

**UNITED STATES – ANTI-DUMPING MEASURES ON CORROSION-RESISTANT
CARBON STEEL FLAT PRODUCTS FROM KOREA**

Request for the Establishment of a Panel by Korea

The following communication, dated 9 February 2012, from the delegation of Korea to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

Upon instructions from my authorities, I hereby convey the request of the Government of the Republic of Korea ("Korea") to the Dispute Settlement Body ("DSB") for the establishment of a panel under Article XXIII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), Articles 4 and 6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), and Article 17.4 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("Anti-Dumping Agreement") with respect to certain anti-dumping measures imposed by the United States on imports of corrosion-resistant carbon steel flat products from Korea, as further described below.

A. Prior Consultations

On 31 January 2011, Korea requested consultations with the United States under Article 4 of the DSU, Article XXII of the GATT 1994, and Article 17 of the Anti-Dumping Agreement.¹ These consultations were requested concerning anti-dumping measures imposed by the United States on imports of corrosion-resistant carbon steel flat products from Korea. Consultations were held on 25 March 2011 and 18 May 2011, respectively. These consultations provided helpful clarifications, but have failed to resolve the dispute.

B. The Measures at Issue

The measures at issue are specific instances in which the United States Department of Commerce ("USDOC") applied the zeroing methodology in following proceedings: (1) administrative review determinations, the imposition of cash deposit requirements, and subsequent assessment of final anti-dumping duties pursuant thereto; and (2) sunset review determinations. More specifically, these specific instances in which the USDOC applied the zeroing methodology are as follows:

¹ WT/DS420/1.

1. Administrative Review Determinations and Subsequent Assessment of Final Anti-Dumping Duties Pursuant Thereto

- a. The USDOC initiated its second anti-dumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea on 5 September 1995.² The USDOC conducted its administrative review of the extent of dumping under the statutory authority provided by the Tariff Act of 1930, as amended, 19 U.S.C. § 1673, et seq., and under the regulatory authority provided in 19 C.F.R. Part 351. The USDOC published its final results on 15 April 1997,³ and amended the results on 20 June 1997⁴ and 11 June 2002.⁵ The USDOC's final and amended results and its final determination reflected and contained anti-dumping margins, cash deposits and duty rates that were calculated by using zeroing.
- b. The USDOC initiated its third anti-dumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea on 13 September 1996.⁶ The USDOC conducted its administrative review of the extent of dumping under the statutory authority provided by the Tariff Act of 1930, as amended, 19 U.S.C. § 1673, et seq., and under the regulatory authority provided in 19 C.F.R. Part 351. The USDOC published its final results on 18 March 1998,⁷ and amended the results on 27 April 1998⁸ and 11 June 2002.⁹ The USDOC's final and amended results and its final determination reflected and contained anti-dumping margins, cash deposits and duty rates that were calculated by using zeroing.
- c. The USDOC initiated its fourth anti-dumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea on 19 September 1997.¹⁰ The USDOC conducted its administrative review of the extent of dumping under the statutory authority provided by the Tariff Act of 1930, as amended, 19 U.S.C. § 1673, et seq., and under the regulatory authority provided in 19 C.F.R. Part 351. The USDOC published its final results on 16 March 1999.¹¹ The USDOC's final results and its final determination reflected and contained anti-dumping margins, cash deposits and duty rates that were calculated by using zeroing.

² See *Initiation of Antidumping Duty Administrative Reviews*, 60 Fed. Reg. 46817 (5 September 1995).

³ See *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 Fed. Reg. 18404 (15 April 1997).

⁴ See *Notice of Amended Final Results of Antidumping Administrative Reviews: Certain Cold-Rolled Carbon Steel Flat Products from Korea; Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea*, 62 Fed. Reg. 33587 (20 June 1997).

⁵ See *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Reviews in Accordance with Court Decision*, 67 Fed. Reg. 39955 (11 June 2002).

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 61 Fed. Reg. 48882 (17 September 1996).

⁷ See *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 63 Fed. Reg. 13170 (18 March 1998).

⁸ See *Notice of Amended Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled Carbon Steel Flat Products from Korea; Certain Corrosion-Resistant Carbon Steel Flat Products from Korea*, 63 Fed. Reg. 20572 (27 April 1998).

⁹ See *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Reviews in Accordance with Court Decision*, 67 Fed. Reg. 39956 (11 June 2002).

¹⁰ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 62 Fed. Reg. 50292 (25 September 1997).

¹¹ See *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 64 Fed. Reg. 12927 (16 March 1999).

