

**UNITED STATES – CONTINUED DUMPING AND
SUBSIDY OFFSET ACT OF 2000**

Recourse by Korea to Article 22.2 of the DSU

The following communication, dated 15 January 2004, from the delegation of Korea to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

The Republic of Korea requests that a special meeting of the Dispute Settlement Body be held on 26 January 2004 in order to consider the following agenda item:

United States – Continued Dumping and Subsidy Offset Act of 2000 : Recourse by the Republic of Korea to Article 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes

Both the Panel and the Appellate Body found that the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) violates the United States' obligations under the General Agreement on Tariffs and Trade 1994 (GATT 1994), the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (AD Agreement), the Agreement on Subsidies and Countervailing Measures (SCM Agreement) and the Marrakesh Agreement establishing the World Trade Organisation (WTO Agreement). Specifically, the Panel and the Appellate Body concluded that:

- the CDSOA is a non permissible specific action against dumping or a subsidy contrary to Article 18.1 of the AD Agreement, Article 32.1 of the SCM Agreement and Articles VI:2 and VI:3 of GATT 1994;
- consequently, that the United States has failed to comply with Article 18.4 of the AD Agreement, 32.5 of the SCM Agreement and Article XVI:4 of the WTO Agreement.
- to the extent that the CDSOA is inconsistent with provisions of the AD and SCM Agreements, the CDSOA nullifies or impairs benefits accruing to Complaining Parties under those Agreements.

On 27 January 2003, the Dispute Settlement Body (DSB) adopted the Appellate Body report and the Panel report as modified by the Appellate Body report. The resulting DSB recommendations and rulings include the recommendation that the United States bring the aspects of the CDSOA found to be inconsistent with the GATT, AD and SCM Agreement into conformity with its obligations

under the covered agreements. The United States stated that it intended to implement the recommendations and rulings of the DSB.

An arbitration under Article 21.3(c) of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) subsequently determined that the "reasonable period of time" for the United States to implement the DSB recommendations and rulings would expire on 27 December 2003.

The United States has failed to implement the recommendations and rulings of the DSB with respect to the CDSOA by that date, and no mutually acceptable arrangement has yet been made. In the interest of preserving the balance of concessions and the integrity of the rules of the multilateral trading system, the Republic of Korea hereby requests authorization from the DSB to suspend the application to the United States of concessions or other obligations under the covered agreements, in accordance with Article 22.2 of the DSU.

The Republic of Korea requests that the DSB grant such authorisation to suspend concessions or other obligations for an amount that will be determined, every year, by the amount of offset payments made to affected domestic producers in the latest annual distribution under the CDSOA.

Pursuant to that authorization, the Republic of Korea intends to impose an additional import duty above bound custom duties on a final list of products originating in the United States. In accordance with Article 22.4 of the DSU, every year, the rate of this additional import duty will be set so as to collect, over one year, additional import duties equivalent to: (a) the offset payments made in the latest annual distribution under the CDSOA from duties collected on products from the Republic of Korea; plus, (b) a proportionate amount of the balance of total offset payments less the offset payments attributed to duties collected on products from other members that are authorized by the DSB to suspend concessions or other obligations in this dispute. Every year, prior to the adjustment of the additional import duty, the Republic of Korea will notify to the DSB a detailed list indicating the level of the additional duty on the selected products in the light of the changes in the level of the disbursements made under the CDSOA.
