

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

Request for Consultations by Indonesia

The following communication, dated 4 June 2004, from the delegation of Indonesia to the delegation of Korea and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Republic of Korea ("Korea") pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT") and Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("AD Agreement") with respect to the imposition of definitive anti-dumping duties on imports of business information paper and uncoated wood-free printing paper from Indonesia¹ and certain aspects of the investigation leading to the imposition of such duties.

Article 1 of the AD Agreement requires that "[a]n anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated* and conducted in accordance with the provisions of [the AD] Agreement" [*footnote omitted]. In the light of this requirement, and based on Article VI of GATT and other provisions of the AD Agreement hereafter cited, Indonesia is deeply concerned about the following aspects of the imposition of definitive anti-dumping duties and the investigation leading thereto:

1. Korea's initiation of investigation:
 - notwithstanding its failure to make a determination that the application had been made by or on behalf of the domestic industry, (Article 5.4 of the AD Agreement);
 - notwithstanding its failure to make an objective examination of the participation of the applicant Hansol Paper Co. ("Hansol") in the definition of "domestic industry", despite Hansol's significant volume of imports from Indonesia during the period of investigation for injury, (Article 3.1 and Article 4.1(i) of the AD Agreement);

¹ Imposed under Resolution No. 2003-22, issued by Korea Trade Commission dated 24 September 2003.

- notwithstanding the applicants' failure to include in the application sufficient and adequate evidence of dumping, injury and causal link between the alleged dumped imports and the injury, particularly in respect of:
 - (i) the occurrence of certain injury factors, *inter alia*, market share, domestic prices, output, profits, ability to raise capital or investment, employment, productivity, actual and potential negative effects on cash flow, growth, and the magnitude of the margin of dumping,
 - (ii) the existence of causal link between the alleged dumped imports and injury, as the information and evidence on injury submitted by the applicants relates to a period of investigation (1999-2001) during which – except for the quarter October to December 2001 – there was no occurrence of dumping for the purpose of the investigation (according to the Notice of Initiation, the period of investigation for dumping was 1 October 2001 to 30 September 2002),

(Article 5.2 and Article 5.3 of the AD Agreement);

- notwithstanding the fact that the period for injury and the period for dumping overlapped only for a period of three months, Korea's failure to consider *simultaneously* the evidence of both dumping and injury in the decision to initiate the investigation, (Article 5.7 of the AD Agreement);
2. Korea's failure to provide in the Notice of Initiation, any information regarding the factors on which the allegation of injury [was] based, (Article 12.1.1(iv) of the AD Agreement).
 3. Korea's granting of confidential treatment to information contained in the domestic industry's application without (i) requiring the applicants to provide showing of good cause for such a treatment, (ii) requiring the applicants to furnish non-confidential summaries "in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence", or (iii) any indication that the information could not be summarized and the reasons why summarization was not possible, (Article 6.5, Article 6.5.1 and Article 6.5.2 of the AD Agreement).
 4. Korea's making of a request for information from a firm which was not subject to investigation - *i.e.* PT Cakrawala Mega Indah ("CMI") -, without having obtained the agreement of that firm, and without having notified the Government of Indonesia of such request in the context of an on-the-spot investigation, (Article 6.7 and Annex I of the AD Agreement).
 5. Korea's rejection of information related to the sales of CMI, even though it was (i) verifiable information, (ii) appropriately submitted to be used without undue difficulties, and (iii) submitted in a timely fashion, (Article 6.8 and paragraph 3 of Annex II of the AD Agreement).
 6. Korea's failure to explain why it did not accept the information related to the sales of CMI (Article 6.8 and paragraph 6 of Annex II of the AD Agreement).
 7. In the context of the preliminary determination:

