

**KOREA – ANTI-DUMPING DUTIES ON IMPORTS
OF CERTAIN PAPER FROM INDONESIA**

Recourse to Article 21.5 of the DSU by Indonesia

Request for the Establishment of a Panel

The following communication, dated 22 December 2006, from the delegation of Indonesia to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

On 28 November 2005, the Dispute Settlement Body (the "DSB") adopted the recommendations and rulings in *Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia* (WT/DS312). At the meeting held on 20 December 2005, the Republic of Korea ("Korea") informed the DSB that it intended to fully implement the recommendations and rulings of the DSB in this matter within a reasonable period of time. Indonesia and Korea agreed under Article 21.3(b) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU") that Korea had until 28 July 2006 to implement those recommendations and rulings.

On 27 July 2006, the Korean Trade Commission (the "KTC") published its Implementation Report (Public Notice No. 2006-105 of the Korean Ministry of Finance and Economy) (the "Redetermination") in the Korean Gazette. The Redetermination leaves the underlying anti-dumping measure and the rate of dumping duties unchanged. At the DSB meeting held on 1 September 2006, Korea stated that by adopting the Redetermination it had fully complied with the recommendations and rulings of the DSB. Indonesia did not agree.

On 26 October 2006, Indonesia requested consultations with Korea under Article 21.5 of the DSU and paragraph 1 of the Understanding between Korea and Indonesia of 17 August 2006¹ regarding the consistency of the Redetermination with Korea's obligations under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "Anti-Dumping Agreement"). The request was circulated in document WT/DS312/8. Consultations were held on 15 November 2006. These consultations failed to settle the dispute.

Accordingly, Indonesia and Korea disagree as to the "existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings" of the DSB. Pursuant to Articles 6 and 21.5 of the DSU, Article 17.5 of the Anti-Dumping Agreement and paragraph 2 of the Understanding between the Republic of Korea and the Republic of Indonesia of 17 August 2006, Indonesia hereby requests the establishment of a panel to examine the measures described below. Indonesia requests that this item be placed on the agenda of the next meeting of the DSB.

¹ This Understanding related to the "sequencing" of proceedings under DSU Articles 21.5 and 22 and was circulated as document WT/DS312/7.

A. RESELLER SELLING EXPENSES

The Panel found that in calculating normal values based on constructed value for the Indonesian exporters at issue, the KTC acted inconsistently with the Anti-Dumping Agreement with respect to its calculation of the amount of interest expenses to be included in the selling, general and administrative expenses incurred by a related reseller of the like product. In the Redetermination, however, the KTC left unchanged the amount of interest expenses it included in the reseller's selling expenses in the original determination. Accordingly, the Redetermination is inconsistent with the provisions of the Anti-Dumping Agreement described below and fails to properly implement this aspect of the DSB's recommendations and rulings for the following reasons:

- (a) The KTC failed to properly calculate a "reasonable amount for administrative, selling and general costs" to be included in the constructed value within the meaning of Article 2.2 of the Anti-Dumping Agreement, and failed to rely on "actual data *pertaining to* production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation" within the meaning of Article 2.2.2, in that, *inter alia*, it used expenses incurred by a production company, ignored verified evidence that the reseller would not have incurred such interest expenses, and imputed expenses that were unrelated to the production and sale of the like product. By thus failing to properly determine the constructed value, the KTC also failed to make a fair comparison between normal value and export price within the meaning of Article 2.4 and failed to determine dumping margins properly within the meaning of Article 2.1.
- (b) The KTC failed to comply with its obligation to utilise the "best information available", failed to exercise "special circumspection" in its use of secondary sources and failed to properly corroborate the secondary information used as facts available as required by Article 6.8 of the Anti-Dumping Agreement, read together with Annex II, in particular paragraphs 3 and 7 thereof, in that, *inter alia*, it used the expenses incurred by a production company, improperly ignored verified evidence regarding the interest expenses incurred by a reseller affiliated to another producer, failed to properly conduct a comparative assessment of or make a determination whether the secondary information used could reasonably replace the missing information, ignored verified evidence that the reseller would not have incurred such interest expenses in the resale of the like product, failed to provide an adequate explanation of its determination and relied on new, irrelevant, unreliable and unverifiable information regarding the reseller and regarding selling expenses incurred by companies in other industries in Korea.
- (c) The KTC failed to comply with its obligation to reach an unbiased, objective and proper determination of dumping under Articles 2.1, 2.2, and 2.4 of the Anti-Dumping Agreement, as well as its obligations under Article 6.8 read together with Annex II, in that, *inter alia*, it treated the reseller as a manufacturing company and in arriving at this conclusion relied on faulty information and disregarded its previous findings, verified evidence and the findings of the panel regarding the nature and activities of the reseller.
- (d) The KTC failed to comply with its obligations under Articles 2, 2.2, 2.2.2, 6.1, 6.2, 6.4, 6.6, 6.8, 17.6(i) and Annex II, in particular paragraphs 3 and 7 thereof, to make a proper determination of normal value and to provide the Indonesian exporters with adequate opportunities to submit evidence and to defend their interests, in that, *inter alia*, it excluded evidence supplied during the implementation process by the Indonesian exporters while accepting on the record new evidence from other sources

and failed to take into account direct and verifiable evidence regarding the selling expenses incurred by the reseller.

B. FAILURE TO COMPLY WITH PROCEDURAL OBLIGATIONS

During the implementation phase, the KTC provided the Indonesian exporters with disclosure regarding the manner in which it intended to implement the DSB's rulings with respect to the determination of dumping. However, the KTC failed to provide the Indonesian exporters with any disclosure regarding the manner in which it intended to implement the DSB's rulings with respect to the determination of injury or with any opportunity to comment on issues relating to the re-determination of injury and the causal link between dumping and injury. In particular, the KTC did not disclose to the Indonesian exporters the facts on which it based its injury re-determinations. Accordingly, in the Redetermination:

- (a) The KTC failed to comply with its obligations under Articles 6.1, 6.2, 6.4, 6.5 and 6.9 of the Anti-Dumping Agreement, in that it failed to disclose the factual basis for its injury re-determinations and failed to provide the Indonesian exporters with any opportunity to provide their views.

Moreover, the KTC appears to have accepted confidential submissions from the Korean domestic industry and other sources without requiring a showing of good cause, the submission of non-confidential summaries or an explanation as to why such summarization is not possible. In addition, information contained in these submissions was not provided to the concerned Indonesian exporters. Accordingly, in the Redetermination:

- (b) The KTC failed to comply with its obligations under Articles 6.1, 6.2, 6.4 and 6.5 of the Anti-Dumping Agreement, in that it failed to require a party submitting confidential information to show good cause for confidential treatment or to submit a non-confidential summary thereof or an explanation as to why such summarization was not possible.
- (c) The KTC acted inconsistently with Articles 6.1, 6.2 and 6.4 of the Anti-Dumping Agreement, in that it failed to provide copies of the submissions made by the Korean domestic industry to the Indonesian exporters.

Indonesia continues to reserve its rights in respect of all other aspects of Korea's purported compliance with its obligations in this case.

Indonesia requests that the Panel be established with the standard terms of reference set out in Article 7 of the DSU.
