

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

Recourse to Article 21.5 of the DSU by Indonesia

Request for Consultations

The following communication, dated 26 October 2006, from the delegation of Indonesia to the delegation of Korea and to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

My authorities have instructed me to request the Republic of Korea ("Korea") to enter into consultations pursuant to Article 21.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and paragraph I of the Understanding between the Republic of Korea and the Republic of Indonesia of 17 August 2006 regarding the measures taken by Korea to implement the recommendations and rulings of the Dispute Settlement Body ("DSB") in *Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia (WT/DS312)*.

On 28 November 2005, the DSB adopted its recommendations and rulings in the dispute *Korea - Anti-Dumping Duties on Imports of Certain Paper from Indonesia (WT/DS312)*. At the meeting held on 20 December 2005, Korea informed the DSB that it intended to fully implement its recommendations and rulings. The parties agreed under Article 21.3(b) of the DSU that Korea had until 28 July 2006 to implement the recommendations and rulings in this dispute.

On 27 July 2006, the Korean Trade Commission ("KTC") published its Implementation Report (Public Notice No. 2006-105 of the Korean Ministry of Finance and Economy) (the "Redetermination") in the Korean Gazette. This Implementation Report leaves the anti-dumping measure and rate of duties intact.

At the DSB meeting held on 1 September 2006, Korea stated that with this Implementation Report it had fully complied with the recommendations and rulings of the DSB. Indonesia disagrees. In particular, Indonesia is concerned that the following aspects of the measures taken to comply by Korea fail to implement properly the rulings of the DSB in this matter:

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 by including substantial interest expenses in its calculation of selling expenses incurred by a related reseller of the like product. Indonesia then explained that a correct calculation of these selling expenses would result in *de minimis* margins for the exporters involved. In the Redetermination,

however, the KTC left unchanged the amount of interest expenses it included in the reseller's selling expenses. Indonesia is concerned that the Redetermination fails to properly implement this aspect of the DSB's recommendations and rulings for the following reasons:

1. By attributing interest expenses of such nature and magnitude to the reseller, by using expenses incurred by a production company, and by ignoring verified evidence that the reseller would not have incurred such interest expenses in the resale of the like product, the KTC failed properly to identify a "reasonable amount for administrative, selling and general costs" to be included in the constructed value within the meaning of Article 2.2, 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. By thus failing to properly determine the constructed value, the KTC failed to make a fair comparison between normal value and export price within the meaning of Article 2.4 of the Anti-Dumping Agreement.
2. By attributing interest expenses of such nature and magnitude to the reseller, by using expenses incurred by a production company, and by ignoring verified evidence that a company with the same selling functions affiliated to another producer incurred zero interest expenses, the KTC failed to comply with its obligation to utilise the "best information available" and failed to exercise "special circumspection" in its use of information secondary sources as required by Article 6.8 read with Annex II, including paragraphs 3 and 7 thereof, of the Anti-Dumping Agreement.
3. By relying on new, irrelevant, unreliable and unverifiable information regarding the reseller and regarding selling expenses incurred by companies in other industries and in Korea, the KTC failed to comply with its obligation to utilise the "best information available" and failed to exercise "special circumspection" in its use of secondary sources as required by Article 6.8 read with Annex II, including paragraphs 3 and 7 thereof, of the Anti-Dumping Agreement.
4. By treating the reseller as a manufacturing company and disregarding its previous findings and verified evidence, 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, as well as its obligations under Article 6.8 read with Annex II of the Antidumping Agreement.
5. By excluding evidence supplied during the implementation process by the Indonesian exporters while accepting other new evidence onto the record, the KTC failed to comply with its obligations under Articles 2, 2.2, 2.2.2, 6.1, 6.2, 6.6, 6.8, 17.6(i) and Annex II of the Anti-Dumping Agreement to make a proper determination of the normal value and to provide the Indonesian exporters with required opportunities to submit evidence and to defend their interests.

B. Best Information Available for One Exporter

In determining dumping margins based on best information available for one exporter that did not participate in the KTC's investigation, the Panel found that the KTC had failed to exercise special circumspection within the meaning of Article 6.8 and paragraph 7 of Annex II of the Anti-Dumping Agreement. In the Redetermination, however, the KTC continued to use the same dumping margins for this exporter without properly considering verified evidence from other sources regarding those margins.

6. By continuing to rely on information supplied by the Applicant to calculate the normal value for this exporter despite the fact that (i) these data are contradicted by the KTC's own calculations and (ii) these data are inconsistent with other verified information regarding

prices in the Indonesian market, the KTC failed to comply with its obligations under Article 6.8 read with Annex II of the AD Agreement.

C. Injury and causal link determinations

The Panel found that the KTC's analysis of injury did not meet the requirements of Article 3.4 of the AD Agreement because the KTC failed to evaluate the relevance of injury factors which did not show negative trends in its determination. In its Redetermination the KTC altered its injury and causal link determinations. Indonesia is concerned that the KTC's injury and causal link analysis cannot be reconciled with the requirements of the Anti-Dumping Agreement for the following reasons:

7. The KTC's injury and causal link determinations are based exclusively on information obtained from a subset of the Korean domestic industry (the companies that supported the petition and responded to questionnaires) rather than the entire domestic industry. As a result, figures for the market share of imports and domestic goods, domestic prices, economic factors and indices having a bearing on the state of the industry are partial and inaccurate. Consequently, the KTC's determinations are inconsistent with its obligation to base its determinations on "positive evidence" and "conduct an objective examination" of injury and causal link as set out in Articles 3.1, 3.2, 3.4 and 3.5 of the Anti-Dumping Agreement.
8. In its injury and causal link determinations, the KTC appears to have failed to analyse how imports which were priced above or almost equal to the price of domestic goods could have caused a loss in the volume of sales and hence reductions in market share, reduced capacity utilization and increased inventories in a price sensitive market. The KTC also appears to have failed to analyse properly the effect of the losses in the export market and the effect of non-dumped imports on the purported injury suffered by the domestic industry. This appears to be inconsistent with Articles 3.1, 3.2, 3.4 and 3.5 of the Anti-Dumping Agreement.

D. Failure to Disclose Injury Determinations

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 determination of injury.

9. By failing to provide a draft of its injury re-determination to the Indonesian exporters or to allow these exporters to provide their views, 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.

Indonesia reserves the right to raise additional issues regarding the KTC's Redetermination during consultations.

We look forward to receiving your reply to this request and to fixing a mutually convenient date for consultations.
