factory price and market price in the exporting country, export price to Korea and to third countries of the goods in question.

4. Name, size, features, use, producer, ex-factory price, cost of production of the identical or similar goods in Korea.

5. Facts concerning material injury to domestic industry concerned caused by the importation of the subsidized goods.

6. Contents of the subsidies granted by the exporting country upon the manufacture, production or export of the goods in question and the effect thereof on the price undercutting of the goods in question.
7. Reason for requesting confidential treatment of the data presented.

8. Other references deemed necessary by the Ministry of Finance.

Article 4-17 (Customs and Tariff Deliberation Committee)

(1) The Customs and Tariff Deliberation Committee established pursuant to Article 16-2 of the Act (hereinafter in this Article referred to as "the Committee") shall deliberate on matters mentioned in the following subparagraphs:

1. Important matters on the operation of the anti-dumping duty system, etc. pursuant to the provisions of Articles 10 through 16 of Act;

2. Matters which the Minister of Finance deems necessary regarding other customs and tariff policy.

(2) The Committee shall be composed of 20 members or less including a chairman.

(3) The Vice Minister of Finance shall be appointed as ex officio chairman, and one person shall be designated after consultation with the Minister of Finance, by the head of each relevant department from among assistant secretaries, first grade public officials of the general service, or public officials of the excepted civil service or special service equivalent thereto from the Economic Planning Board, the Ministry of Foreign Affairs, the Ministry of Finance, the Ministry of Agriculture, Forestry, and Fisheries, the Ministry of Trade and Industry, the Ministry of Energy and Resources, the Ministry of Health and Social Affairs, the National Tax Administration, the Office of Customs Administration, and persons entrusted by the Minister of Finance from among the persons who
have knowledge and experience in customs and foreign trade may be appointed as members.

(4) In case of deliberation pursuant to Paragraph 13 of Article 10 of the Act (including the application mutatis mutandis pursuant to Paragraph 2 of Article 13 of the Act), the Chairman of the Committee is allowed to exclude members who, as non-government officials, are deemed to have special vested interest in the industry concerned.

(5) In the Committee, there shall be one executive secretary who is appointed by the chairman from among public officials attached to the Ministry of Finance.

(6) Members who are not public officials may be paid allowances within the limit of the budget when attending the Committee meetings.

(7) The Chairman shall determine matters necessary for the operation of the Committee through the decision of the Committee meeting.