

ANNEX A

REQUEST FOR THE ESTABLISHMENT OF A PANEL

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REQUEST FOR THE ESTABLISHMENT OF A PANEL

WORLD TRADE ORGANIZATION

WT/DS312/2
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KOREA – ANTI-DUMPING DUTIES ON IMPORTS OF CERTAIN PAPER FROM INDONESIA

Request for the Establishment of a Panel by Indonesia

The following communication, dated 16 August 2004, from the delegation of Indonesia to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 4 June 2004, the Republic of Indonesia ("Indonesia") requested consultations 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") regarding the imposition by the Republic of Korea ("Korea") 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 thereto. The request was circulated on 10 June 2004 as document WT/DS312/1, G/L/681, G/ADP/D54/1. Korea and Indonesia held consultations in Geneva on 7 July 2004. However, consultations have failed to settle the dispute.

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]. Indonesia considers that Korea's definitive anti-dumping duties on imports of business information paper and uncoated wood-free printing paper from Indonesia do not meet these requirements. In this regard, Indonesia notes the following:

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

Relating primarily to the initiation of the investigation

1. Korea initiated the investigation notwithstanding its failure to make a determination that the application had been made by or on behalf of the domestic industry. This is inconsistent with Article 5.4 of the AD Agreement.
2. Korea's determination that business information paper and uncoated wood-free printing paper are like products is inconsistent with the definition of "like products" as set out in Article 2.6 of the AD Agreement. Consequently, the definition of "domestic industry" utilised by Korea in its determination that the application has been made by or on behalf of the "domestic industry" is flawed. For this reason, Korea's initiation of the investigation is inconsistent with Article 5.4 of the AD Agreement.
3. Korea initiated the investigation 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. This is inconsistent with Article 3.1 and Article 4.1(i) of the AD Agreement.
4. Korea initiated the investigation notwithstanding the failure of the applicants 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 relate 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),

In these circumstances, Korea's initiation of the investigation is inconsistent with Article 5.2 and Article 5.3 of the AD Agreement.
5. Korea initiated the investigation notwithstanding that the period for injury and the period for dumping overlapped only for a period of three months. Korea's failure to *simultaneously* consider the evidence of both dumping and injury in the decision to initiate the investigation is contrary to Article 5.7 of the AD Agreement.
6. Korea failed to provide in the Notice of Initiation any information regarding the factors on which the allegation of injury was based. This is inconsistent with Article 12.1.1(iv) of the AD Agreement.
7. Korea granted confidential treatment to information contained in the domestic industry's application and to supplementary information provided by the domestic industry without (i) requiring the applicants or the domestic industry to provide showing of good cause for such a treatment, (ii) requiring the applicants or the

domestic industry 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. The granting of such confidential treatment without requiring the showing of good cause is inconsistent with Article 6.5 of the AD Agreement. Furthermore, Korea's failure to require the furnishing of non-confidential summaries or any indication that that information could not be summarized and the reasons why summarization was not possible are contrary to Article 6.5, Article 6.5.1 and Article 6.5.2 of the AD Agreement.

Relating primarily to the conduct of the investigation

8. Korea requested information on a firm which was not subject to the 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. This is inconsistent with Article 6.7 and Annex I of the AD Agreement.
9. Korea did not consider and accept information related to the sales of CMI and the financial statements of CMI, notwithstanding that they were (i) verifiable, (ii) appropriately submitted and could be used without undue difficulties, and (iii) submitted in a timely fashion. This is inconsistent with Article 6.8 and paragraphs 3 and 5 of Annex II of the AD Agreement.
10. Korea failed to explain the reasons for its non-acceptance of the information related to the sales of CMI and the financial statements of CMI . This is inconsistent with Article 6.8 and paragraph 6 of Annex II of the AD Agreement.

Relating primarily to the preliminary determination

11. Korea's determination that business information paper and uncoated wood-free printing paper are like products is inconsistent with the definition of "like products" as set out in Article 2.6 of the AD Agreement. Furthermore, Korea's failure to explain this conclusion in sufficient detail is contrary to the requirements set out in Article 12.2 of the AD Agreement.
12. Korea's resort to constructed value as the basis for determining normal value for PT Pindo Deli and PT Indah Kiat is inconsistent with Article VI:1 and Article VI:2 of GATT and Article 2.1 and Article 2.2 of the AD Agreement.
13. 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, is inconsistent with Article 2.2, Article 2.2.1.1, and Article 2.2.2 of the AD Agreement.
14. Korea's resort to best information available in order to construct administrative, selling and general costs of PT Pindo Deli and PT Indah Kiat is inconsistent with Article 6.8 and paragraphs 3, 5 and 6 of Annex II of the AD Agreement.
15. Korea failed to provide in sufficient detail findings and conclusions reached on the determination of normal value. In particular, Korea failed to provide details of the

amounts for, and methods and evidence used in determining, cost of production, administrative, selling and general costs, financial expenses and profits. This is inconsistent with Article 12.2 of the AD Agreement.

16. 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 an intermediary – CMI – while export sales were made directly to consumers, is inconsistent with Article VI:1 and Article VI:2 of GATT and Article 2.1 and Article 2.4 of the AD Agreement.
17. For exporters who did not submit information to Korea (*i.e.*, PT Tjiwi Kimia and unidentified exporters of Indonesia), Korea arbitrarily applied the "best information available" to determine the dumping margin for Tjiwi Kimia. This is inconsistent with the provisions of Article 6.8 and paragraph 7 of Annex II of the AD Agreement.
18. Korea failed to immediately terminate the investigation in respect of PT Indah Kiat notwithstanding its determination that the margin of dumping for PT Indah Kiat was *de minimis*. This is inconsistent with Article 5.8 of the AD Agreement.

