

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
20 August 2004

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

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.

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 Dis