

**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 15 September 2011, 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 specific measures at issue are the following, imposed by the United States on corrosion-resistant carbon steel flat products from Korea. The first group of measures are US laws, regulations, administrative practices and methodologies relevant to the zeroing methodology applied by the United States Department of Commerce ("USDOC"), including, but not limited to, the following:

1. the Tariff Act of 1930 (the "Tariff Act"), in particular, sections 731, 751, 752, 771(35)(A), and (B), and 777A(c) and (d);
2. the Statement of Administrative Action that accompanied the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. I;

¹ WT/DS420/1.

3. the implementing regulations of the USDOC, 19 C.F.R. section 351, in particular, sections 351.212(b) and (c), 351.218, and 351.414;
4. the Import Administration Antidumping Manual (1997 edition), including the computer program(s) to which it refers;
5. the USDOC's Policy Bulletin 98.3, "Policies Regarding the Conduct of Five-year ('Sunset') Reviews of Antidumping and Countervailing Duty Orders" ("Sunset Policy Bulletin"), 63 Fed. Reg. 18871 (16 April 1998);
6. the general procedures and methodology employed by the United States for determining dumping margins in administrative reviews, sunset reviews, and duty assessment determinations, including, but not limited to,
 - a. methodologies whereby the USDOC compares the export price for individual transactions to a weighted-average normal value, and then, when calculating the overall margin of dumping, treated as zero the negative dumping margins for individual transactions for which the export price exceeded the weighted-average normal value; and
 - b. methodologies whereby the USDOC does not perform a new calculation of the dumping margins as part of its determination, but instead adopted, applied, or relied upon dumping margins that had been calculated in prior proceedings using the methodologies described in sub-paragraph (a); and
7. the general procedures and methodology employed by the United States, in sunset reviews, for determining whether revocation of antidumping orders would be likely to lead to continuation or recurrence of dumping within a reasonably foreseeable time.

The second group of measures at issue are specific instances in which the 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; (2) sunset review determinations; and (3) automatic imposition of cash deposit requirements and assessment of anti-dumping duties without published determinations for review periods and/or exporters for which no reviews were requested. More specifically, these specific instances in which the USDOC applied the zeroing methodology are as follows:

1. Administrative Review Determinations and Subsequent Assessment of Final Anti-Dumping Duties Pursuant Thereto
 - a. The USDOC initiated its first anti-dumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea on 8 September 1994.² 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 26 April 1996.³ The USDOC's final results and its final

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 59 Fed. Reg. 46391 (8 September 1994).

³ See *Certain Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review*, 61 Fed. Reg. 18547 (26 April 1996).

determination reflected and contained anti-dumping margins, cash deposits and duty rates that were calculated by using zeroing.

- b. The USDOC initiated its second anti-dumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea on 5 September 1995.⁴ 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 1997,⁵ and amended the results on 20 June 1997⁶ and 11 June 2002.⁷ 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 third anti-dumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea on 13 September 1996.⁸ 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 1998,⁹ and amended the results on 27 April 1998¹⁰ and 11 June 2002¹¹. 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.
- d. The USDOC initiated its fourth anti-dumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea on 19 September 1997.¹² 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

⁴ See *Initiation of Antidumping Duty Administrative Reviews*, 60 Fed. Reg. 46817 (5 September 1995).

⁵ 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).

⁶ 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).

⁷ 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).

⁸ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 61 Fed. Reg. 48882 (17 September 1996).

⁹ 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).

¹⁰ 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).

¹¹ 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).

¹² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 62 Fed. Reg. 50292 (25 September 1997).

results on 16 March 1999.¹³ 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.

- e. The USDOC initiated its fifth anti-dumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea on 23 September 1998.¹⁴ 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 2000,¹⁵ and amended the results on 25 April 2000.¹⁶ 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 sixth anti-dumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea on 24 September 1999.¹⁷ 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 2001,¹⁸ and amended the results on 14 March 2001.¹⁹ 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 seventh anti-dumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea on 26 September 2000.²⁰ 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 2002,²¹ and amended the results on 29 April 2002.²² The

¹³ 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).

¹⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 63 Fed. Reg. 51893 (29 September 1998).

¹⁵ 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).

¹⁶ 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).

¹⁷ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 64 Fed. Reg. 53318 (1 October 1999).

¹⁸ 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).

¹⁹ 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).

²⁰ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 65 Fed. Reg. 58733 (2 October 2000).

²¹ 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).

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.

- h. 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 2003.²³ 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 14 March 2005.²⁴ 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.
- i. The USDOC initiated its eleventh anti-dumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea on 22 September 2004.²⁵ 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 2006,²⁶ and amended the results on 20 March 2006.²⁷ 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 twelfth anti-dumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea on 28 September 2005.²⁸ 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 2007,²⁹ and amended the results on 26 April 2007.³⁰ The

²² 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).

²³ 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).

²⁴ 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).

²⁵ See *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 Fed. Reg. 56745 (22 September 2004).

²⁶ 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).

²⁷ 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).

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

²⁹ 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).

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.

- k. 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 2006.³¹ 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 17 March 2008.³² 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.
- l. The USDOC initiated its fourteenth anti-dumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea on 25 September 2007.³³ 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 2009,³⁴ and amended the results on 28 April 2009.³⁵ 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.
- m. 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 2008.³⁶ 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 2010.³⁷ 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.

³⁰ 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).

³¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 Fed. Reg. 57465 (29 September 2006).

³² 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).

³³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 Fed. Reg. 54428 (25 September 2007).

³⁴ 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).

³⁵ 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).

³⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 Fed. Reg. 56794 (30 September 2008).

³⁷ 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).

- n. The USDOC initiated its sixteenth anti-dumping duty administrative review and new shipper review of certain corrosion-resistant carbon steel flat products from Korea on 22 September 2009.³⁸ 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 21 March 2011.³⁹ 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.
- o. All future anti-dumping duty administrative reviews of certain corrosion-resistant carbon steel flat products from Korea conducted by the USDOC, and reflecting and containing the application or continued application of anti-dumping margins, cash deposits and duty rates that are or were calculated by using zeroing. Korea deems these future reviews to have a close nexus with the foregoing reviews.⁴⁰
- p. Continuing assessment and liquidation of antidumping duties pursuant to determinations made in any of the reviews identified above, including future administrative reviews, whether such assessment or liquidation of duties occurs prior to or after the end of the reasonable period of time for implementation of the DSB ruling in this matter.

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 1999.⁴¹ 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 April 2000.⁴² The United States International Trade Commission ("USITC") published its determination of likely continuation or recurrence on injury on 1 December 2000,⁴³ as amended on 8 December 2000;⁴⁴ and the USDOC published its notice of continuation of the anti-

³⁸ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 Fed. Reg. 48224 (22 September 2009).

³⁹ See *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review*, 76 Fed. Reg. 15291 (21 March 2011).

⁴⁰ See *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") – Recourse to Article 21.5 of the DSU by the European Communities* (Appellate Body Report, WT/DS294/AB/RW, adopted 11 June 2009), section VI.B.

⁴¹ 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).

⁴² 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).

⁴³ 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).

⁴⁴ 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).

dumping order on 15 December 2000.⁴⁵ 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.

- b. The USDOC initiated its second sunset review of certain corrosion-resistant carbon steel flat products from Korea on 1 November 2005.⁴⁶ 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 2006.⁴⁷ The USITC published its determination of likely continuation or recurrence on injury on 31 January 2007,⁴⁸ and the USDOC published its notice of continuation of the anti-dumping order on 14 February 2007.⁴⁹ 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.
- c. All future sunset reviews of certain corrosion-resistant carbon steel flat products from Korea conducted by the USDOC and USITC and reflecting and containing the application or continued application of anti-dumping margins, cash deposits and duty rates that are or were calculated by using zeroing. Korea deems these future reviews to have a close nexus with the foregoing reviews.⁵⁰

3. Automatic Imposition of Cash Deposit Requirements and Assessment of Anti-Dumping Duties Without Published Determinations for Review Periods and/or Exporters for Which No Reviews Were Requested

- a. The USDOC automatically imposed cash deposit requirements and assessed anti-dumping duties without published determinations for review periods and/or exporters for which no reviews were requested for the following review periods: 4 February 1993 through 31 July 1994; 1 August 1994 through 31 July 1995; 1 August 1995 through 31 July 1996; 1 August 1996 through 31 July 1997; 1 August 1997 through 31 July 1998; 1 August 1998 through 31 July 1999; 1 August 1999 through 31 July 2000; 1 August 2000 through 31 July 2001; 1 August 2001 through 31 July 2002; 1 August 2002

⁴⁵ 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).

⁴⁶ See *Initiation of Five-year ("Sunset") Reviews*, 70 Fed. Reg. 65884 (1 November 2005).

⁴⁷ 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).

⁴⁸ 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).

⁴⁹ 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).

⁵⁰ See *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") – Recourse to Article 21.5 of the DSU by the European Communities* (Appellate Body Report, WT/DS294/AB/RW, adopted 11 June 2009), section VI.B.

through 31 July 2003; 1 August 2003 through 31 July 2004; 1 August 2004 through 31 July 2005; 1 August 2005 through 31 July 2006; 1 August 2006 through 31 July 2007; 1 August 2007 through 31 July 2008; 1 August 2008 through 31 July 2009. The USDOC's imposition of cash deposit requirements and assessment of anti-dumping duties reflected and contained anti-dumping margins that were calculated by using zeroing.

- b. All future impositions of cash deposit requirements and assessment of anti-dumping duties by the USDOC without published determinations for review periods and/or exporters for which no reviews are requested, and reflecting and containing the application or continued application of anti-dumping margins that are or were calculated by using zeroing. Korea deems these future impositions and assessments to have a close nexus with the foregoing impositions and assessments.⁵¹

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 methodologies 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 methodologies described above. 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, and the automatic assessment of anti-dumping duties based on dumping margins established in prior proceedings using the practice of zeroing, when no review is requested; 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.

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

⁵¹ See *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") – Recourse to Article 21.5 of the DSU by the European Communities* (Appellate Body Report, WT/DS294/AB/RW, adopted 11 June 2009), section VI.B.

is inconsistent with the obligations of the United States under the relevant provisions of the GATT 1994, the Anti-Dumping Agreement, and the Marrakesh Agreement Establishing the WTO, in particular under Articles 1, 2.1, 2.4, 2.4.2, 3, 5.8, 9.1, 9.3, 11, 18.3 and 18.4 of the Anti-Dumping Agreement; Articles VI:1 and VI:2 of GATT 1994; and Article XVI:4 of the Marrakesh Agreement Establishing the WTO.

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; sunset review determinations; automatic assessment of anti-dumping duties without published determinations for review periods and/or exporters for which no reviews were or will be requested; and maintenance of zeroing procedures in periodic reviews after the end of the reasonable period of time for implementation of the ruling that those procedures are "as such" inconsistent with the United States' obligations under the Anti-Dumping Agreement and the GATT 1994; 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 27 September 2011.
