

ANNEX F

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY KOREA

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ANNEX F-1

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY KOREA

**WORLD TRADE
ORGANIZATION**

WT/DS402/3
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UNITED STATES – USE OF ZEROING IN ANTI-DUMPING MEASURES INVOLVING PRODUCTS FROM KOREA

Request for the Establishment of a Panel by Korea

The following communication, dated 8 April 2010, from the delegation of Korea to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

Upon instructions from my authorities, and on behalf of the Government of the Republic of Korea ("Korea"), I hereby request, pursuant to Articles 4 and 6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"), Article XXIII of the *General Agreement on Tariffs and Trade of 1994* (the "GATT 1994"), and Article 17.4 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of 1994* (the "Anti-Dumping Agreement"), that a panel be established with respect to certain anti-dumping measures imposed by the United States on imports of Stainless Steel Plate in Coils, Stainless Steel Sheet and Strip in Coils, and Diamond Sawblades and Parts Thereof from the Republic of Korea.

On 24 November 2009, Korea requested consultations with the United States pursuant to Article 4 of the DSU, Article XXII:1 of the GATT 1994, and Article 17 of the Anti-Dumping Agreement with regard to the practice, 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 the anti-dumping investigations that resulted in the above-referenced measures. Consultations were held in Washington, DC, on 22 December 2009 and in Geneva on 2 February 2010. While these consultations allowed a better understanding of the Parties' positions, they failed to resolve the dispute.

The Government of Korea hereby requests that a panel be established 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 (A-580-831);
- (2) Stainless Steel Sheet and Strip in Coils from the Republic of Korea (A-580-834); and
- (3) Diamond Sawblades and Parts Thereof from the Republic of Korea (A-580-855).

The effect of the USDOC's zeroing practice in the 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 antidumping 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 2007.¹ However, the United States did not apply this change in methodology in the three specific cases listed above.

I have attached a list of the determinations and anti-dumping duty orders that the United States has issued to date in the antidumping investigations in the three cases that are the subject of this request.

The Government of Korea considers that the measures at issue in this dispute are inconsistent with the obligations of the United States under the Anti-Dumping Agreement. Specifically, Korea considers that each of these measures is inconsistent with the first sentence of Article 2.4.2 of the Anti-Dumping Agreement because the United States' use of "zeroing" was not consistent with the methodologies for establishing margins of dumping described in that provision, and artificially inflated the margins of dumping by precluding a determination for the product as a whole.

Korea hereby requests that a panel be established pursuant to Article XXIII of the GATT 1994, Articles 4 and 6 of the DSU and Article 17.4 of the Anti-Dumping Agreement with the standard terms of reference set forth in Article 7 of the DSU. Korea asks that this request for the establishment of a panel be placed on the agenda of the meeting of the Dispute Settlement Body scheduled for 20 April 2010.

¹ 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) as amended by Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof From the Republic of Korea, 75 Fed. Reg. 14126 (24 March 2010)

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: Antidumping Duty Orders, 74 Fed. Reg. 57145 (4 November 2009)