- d. The USDOC initiated its fifth anti-dumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea on 23 September 1998.¹² The USDOC conducted its administrative review of the extent of dumping under the statutory authority provided by the Tariff Act of 1930, as amended, 19 U.S.C. § 1673, et seq., and under the regulatory authority provided in 19 C.F.R. Part 351. The USDOC published its final results on 13 March 2000,¹³ and amended the results on 25 April 2000.¹⁴ The USDOC's final and amended results and its final determination reflected and contained anti-dumping margins, cash deposits and duty rates that were calculated by using zeroing.
- e. The USDOC initiated its sixth anti-dumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea on 24 September 1999.¹⁵ The USDOC conducted its administrative review of the extent of dumping under the statutory authority provided by the Tariff Act of 1930, as amended, 19 U.S.C. § 1673, et seq., and under the regulatory authority provided in 19 C.F.R. Part 351. The USDOC published its final results on 16 January 2001,¹⁶ and amended the results on 14 March 2001.¹⁷ The USDOC's final and amended results and its final determination reflected and contained anti-dumping margins, cash deposits and duty rates that were calculated by using zeroing.
- f. The USDOC initiated its seventh anti-dumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea on 26 September 2000.¹⁸ The USDOC conducted its administrative review of the extent of dumping under the statutory authority provided by the Tariff Act of 1930, as amended, 19 U.S.C. § 1673, et seq., and under the regulatory authority provided in 19 C.F.R. Part 351. The USDOC published its final results on 18 March 2002,¹⁹ and amended the results on 29 April 2002.²⁰ The USDOC's final and amended results and its final determination reflected and contained anti-dumping margins, cash deposits and duty rates that were calculated by using zeroing.
- g. The USDOC initiated its tenth anti-dumping duty administrative review and new shipper review of certain corrosion-resistant carbon steel flat products from Korea on 30 September 2003.²¹ The USDOC conducted its administrative review of the extent of dumping under the

¹² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 63 Fed. Reg. 51893 (29 September 1998).

¹³ See *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Notice of Final Results of Antidumping Duty Administrative Reviews*, 65 Fed. Reg. 13359 (13 March 2000).

¹⁴ See *Notice of Amended Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 65 Fed. Reg. 24180 (25 April 2000).

¹⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 64 Fed. Reg. 53318 (1 October 1999).

¹⁶ See *Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 66 Fed. Reg. 3540 (16 January 2001).

¹⁷ See *Notice of Amended Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 66 Fed. Reg. 14883 (14 March 2001).

¹⁸ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 65 Fed. Reg. 58733 (2 October 2000).

¹⁹ See *Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 67 Fed. Reg. 11976 (18 March 2002).

²⁰ See *Notice of Amended Final Results of Antidumping Duty Administrative Reviews: Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 67 Fed. Reg. 20956 (29 April 2002).

²¹ See *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review*, 68 Fed. Reg. 56262 (30 September 2003).

statutory authority provided by the Tariff Act of 1930, as amended, 19 U.S.C. § 1673, et seq., and under the regulatory authority provided in 19 C.F.R. Part 351. The USDOC published its final results on 14 March 2005.²² The USDOC's final results and its final determination reflected and contained anti-dumping margins, cash deposits and duty rates that were calculated by using zeroing.

- h. The USDOC initiated its eleventh anti-dumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea on 22 September 2004.²³ The USDOC conducted its administrative review of the extent of dumping under the statutory authority provided by the Tariff Act of 1930, as amended, 19 U.S.C. § 1673, et seq., and under the regulatory authority provided in 19 C.F.R. Part 351. The USDOC published its final results on 13 February 2006,²⁴ and amended the results on 20 March 2006.²⁵ The USDOC's final and amended results and its final determination reflected and contained anti-dumping margins, cash deposits and duty rates that were calculated by using zeroing.
- i. The USDOC initiated its twelfth anti-dumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea on 28 September 2005.²⁶ The USDOC conducted its administrative review of the extent of dumping under the statutory authority provided by the Tariff Act of 1930, as amended, 19 U.S.C. § 1673, et seq., and under the regulatory authority provided in 19 C.F.R. Part 351. The USDOC published its final results on 20 March 2007,²⁷ and amended the results on 26 April 2007.²⁸ The USDOC's final and amended results and its final determination reflected and contained anti-dumping margins, cash deposits and duty rates that were calculated by using zeroing.
- j. The USDOC initiated its thirteenth anti-dumping duty administrative review and new shipper review of certain corrosion-resistant carbon steel flat products from Korea on 29 September 2006.²⁹ The USDOC conducted its administrative review of the extent of dumping under the statutory authority provided by the Tariff Act of 1930, as amended, 19 U.S.C. § 1673, et seq., and under the regulatory authority provided in 19 C.F.R. Part 351. The USDOC published its final results on 17 March 2008.³⁰ The USDOC's final results and its final determination reflected and contained anti-dumping margins, cash deposits and duty rates that were calculated by using zeroing.

