

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Subsidies and
Countervailing Measures

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INFORMATION ON INTERPRETATION AND APPLICATION OF THE AGREEMENT

Legislation of Korea

Revision

The following communication, dated 17 May 1982, has been received from the Permanent Mission of the Republic of Korea.

In accordance with Article 19:5 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, I have the pleasure to inform you of the changes in the Korean Custom Act and the Enforcement Decree relevant to the Agreement.

In this regard, I am transmitting for the information of the Committee on Subsidies and Countervailing Measures an English translation of Extracts from the Customs Act amended by Law No. 3478 and from the Enforcement Decree amended by Presidential Decree No. 10669.

I. Extract from Customs Act
(Amended by Law No. 3478, 31 December 1981)

Article 13 (Countervailing duty)

1. In the case where there is a fact that the importation of products in respect of which any subsidies or bounties (hereinafter referred to as "subsidies") are granted, directly or indirectly, upon the manufacture, production or export, in any foreign country, causes or threatens to cause material injury to a domestic industry or materially retards the establishment of a domestic industry (hereinafter referred to as "material injury, etc."), there may be imposed, if deemed necessary for protecting the domestic industry concerned, upon such products, as prescribed by a Presidential decree, a duty additional to customs duty chargeable at the basic rate, in an amount equal to or less than the amount of the subsidies (hereinafter referred to as "countervailing duty"), by specifying the products and exporter or exporting country of such products.
2. In cases where there are products in respect of which subsidies are granted, directly or indirectly, upon the manufacture, production or export, in any foreign country, to which a measure requiring the deposit of a security in accordance with the provisions of paragraph 9 (hereinafter referred to as "provisional measure") was applied, and which fall under any of the following sub-paragraphs, there may be imposed a countervailing duty from the date of importation. In this case, the amount of the countervailing duty which may be imposed shall not exceed the amount of security deposited in accordance with the provisions of paragraph 9:
 - (1) Products in respect of which it is deemed that the importation thereof has caused material injury, etc. to a domestic industry (including those products in respect of which it is deemed that the importation thereof would have caused material injury, etc. to a domestic industry, in the absence of the provisional measure) and which were imported within the period for which the provisional measure has been applied;
 - (2) Products in respect of which it is deemed that the massive imports thereof in a short period caused injury to a domestic industry which is difficult to repair and if necessary, in order to preclude the recurrence of such injury, and which are imported not more than ninety days

prior to the date of application of the provisional measure ;

- (3) Products in respect of which a provisional measure has been applied in accordance with the provisions of paragraph 9, by reason of violation of the undertakings offered by the government of the exporting country or the exporter in accordance with the provisions of paragraph 6 and which were imported not more than ninety days prior to the date of application of the provisional measure; provided, however, that this provision shall not apply to the products imported prior to the date on which violation of the undertakings occurred.
3. Any person who has an interest in a domestic industry to which material injury, etc. has been caused, in accordance with the provisions of paragraph 1, may, as described by a Presidential decree, submit sufficient evidence on the fact of the importation of the subsidized products and the fact of the material injury, etc. to a domestic industry, caused by the importation, and request the Minister of Finance to impose countervailing duty on the products.
4. The Minister of Finance shall, upon a request made in accordance with the provisions of paragraph 3 or when there is sufficient evidence on the fact of the importation of the subsidized products and the fact of the material injury, etc. to a domestic industry, caused by the importation, initiate, if it is deemed necessary, an investigation as to whether there are those facts.
5. An investigation in accordance with the provisions of paragraph 4 shall be concluded within one year after the date of initiation of the investigation; provided, however, that in special circumstances the period may be extended.
6. In cases where an investigation in accordance with the provisions of paragraph 4 has been initiated or where a provisional measure in accordance with the provisions of paragraph 9 has been applied, the government of the exporting country or the exporter of the products

concerned may offer the undertakings as prescribed in the following sub-paragraphs; provided, however, that it is required to obtain the consent of the exporting government, in case of sub-paragraph 2:

- (1) The government of the exporting country; undertakings to eliminate or limit the subsidies with regard to the products concerned, or to take appropriate measures to eliminate the injurious effect of the subsidies on a domestic industry;
 - (2) The exporter; undertakings to revise prices of the products or cease exports so that the Minister of Finance is satisfied that the injurious effect of the subsidies is eliminated.
7. In cases where the undertakings offered in accordance with the provisions of paragraph 6 are accepted, the Minister of Finance may suspend or terminate the investigation in accordance with the provisions of paragraph 4; provided, however, that the investigation may be completed if the Minister of Finance deems it necessary or the government of the exporting country or the exporter or the importer of the products concerned desires to complete the investigation of injury to a domestic industry.
8. In cases where the undertakings offered in accordance with the provisions of paragraph 6 are accepted, the Minister of Finance may require the government of the exporting country or the exporter to provide periodically information relevant to the fulfilment of such undertakings.
9. In cases where the subsidized products investigated in accordance with the provisions of paragraph 4 are imported, if it can be presumed on the basis of sufficient evidence (or the best information available in case of withdrawal or violation of the undertakings in accordance with the provisions of paragraph 6 and in case of non-compliance with requirements to provide information in accordance with the provisions of paragraph 8) that there is the fact of material injury, etc. to a domestic industry caused by such importation and if it is deemed necessary in order to protect the domestic industry, the security the estimated amount of which is deemed equal to that of the subsidies

may be ordered to be deposited, even before completion of the investigation, as prescribed by a Presidential decree, by specifying the exporting country or the exporter of the products and the period (not exceeding four months).

