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Committee on Anti-Dumping Practices

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Committee on Subsidies and Countervailing Measures

ORAL QUESTIONS POSED AT THE JOINT SPECIAL MEETING
OF THE COMMITTEES CONCERNING THE NOTIFICATIONS
PROVIDED BY THE GOVERNMENT OF KOREA OF LAWS AND
REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

The following communication, dated 11 August 1995, has been received from the Hong Kong Economic and Trade Office.

Article 4-2(2) of the Enforcement Decree of the Customs Act defines the domestic industry as "*the domestic production industry that accounts for all or a major portion of the total domestic production of the products that are the same in kind and quality and the products similar with those imported at a price that is lower than the normal value*" (our underlining). The definitions of the terms "product same in kind and quality" and "similar product" are given in Article 4-(1) of the Regulation of the Customs Act.

Article 4.1 of the WTO A-D Agreement defines "domestic industry" as "*the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products...*". The term "like products" is defined in Article 2.6 as to mean "a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration" (our underlining).

The WTO A-D Agreement therefore is clear that similar product (i.e. product which has characteristics closely resembling those of the product which is subject of investigation) will be used to define domestic industry only if identical products are not produced domestically in the importing Member. The Korean legislation seems to permit, by lumping "product same in kind and quality" and "similar product" together in the definition of domestic industry, the inclusion of "similar product" to define the domestic industry even though there is production of "product same in kind and quality" in Korea.

We would appreciate clarification from the Korean authorities as to how Article 4-2(2) is consistent with Article 4.1 and Article 2.6 of the WTO A-D Agreement.