- Korea's incorrect characterization of business information paper and uncoated wood-free printing paper as like products (Article 2.6 of the AD Agreement) and the failure to explain this conclusion in sufficient detail, (Article 12.2 of the AD Agreement);
 - Korea's resort to constructed value as the basis for determining normal value for PT Pindo Deli and PT Indah Kiat, (Article VI:1 and VI:2 of GATT and Articles 2.1. and 2.2 of the AD Agreement);
 - Korea's construction of the normal value in respect of PT Pindo Deli and PT Indah Kiat without taking into consideration actual data from CMI pertaining to sales in the ordinary course of trade of the like products subject to investigation, notwithstanding the fact that all information requested by Korea was supplied by the exporters in time, (Article 2.2, Article 2.2.1.1 and 2.2.2 of the AD Agreement);
 - Korea's resort to best information available in order to construct administrative, selling and general costs of PT Pindo Deli and PT Indah Kiat, (Article 6.8 and paragraphs 3 and 6 of Annex II of the AD Agreement);
 - Korea's failure to make a fair comparison between the export price and the constructed normal value of PT Pindo Deli and PT Indah Kiat *inter alia*, by failing to take into account that domestic sales were made through the intermediary CMI, while export sales were made directly to consumers, (Article VI:1 and Article VI:2 of GATT and Article 2.1 and Article 2.4 of the AD Agreement);
 - For exporters who did not submit information to Korea (*i.e.*, PT Tjiwi Kimia and unidentified exporters of Indonesia), Korea's arbitrary application of the "best information available" standard to determine the dumping margin for Tjiwi Kimia, (Article 6.8 and paragraph 7 of Annex II of the AD Agreement);
 - In relation to further information provided by the domestic industry concerning the domestic industry's performance up to June 2002, Korea's denial of access to such information by not making it available to the other interested parties in a timely manner or by not allowing other interested parties to see it so as to present their cases on the basis of this information, (Article 6.1.2 and Article 6.4 of the AD Agreement);
 - Korea's refusal to provide an opportunity to Indonesian exporters to present their views in time prior to the disclosure of essential facts and final determination, (Article 6.2 of the AD Agreement);
8. In the context of the final determination:
- Korea's incorrect characterization of business information paper and uncoated wood-free printing paper as like products (Article 2.6 of the AD Agreement) and the failure to explain this conclusion in sufficient detail notwithstanding the views expressed by Indonesian exporters that business information paper

and uncoated wood-free printing paper are not like products, (Article 12.3 of the AD Agreement);

- Korea's failure to determine individual margins of dumping for PT Inda Kiat, PT Pindo Deli and PT Tjiwi Kimia, (Article 6.10 of the AD Agreement) and the consequent levy of an anti-dumping duty in excess of individual margins of dumping, if any, (Article VI:2 of GATT and Article 9.3 of the AD Agreement).
- Korea's resort to constructed value as the basis for determining normal value for PT Pindo Deli, PT Indah Kiat and PT Tjiwi Kimia, (Article VI:1 and VI:2 of GATT and Articles 2.1. and 2.2 of the AD Agreement);
- Korea's construction of the normal value in respect of PT Pindo Deli, PT Indah Kiat, and PT Tjiwi Kimia without taking into consideration actual data pertaining to sales of CMI in the ordinary course of trade of the like products subject to investigation, (Article 2.2, Article 2.2.1.1 and 2.2.2 of the AD Agreement);
- Korea's failure to make a fair comparison between the export price and the constructed normal value in respect of PT Pindo Deli, PT Indah Kiat and Tjiwi Kimia, (Article VI:1 and Article VI:2 of GATT and Article 2.1 and 2.4 of the AD Agreement);
- Korea's incorrect classification of imports from PT Inda Kiat as dumped imports as a result of treating PT Inda Kiat, PT Pindo Deli and Tjiwi Kimia as a single economic unit, and the consequent incorrect determination of injury and causal link between the alleged dumped imports and injury, (Article 3.1, Article 3.2, Article 3.4, and Article 3.5 of the AD Agreement, and Article VI:1 and Article VI:6 of GATT);
- As a result of the incorrect characterization of business information paper and uncoated wood-free paper as like products, Korea's incorrect assessment of the impact of the dumped imports on the domestic industry, (Article 3.1, Article 3.4, and Article 3.5. of the AD Agreement, and Article VI:1 and Article VI:6 of GATT);
- Korea's failure to evaluate the effect of the dumped imports on prices in the domestic market for like products, (Article 3.1, Article 3.2, and Article 3.5 of the AD Agreement, and Article VI:1 and Article VI:6 of GATT);
- Korea's failure to evaluate all relevant economic factors and indices having a bearing on the state of the domestic industry, in particular, actual and potential decline, productivity, return on investment, factors affecting the domestic prices, magnitude of the margin of dumping, actual and potential negative effects on cash flow, wages, growth, ability to raise capital or investment, (Article 3.1, Article 3.4, and Article 3.5 of the AD Agreement, and Article VI:1 and Article VI:6 of GATT);
- In relation to further information provided by the domestic industry concerning the domestic industry's performance up to first half of 2003,

Korea's denial of access to such information by not making it available to the other interested parties in a timely manner or by not allowing other interested parties to see it, (Article 6.1.2 and Article 6.4 of the AD Agreement).

It appears to Indonesia that the foregoing cannot be reconciled with Article VI of the GATT, Article 1 of the AD Agreement, and the specific provisions cited above.

Indonesia looks forward to receiving your reply to this request at your earliest convenience. I propose that the date and venue of these consultations be agreed between our two Missions.