²² See *Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 70 Fed. Reg. 12443 (14 March 2005).

²³ See *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 Fed. Reg. 56745 (22 September 2004).

²⁴ See *Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 Fed. Reg. 7513 (13 February 2006).

²⁵ See *Notice of the Amended Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 Fed. Reg. 13962 (20 March 2006).

²⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 Fed. Reg. 56631 (28 September 2005).

²⁷ See *Notice of Final Results of the Twelfth Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 72 Fed. Reg. 13086 (20 March 2007).

²⁸ See *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea; Notice of the Amended Final Results of the Twelfth Administrative Review*, 72 Fed. Reg. 20815 (26 April 2007).

²⁹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 Fed. Reg. 57465 (29 September 2006).

³⁰ See *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review*, 73 Fed. Reg. 14220 (17 March 2008).

- k. The USDOC initiated its fourteenth anti-dumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea on 25 September 2007.³¹ The USDOC conducted its administrative review of the extent of dumping under the statutory authority provided by the Tariff Act of 1930, as amended, 19 U.S.C. § 1673, et seq., and under the regulatory authority provided in 19 C.F.R. Part 351. The USDOC published its final results on 16 March 2009,³² and amended the results on 28 April 2009.³³ The USDOC's final and amended results and its final determination reflected and contained anti-dumping margins, cash deposits and duty rates that were calculated by using zeroing.
- l. The USDOC initiated its fifteenth anti-dumping duty administrative review and new shipper review of certain corrosion-resistant carbon steel flat products from Korea on 30 September 2008.³⁴ The USDOC conducted its administrative review of the extent of dumping under the statutory authority provided by the Tariff Act of 1930, as amended, 19 U.S.C. § 1673, et seq., and under the regulatory authority provided in 19 C.F.R. Part 351. The USDOC published its final results on 22 March 2010.³⁵ The USDOC's final results and its final determination reflected and contained anti-dumping margins, cash deposits and duty rates that were calculated by using zeroing.

2. Sunset Review Determinations

- a. The USDOC initiated its first sunset review of certain corrosion-resistant carbon steel flat products from Korea on 1 September 1999.³⁶ The USDOC conducted its sunset review under the statutory authority provided by the Tariff Act of 1930, as amended, 19 U.S.C. § 1673, et seq., and under the regulatory authority provided in 19 C.F.R. Part 351. The USDOC published its final results of determination of likely continuation or recurrence of dumping on 6 April 2000.³⁷ The United States International Trade Commission ("USITC") published its determination of likely continuation or recurrence on injury on 1 December 2000,³⁸ as amended on 8 December 2000,³⁹ and the USDOC published its notice of continuation of the anti-dumping order on 15 December 2000.⁴⁰ The USDOC's and USITC's final results and the

³¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 Fed. Reg. 54428 (25 September 2007).

³² See *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission*, 74 Fed. Reg. 11082 (16 March 2009).

³³ See *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Amended Final Results of the Fourteenth Administrative Review*, 74 Fed. Reg. 19199 (28 April 2009).

³⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 Fed. Reg. 56794 (30 September 2008).

³⁵ See *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review*, 75 Fed. Reg. 13490 (22 March 2010).

³⁶ See *Initiation of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders or Investigations of Carbon Steel Plates and Flat Products*, 64 Fed. Reg. 47767 (1 September 1999).

³⁷ See *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea; Final Results of Expedited Sunset Reviews*, 65 Fed. Reg. 18044 (6 April 2000).

³⁸ See *Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom*, 65 Fed. Reg. 75301 (1 December 2000).

³⁹ See *Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom*, 65 Fed. Reg. 77074 (8 December 2000).

⁴⁰ See *Continuation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, South Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom*, 65 Fed. Reg. 78469 (15 December 2000).

USDOC's continuation of the anti-dumping duty order reflected and contained anti-dumping margins, cash deposits and duty rates that had been calculated by using zeroing.

- b. The USDOC initiated its second sunset review of certain corrosion-resistant carbon steel flat products from Korea on 1 November 2005.⁴¹ The USDOC conducted its sunset review under the statutory authority provided by the Tariff Act of 1930, as amended, 19 U.S.C. § 1673, et seq., and under the regulatory authority provided in 19 C.F.R. Part 351. The USDOC published its final results of determination of likely continuation or recurrence of dumping on 6 June 2006.⁴² The USITC published its determination of likely continuation or recurrence on injury on 31 January 2007,⁴³ and the USDOC published its notice of continuation of the anti-dumping order on 14 February 2007.⁴⁴ The USDOC's and USITC's final results and the USDOC's continuation of the anti-dumping duty order reflected and contained anti-dumping margins, cash deposits and duty rates that had been calculated by using zeroing.

