

**UNITED STATES – USE OF ZEROING IN ANTI-DUMPING MEASURES  
INVOLVING PRODUCTS FROM KOREA**

Request for Consultations by Korea

The following communication, dated 24 November 2009, from the delegation of Korea to the delegation of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

Upon instructions from my authorities, and on behalf of the Government of Korea, I hereby request consultations with the Government of the United States of America ("United States") 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 1994"), and Article 17 of the *Agreement on Implementation of Article VI of GATT 1994* ("Anti-Dumping Agreement"), with regard to the application, commonly referred to as "zeroing," by which the United States Department of Commerce ("USDOC") treats transactions with negative dumping margins as having margins equal to zero for purposes of determining the weighted-average dumping margins in its anti-dumping investigations.

The Government of Korea requests consultations with the United States concerning the USDOC's use of the practice of zeroing negative dumping margins in calculating overall weighted average margins of dumping in final determinations and amended final determinations in investigations in the following three specific cases involving Korean products:

- (1) Stainless Steel Plate in Coils from the Republic of Korea (Case No. A-580-831);
- (2) Stainless Steel Sheet and Strip in Coils from the Republic of Korea (Case No. A-580-834); and
- (3) Diamond Sawblades and Parts Thereof from the Republic of Korea (Case No. A-580-855).

The effect of the USDOC's zeroing practice in the three cases listed above has been either to artificially create margins of dumping where none would otherwise have been found, or to inflate margins of dumping.

The zeroing methodology that the USDOC used in the anti-dumping investigations in these cases is virtually identical to the methodology that was held to be inconsistent with the Anti-Dumping Agreement in *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen*

*from India* (WT/DS141/R and WT/DS141/AB/R), and also in *United States – Final Dumping Determination on Softwood Lumber from Canada* (WT/DS264/R and WT/DS264/AB/R). The United States has announced a change in the dumping margin calculation methodology employed in new anti-dumping investigations, as a result of which the United States will no longer utilize the practice of zeroing in any investigations that were pending as of 22 February 2007.<sup>1</sup>

The Government of Korea considers the USDOC's use of its practice of zeroing in its final determinations, amended final determinations, and anti-dumping duty orders in the three listed cases to be inconsistent with the obligations of the United States under Article VI of the GATT 1994 and Articles 1, 2.1, 2.4, 2.4.2, and 5.8 of the Anti-Dumping Agreement.

Korea intends to address whether the methodologies employed by the United States in these cases are consistent with the aforementioned provisions of the Anti-Dumping Agreement and GATT 1994. In this regard, I have attached a list of the determinations and anti-dumping orders that the United States has issued to date in antidumping investigations in the three cases that are the subject of this request.

The Government of Korea reserves its rights to raise additional factual and legal issues during the course of the consultations and in any request for the establishment of a panel.

We look forward to receiving the United States' response and scheduling a mutually convenient date and venue for consultations.

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<sup>1</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 Fed. Reg. 77722 (27 December 2006); and *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margins in Antidumping Investigations; Change in Effective Date of Final Modification*, 72 Fed. Reg. 3783 (26 January 2007).

## **Annex**

### **A. STAINLESS STEEL PLATE IN COILS FROM THE REPUBLIC OF KOREA (CASE NO. A-580-831)**

#### **1. Notice of Final Determination of Sales at Less than Fair Value**

*Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils ("SSPC") from the Republic of Korea*, 64 Fed. Reg. 15444 (31 March 1999), as amended by *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From the Republic of Korea; and Stainless Steel Sheet and Strip in Coils From the Republic of Korea*, 66 Fed. Reg. 45279 (28 August 2001)

#### **2. Final Injury Determination**

*Certain Stainless Steel Plate From Belgium, Canada, Italy, Korea, South Africa, and Taiwan*, 64 Fed. Reg. 25515 (12 May 1999)

#### **3. Antidumping Order**

*Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan*, 64 Fed. Reg. 27756 (21 May 1999), as amended by *Notice of Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan*, 68 Fed. Reg. 11520 (11 March 2003), as amended by *Notice of Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan*, 68 Fed. Reg. 16117 (2 April 2003), and as amended by *Notice of Correction to the Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan*, 68 Fed. Reg. 20114 (24 April 2003)

### **B. STAINLESS STEEL SHEET AND STRIP IN COILS FROM THE REPUBLIC OF KOREA (CASE NO. A-580-834)**

#### **1. Notice of Final Determination of Sales at Less than Fair Value**

*Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea*, 64 Fed. Reg. 30664 (8 June 1999), as amended by *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From the Republic of Korea; and Stainless Steel Sheet and Strip in Coils From the Republic of Korea*, 66 Fed. Reg. 45279 (28 August 2001)

#### **2. Final Injury Determination**

*Certain Stainless Steel Sheet and Strip From France, Germany, Italy, Japan, The Republic of Korea, Mexico, Taiwan, and The United Kingdom*, 64 Fed. Reg. 40896 (28 July 1999)

#### **3. Antidumping Order**

*Notice of Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From United Kingdom, Taiwan and South Korea*, 64 Fed. Reg. 40555 (27 July 1999)

- C. DIAMOND SAWBLADES AND PARTS THEREOF FROM THE REPUBLIC OF KOREA (CASE NO. A-580-855)

**1. Notice of Final Determination of Sales at Less Than Fair Value**

*Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea*, 71 Fed. Reg. 29310 (22 May 2006); and Memorandum from Maisha Cryor, Import Administration to Thomas F. Futtner, Import Administration, regarding Ministerial Error Allegations in the Final Determination of the Antidumping Duty Investigations on Diamond Sawblades and Parts Thereof from the Republic of Korea, United States Department of Commerce (28 June 2006)

**2. Final Injury Determination**

*Diamond Sawblades and Parts Thereof from China and Korea*, Inv. Nov. 731-TA-1092 and 1093 (Final) (Remand), USITC Pub. 4007 (May 2008), approved in *Diamond Manufacturers Coalition v. United States*, CIT Court No. 06-00247, 2009 Ct. Intl. Trade LEXIS 6; Slip Op. 2009-5 (13 January 2009)

**3. Antidumping Order**

*Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea: Notice of Court Decision Not In Harmony With Final Determination of the Antidumping Duty Investigations*, 74 Fed. Reg. 6570 (10 February 2009); *Diamond Manufacturers Coalition v. United States*, CIT Court Nos. 06-00247, 09-00110, 2009 WL 3166656 (CIT); Slip Op. 09-107 (30 September 2009); *Diamond Sawblades and Parts Thereof From the People's Republic of China and the Republic of Korea: Antidumping Duty Orders*, 74 Fed. Reg. 57145 (4 November 2009)

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