10. When an investigation in accordance with the provisions of paragraph 4 has been completed, the Minister of Finance shall immediately release the security deposited in accordance with the provisions of paragraph 9; provided, however, that this provision shall not apply to the case of the imposition of countervailing duties in accordance with the provisions of paragraph 2.

II. Extract from Enforcement Decree of Customs Act
(Amended by Presidential Decree No. 10669,
31 December 1981)

Article 4-13 (Countervailing Duty)

1. The term "domestic industry" referred to in paragraph 1 of Article 13 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, that the producers who are related to the exporters or importers of the product concerned and who are themselves importers of such product shall be excluded.
2. Any person, who is interested in the domestic industry to which the importation of the subsidized products has caused material injury and who is to make a request in accordance with the provisions of paragraph 3 of Article 13 of the Act, shall submit to the Minister of Finance written relevant information stating therein the following items :
 - (1) the description, specification, other features and name of manufacturer of the products in question;
 - (2) the name of the exporter and exporting country of the products in question;
 - (3) the wholesale price in the exporting country, export prices to Korea and to third countries, on the products in question ;
 - (4) the description, price and ex factory price of the like products or similar products in Korea, and cost accounting statements thereof ;
 - (5) the circumstances as to the fact of the importation of the subsidized products and the fact of material injury, etc. to the domestic industry concerned ;
 - (6) the contents of the subsidies which are granted by the exporting country, upon the manufacture, production or export of the products in question and their export price undercutting effect ;
 - (7) a request for confidential treatment of the data presented and the reason therefor when such treatment is sought ;

- (8) any other relevant matters.
3. The Minister of Finance may, if it is deemed appropriate to treat the data presented in accordance with the provisions of paragraph 2 as confidential, request any person who presented such data to submit a written non-confidential summary thereof.
 4. The Minister of Finance may, when it is deemed necessary to initiate an investigation after reviewing whether the investigation is necessary, upon a request made in accordance with the provisions of paragraph 2, request relevant data or other necessary assistance from relevant organization, exporter, importer or other interested person (hereinafter referred to as "interested parties"). In this case, any parties who were so requested shall comply therewith unless there is justifiable reason otherwise.
 5. When it is deemed necessary for an investigation in accordance with the provisions of paragraph 4 of Article 13 of the Act, the Minister of Finance may require that any interested parties express their opinions, and the latter may request the Minister of Finance for an opportunity of express their opinions.
 6. The Minister of Finance shall, upon a request by interested parties of the products concerned with the investigation in accordance with the provisions of paragraph 4 of Article 13 of the Act, provide opportunities for them to see any relevant evidence presented in accordance with the provisions of paragraph 2 (excluding that which is treated as confidential) and data submitted in accordance with the provisions of paragraph 4, paragraph 5 and paragraph 7, unless there are special circumstances otherwise. In this case, any interested parties who requested to see data shall submit written information stating the list of data and reasons therefor.
 7. Any parties, who are to offer the undertakings in accordance with the provisions of paragraph 6 of Article 13 of the Act, or who desire to complete the investigation of injury in accordance with the provisions of paragraph 7 of the same Article, shall submit to the Minister of Finance a written document to that effect.

8. When it is deemed that there does not exist the fact of material injury, ect. after acceptance of the undertakings, in accordance with the provisions of paragraph 6 of Article 13 of the Act, the Minister of Finance may take measures for such undertaking go lapse; provided, however, that this provision shall not apply in cases where it is deemed that such a finding has been made in large part taking account of the existence of such undertakings.
9. When the interested parties of the products covered by the undertakings accepted in accordance with the provisions of paragraph 6 of Article 13 of the Act consider that such undertakings need not be continued, they may submit to the Minister of Finance written relevant information and request the Minister to review the need for the continuation of the undertakings.
10. The Minister of Finance shall, upon a request made in accordance with the provisions of paragraph 9 or when it is deemed necessary, decide whether the accepted undertakings need to be continued or not.
11. When the interested parties submit written relevant information and request a review as to whether the imposition of countervailing duties in accordance with the provisions of Article 13 of the Act need to be continued or not, or if it is deemed necessary, the Minister of Finance may review the need for the continuation of the imposition of such countervailing duties.
12. The Minister of Finance shall, when the measure falls under any of the following sub-paragraphs, make the contents known to the public in the Official Gazette and shall notify in writing the interested parties of such a measure :
 - (1) When deciding to take measures and deciding not to take measures, in accordance with the provisions of paragraph 1 of article 13 of the Act and paragraph 9;
 - (2) When initiating the investigation, in accordance with the provision of paragraph 4 of Article 13 of the Act ;

- (3) When extending the period of the investigation, in accordance with the provisions of paragraph 5 of Article 13 of the Act;
- (4) When accepting the undertakings, in accordance with the provisions of paragraph 6 of Article 13 of the Act ;
- (5) When deciding to suspend or terminate or continue the investigation, in accordance with the provisions of paragraph 7 of Article 13 of the Act;
- (6) When deciding for the undertaking to lapse or to be continued, in accordance with the provisions of paragraph 8 and paragraph 10.