The methodology of "zeroing" refers to the practice and methodology by which transactions with negative dumping margins are treated as having margins equal to zero in determining dumping margins in administrative reviews and sunset reviews, and also in assessing the final anti-dumping duty liability for purposes of liquidation of entries. The use of the "zeroing" methodology also refers to instances whereby the DOC does not perform a new calculation of the dumping margins as part of its determination, but instead adopts, applies, or relies upon dumping margins that have been calculated in prior proceedings using the "zeroing" methodology. The adoption, application, or reliance on prior determinations using zeroing includes the imposition and continuation of requirements that cash deposits be posted at the time of entry of merchandise based on determinations in administrative reviews in which the dumping margins were established using the practice of zeroing; the assessment of anti-dumping duties based on dumping margins determined in administrative reviews using the practice of zeroing; the determination of dumping margins above *de minimis* levels as a result of the practice of zeroing negative dumping margins, and the consequent imposition, continuation, or collection of anti-dumping duties; the use, in sunset reviews, of dumping margins calculated in prior anti-dumping investigations and/or administrative reviews in which negative dumping margins had been treated as zero dumping margins, resulting in determinations that revocation of the anti-dumping duty orders would be likely to lead to continuation or recurrence of dumping; and the consideration by the USITC, in sunset reviews, of the magnitude of the margins of dumping provided by the USDOC, in determining whether the revocation of an anti-dumping duty order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

The effect of the USDOC's zeroing practice has been and will be either artificially to create margins of dumping where none would otherwise have been found, or artificially to inflate margins of dumping. Korea considers that these measures are inconsistent with the obligations of the United States under the provisions of the GATT 1994, the Anti-Dumping Agreement, and the Marrakesh Agreement Establishing the WTO, as described below.

⁴¹ See *Initiation of Five-year ("Sunset") Reviews*, 70 Fed. Reg. 65884 (1 November 2005).

⁴² See *Final Results of Expedited Sunset Reviews: Corrosion-Resistant Carbon Steel Flat Products from Australia, Canada, France, Germany, Japan, and South Korea*, 71 Fed. Reg. 32508 (6 June 2006).

⁴³ See *Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom*, 72 Fed. Reg. 4529 (31 January 2007).

⁴⁴ See *Continuation Pursuant to Second Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany and Korea*, 72 Fed. Reg. 7009 (14 February 2007).

C. Legal Basis of the Complaint

The use of zeroing has led, leads, and will lead the United States to find the existence of dumping where none would have otherwise been found or to calculate inflated margins of dumping. Korea considers that the USDOC's use of its methodology of zeroing in the above detailed measures is inconsistent with the obligations of the United States under Articles 9.3 and 11.3 of the Anti-Dumping Agreement.

The USDOC's use of zeroing in the corrosion-resistant carbon steel flat products from Korea with respect to administrative review determinations and subsequent collection of cash deposits and assessment of final anti-dumping duties pursuant thereto and sunset review determinations is similar or identical to the method that was held to be inconsistent with the Anti-Dumping Agreement in *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")* (Panel Report, WT/DS294/R, and Appellate Body Report, WT/DS294/AB/R, adopted 9 May 2006) and *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") – Recourse to Article 21.5 of the DSU by the European Communities*, (Panel Report, WT/DS294/AB/RW, and Appellate Body Report, WT/DS294/AB/RW, adopted 11 June 2009); *United States – Measures Relating to Zeroing and Sunset Reviews* (Panel Report, WT/DS322/R, and Appellate Body Report, WT/DS322/AB/R, adopted 23 January 2007) and *United States – Measures Relating to Zeroing and Sunset Reviews – Recourse to Article 21.5 of the DSU by Japan* (Panel Report, WT/DS322/RW, and Appellate Body Report, WT/DS322/AB/RW, adopted 31 August 2009); and *United States – Continued Existence and Application of Zeroing Methodology* (Panel Report, WT/DS350/AB/R, and Appellate Body Report, WT/DS350/AB/R, adopted 19 February 2009).

The foregoing paragraphs are provided without prejudice to any arguments that Korea may develop and present to the panel regarding the WTO-inconsistency of the measures at issue.

D. Request

Accordingly, Korea requests that the DSB establish a panel pursuant to Article XXIII:1 of the GATT 1994, Articles 4 and 6 of the DSU, and Article 17.4 of the Anti-Dumping Agreement. Korea requests that the establishment of a panel in this matter be placed on the agenda of the meeting of the DSB scheduled for 22 February 2012.
