INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Legislation of Korea

Reproduced herewith are Article 10 of the Korean Customs Law and the related sections of Article 4 of the Presidential Decree of the Customs Act.
I. Customs Act

Article 10 (Anti-dumping Duty)

(1) In cases where the importation of foreign product for sale at a price lower than the normal value causes or threatens to cause material injury to a domestic industry or materially retards the establishment of a domestic industry (hereinafter in this Article referred to as "material injury, etc."), if deemed necessary to protect the domestic industry concerned, a duty may be imposed (hereinafter referred to as "anti-dumping duty") in addition to the customs duty charged pursuant to the dutiable value of the product concerned, in an amount equal to or less than the difference between the normal value and the dumping price (hereinafter referred to as "margin of dumping") of such product, by specifying the product, exporter or exporting country of such product prescribed by the Presidential Decree.

(2) Any person having an interest in or the competent Minister having jurisdiction over the domestic industry subject to material injury, etc. prescribed in Paragraph (1) may request the Minister of Finance to impose an anti-dumping duty on the product concerned, presenting sufficient evidence of the importation of the dumped product and of the material injury, etc. which resulted therefrom as prescribed by the Presidential Decree.

(3) If requested to impose an anti-dumping duty pursuant to Paragraph (2) or having sufficient evidence of the importation of dumped product and of the material injury, etc. which resulted therefrom, the Minister of Finance shall, if deemed necessary, have the Customs and Tariff Deliberation Committee mentioned in Article 16-2 investigate the case.

(4) If the person who requested the imposition of an anti-dumping duty pursuant to Paragraph (2) withdraws such request, the Minister of Finance may, if deemed necessary, terminate the investigation pursuant to Paragraph (3).

(5) If the evidence submitted pursuant to Paragraph (2) is not sufficient, or if the margin of dumping; the quantity of dumped product imported or the material injury, etc. is deemed insignificant, the Minister of Finance may reject the request.
concerned and terminate the investigation.

(6) The investigation mentioned in Paragraph (3) shall be terminated within a year from its initiation unless there is a special reason to extend the time period.

(7) Concerning those products on which an investigation is initiated pursuant to Paragraph (3), if sufficient evidence (or as much information as is obtainable in the case of a breach of undertaking mentioned in Paragraph (8) or failure to comply with a request to submit data or to verify it pursuant to Paragraph (10)) is found to lead to the belief that the product were imported for dumping and the material injury has resulted therefrom, and if deemed necessary to eliminate injury that may occur during the investigation period, the Minister of Finance may, even before the completion of the investigation, either impose a provisional anti-dumping duty in an amount equal to or less than the provisionally estimated margin of dumping or order that a security be offered (hereinafter in this Article referred to as "provisional measures"), specifying the said product, the exporting country or the exporter of the product and the period (which shall not exceed four months, but may be extended to six months at the request of an exporter who holds a significant percentage of the trade).

(8) If an investigation is initiated pursuant to Paragraph (3) or if provisional measures are taken pursuant to Paragraph (7), the exporter of the product concerned may offer an undertaking that he will revise its price to eliminate the injury resulting from the dumping or cease to export the product concerned.

(9) If the undertaking mentioned in Paragraph (8) is accepted, the Minister of Finance shall suspend the investigation mentioned in Paragraph (3) or terminate it without taking provisional measures or imposing an anti-dumping duty, and shall cancel the provisional measures already taken; however, the investigation may continue if the Minister of Finance deems it necessary, or if the exporter requests the continuation thereof.

(10) When accepting the undertaking mentioned in Paragraph (8), the Minister of Finance may require the exporter to provide periodically the data relevant to the fulfillment of the undertaking concerned and may require the exporter to permit verification of the said data.
(11) The anti-dumping duty imposed pursuant to Paragraph (1) or the provisional measures taken pursuant to Paragraph (7) shall be applicable to the product imported since the enforcement date of such duty or measures; however, among those products on which the provisional measures were taken pursuant to Paragraph (7) the following product shall be subject to anti-dumping duty, even though they were imported before the date when such measures were taken:

1. Product imported during the period for which the provisional measures were in effect, if a final decision is made that material injury, etc. had occurred, or if it is deemed that, without the provisional measures, material injury, etc. might have occurred;

2. Product imported since the date ninety days prior to the enforcement date of the provisional measures, if there is a history of dumping which caused material injury, etc. or if the importer was, or should have been aware of the fact of the dumping and the material injury, etc. which resulted therefrom, or if the retroactive imposition of the anti-dumping duty is required to prevent the recurrence of mass import of the product in a relatively short period;

3. Product imported since the date ninety days prior to the enforcement date of the provisional measures if material injury, etc. is deemed to have occurred due to the import, in breach of the undertaking mentioned in Paragraph (8), of the product on which the provisional measures were taken; however, this shall not apply to those product imported before the date of the above breach of undertaking.

(12) If the amount of the anti-dumping duty exceeds that of the provisional anti-dumping duty, the difference between them shall not be collected, and if it is the other way around, the difference shall be refunded. If the final result of the investigation is negative, the provisional anti-dumping duty paid in compliance with the provisional measure shall be refunded, or the offered security shall be released.

(13) The Minister of Finance shall take measures under Paragraphs (1), (3), (5), (7) and (9) after deliberation by the Customs and Tariff Deliberation Committee.

(14) When the Minister of Finance is requested to impose anti-dumping duty mentioned in Paragraph (2) by the person who
has an interest in the domestic industry, or when he has the investigation terminated pursuant to Paragraph (4), he shall so notify the competent Minister having jurisdiction over the industry concerned.
II. Presidential Decree of the Customs Act

Article 4-2 (Normal Value and Dumping Price)

(1) The term "normal value" 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 in 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 Paragraphs (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)

(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 the 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 shall be excluded.

(2) The term "any person having an interest in the domestic industry" in the Paragraph (1) of Article 13 of the Act shall mean the party who files a petition on behalf of domestic industry, a domestic producer or a wholesaler of a like product, an association of whose members produce or wholesale a like product, or a certified or recognized union of workers which represents an industry involved in the production or wholesale of a like product.

(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 Paragraphs (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) 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.

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

(3) 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.

(4) 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.

(5) 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 a 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.

(6) 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.

(7) 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.

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

(10) 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 thus investigation or verification is impossible, provisional and final determination, affirmative or negative, may be made on the basis of the information available.

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 shall review the imposition of anti-dumping duties which were determined pursuant to Paragraph 1 of Article 10 of the Act, and the necessity of continuation of undertakings which were accepted pursuant to Paragraph 9 of Article 10 of the Act, more than once per year.

(2) An interested party can request, after submission of supporting written data, the Minister of Finance initiate a review of the imposition of an anti-dumping duty which were determined pursuant to Paragraph 1 of Article 10 of the Act and the necessity for the continuation of an undertaking which were accepted pursuant to Paragraph 9 of Article 10. 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.

(3) 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 the interested party does not agree, the Minister of Finance can take the necessary anti-dumping measures on the basis of the information available.
(4) 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 subparagraph 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.

(5) When measures falling under any of the following subparagraphs are taken, the Minister of Finance shall publish the contents in the gazette and shall notify the interested parties in writing of such measures.

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.

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 the 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 & Fisheries, the Ministry of Trade & Industry, the Ministry of Energy & Resources, the Ministry of Health & Social Affairs, the National Tax Administration and the 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. However, when the Committee deliberates on the matters provided in Paragraph (13) of Article 10 of the Act (including occasions referred to in Paragraph (2) of Article 13 of the Act), the Committee shall be composed of public officials only.

(4) 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.

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

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