Relating primarily to the final determination

19. Korea's determination that business information paper and uncoated wood-free printing paper are like products is inconsistent with the definition of "like products" as set out in Article 2.6 of the AD Agreement. Furthermore, Korea's failure to explain this determination in sufficient detail, notwithstanding the views expressed by Indonesian exporters that business information paper and uncoated wood-free printing paper are not like products, is contrary to Article 12.2 of the AD Agreement.
20. Korea's failure to determine individual margins of dumping for PT Indah Kiat, PT Pindo Deli and PT Tjiwi Kimia is contrary to Article 6.10 of the AD Agreement. In the light of this claim, the consequent levy of an anti-dumping duty in excess of individual margins of dumping, if any, is inconsistent with the requirements of Article VI:2 of GATT and Article 9.3 of the AD Agreement.
21. Korea's determination of a single normal value, export price and dumping margin for PT Indah Kiat, PT Pindo Deli and PT Tjiwi Kimia is inconsistent with Articles 2.1, 2.2 and 2.4 of the AD Agreement.
22. Korea's resort to constructed value as the basis for determining normal value for PT Pindo Deli and PT Indah Kiat is inconsistent with Article VI:1 and Article VI:2 of GATT and Article 2.1 and Article 2.2 of the AD Agreement.
23. Korea's construction of the normal value in respect of PT Pindo Deli and PT Indah Kiat without taking into consideration actual data, including data pertaining to sales of CMI in the ordinary course of trade of the like products subject to investigation and data regarding the costs attributable to CMI and without following any of the methods mandated under Article 2.2.2 of the AD Agreement is inconsistent with Article 2.2, Article 2.2.1.1, and Article 2.2.2 of the AD Agreement.
24. Korea's resort to best information available in order to construct administrative, selling and general costs of PT Pindo Deli and PT Indah Kiat is inconsistent with Article 6.8 and paragraphs 3, 5, 6 and 7 of Annex II of the AD Agreement.

25. Korea failed to provide in sufficient detail findings and conclusions reached on the determination of normal value. In particular, Korea failed to provide details of the amounts for, and methods and evidence used in determining, cost of production, administrative, selling and general costs, financial expenses and profits. This is inconsistent with Article 12.2 of the AD Agreement.
26. Korea's determination of normal value for PT Tjiwi Kimia is inconsistent with Article 2.1, and Article 6.8, paragraphs 3, 5, 6 and 7 of Annex II of the AD Agreement.
27. 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, *inter alia*, by failing to take into account that domestic sales were made through an intermediary – CMI - while export sales were made directly to consumers and by failing to make a fair comparison at the same level of trade is contrary to Article VI:1 and Article VI:2 of GATT and Article 2.1 and Article 2.4 of the AD Agreement.
28. Korea's incorrect classification of imports from PT Indah Kiat as dumped imports as a result of treating PT Indah Kiat, PT Pindo Deli and PT Tjiwi Kimia as a single economic unit, as well as Korea's incorrect classification of *all* imports from Indonesia and China, including imports that occurred outside the period of investigation for dumping, as dumped imports and the consequent incorrect determination of injury and causal link between the alleged dumped imports and injury is inconsistent with Article 3.1, Article 3.2, Article 3.4, Article 3.5 and Article 3.7 of the AD Agreement, and Article VI:1 and Article VI:6 of GATT.
29. 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 is inconsistent with Article 3.1, Article 3.4, Article 3.5 and Article 3.7 of the AD Agreement, and Article VI:1 and Article VI:6 of GATT.
30. Korea's failure to adequately evaluate the effect of the dumped imports on prices in the domestic market for like products is inconsistent with Article 3.1, Article 3.2, Article 3.5 and Article 3.7 of the AD Agreement, and Article VI:1 and Article VI:6 of GATT.
31. Korea's failure to evaluate all relevant economic factors and indices having a bearing on the state of the domestic industry is contrary to Article 3.1, Article 3.4, Article 3.5 and Article 3.7 of the AD Agreement, and Article VI:1 and Article VI:6 of GATT.
32. Korea's failure to objectively examine the participation of the domestic industry in the importation of the allegedly dumped imports and Korea's erroneous attribution of the injury that occurred in the first half of 2003 to dumped imports that entered the Korean market 3-15 months earlier is inconsistent with the requirements set out in Article 3.1, Article 3.2, Article 3.4, Article 3.5, and Article 3.7 of the AD Agreement, and Article VI:1 and Article VI:6 of GATT.
33. 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 is inconsistent with Article 6.1.2 and Article 6.4 and Article 6.9 of the AD Agreement. Furthermore, Korea's failure to inform the Indonesian exporters of the essential facts relating to

injury before the final determination was made is inconsistent with Article 6.9 of the AD Agreement.

In Indonesia's view, the foregoing cannot be reconciled with Article VI of the GATT, Article 1 of the AD Agreement, and the specific provisions cited above. Therefore, pursuant to Articles 4.7 and 6 of the DSU, Article XXIII:2 of the GATT, and Articles 17.4 and 17.5 of the AD Agreement, Indonesia hereby requests the Dispute Settlement Body to establish a panel to examine the matter described above.
