

# KOREA – CERTAIN PAPER<sup>1</sup>

(DS312)

| PARTIES     |           | AGREEMENT                             | TIMELINE OF THE DISPUTE     |                   |
|-------------|-----------|---------------------------------------|-----------------------------|-------------------|
| Complainant | Indonesia | ADA Arts. 2, 3, 6, 9, 12 and Annex II | Establishment of Panel      | 27 September 2004 |
|             |           |                                       | Circulation of Panel Report | 28 October 2005   |
| Respondent  | Korea     |                                       | Circulation of AB Report    | NA                |
|             |           |                                       | Adoption                    | 28 November 2005  |

## 1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: Anti-dumping duties imposed by Korea on certain imports.
- Products at issue: "Business information paper and wood-free printing paper" from Indonesia.

## 2. SUMMARY OF KEY PANEL FINDINGS<sup>2</sup>

*Reliance on "facts available" (ADA Arts 2.2 and 6.8 and Annex II(3), (6) and (7))*

- Normal value calculation: The Panel found that the Korean investigating authority (i.e. KTC) did not act inconsistently with Art. 6.8 and Annex II(3) when it resorted to facts available for the calculation of normal value for two Indonesian exporters because the information requested (financial statements and accounting records) had not been submitted "within a reasonable period of time". In addition, the data submitted to the KTC after the deadline were not verifiable within the meaning of Annex II(3) in light of the fact that the exporters refused to submit corroborating information during the verification. The Panel also found that the KTC complied with its obligation under Annex II(6) to inform the exporters of its decision to use facts available. The Panel also found that the KTC did not act inconsistently with Art. 2.2 in basing its normal value determination on constructed value under Art. 2.2, as the data (on domestic sales) submitted by the exporters were not verifiable.
- Dumping margin determination: The Panel found that the KTC acted inconsistently with Art. 6.8 and Annex II(7) in respect of its dumping margin determination for one of the exporters by failing to compare information on normal value obtained from secondary sources (i.e. information in the application by the petitioners) against other independent sources.

*Treatment of certain exporters as a single exporter (ADA Arts. 6.10 and 9.3)*

- Having found that Art. 6.10, when read in context with Art. 9.3, does not necessarily preclude treating distinct legal entities as a single exporter for dumping determinations as long as it is shown that the structural and commercial relationship between the subject companies is sufficiently close to be considered as a single exporter, the Panel found that the KTC did not act inconsistently with Arts. 6.10 or 9.3 because one parent company had a considerable controlling power over the operations of the three subject Indonesian companies as its subsidiaries.

*Disclosure obligations (ADA Art. 6)*

- The Panel found that the KTC's disclosure of the verification results (which was confined to its decision to resort to facts available) *vis-à-vis* the subject exporters fell short of meeting the disclosure standard under Art. 6.7 because it failed to inform them of the verification results (i.e. adequate information regarding all aspects of the verification) in a manner that would have allowed them to properly prepare their case for the rest of the investigation.
- The Panel also found that the KTC acted inconsistently with the disclosure obligation under Art. 6.4 by declining the Indonesian exporters' request to access information relating to the KTC's calculation of the constructed normal value.

<sup>1</sup> Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia

<sup>2</sup> Other issues addressed: ADA Art. 3.4 (impact of dumped imports); Art. 6.5 (confidential treatment); Art. 2.4 (price comparability); Art. 2.6 (like products); Art. 3.1, 3.2 and 3.4 (price analysis); Art. 3.4 and 3.5 (Korean industry's imports); Art. 6.2, 6.4, 6.9, 12.2 and 12.2.2 (disclosure obligations); terms of reference; confidentiality.

# KOREA – CERTAIN PAPER (ARTICLE 21.5 – INDONESIA)<sup>1</sup>

(DS312)

| PARTIES     |           | AGREEMENTS                     | TIMELINE OF THE DISPUTE        |                   |
|-------------|-----------|--------------------------------|--------------------------------|-------------------|
| Complainant | Indonesia | ADA Arts. 1, 2, 6 and Annex II | Referred to the Original Panel | 23 January 2007   |
|             |           |                                | Circulation of Panel Report    | 28 September 2007 |
| Respondent  | Korea     | GATT 1994 Art. VI              | Circulation of AB Report       | NA                |
|             |           |                                | Adoption                       | 22 October 2007   |

## 1. MEASURE TAKEN TO COMPLY WITH THE DSB'S RECOMMENDATIONS

- The re-determination by the Korean Trade Commission ("KTC") in the anti-dumping investigation on "business information paper and wood-free printing paper" from Indonesia, carried out for to implement DSB rulings and recommendations following the original dispute settlement proceedings.

## 2. SUMMARY OF KEY PANEL FINDINGS

- ADA Art. 6.8 and Annex II: The Panel found that the KTC acted inconsistently with its obligations under Art. 6.8 and para. 7 of Annex II in the calculation of interest expenses for two of the Indonesian companies subject to the implementation proceedings at issue. It found that the KTC failed to apply special circumspection in its determination whether using a manufacturing company's interest expenses for a trading company would be proper, and in the corroboration of such interest expense with the interest expenses of some other companies.
- ADA Art. 6.2: The Panel found that the KTC acted inconsistently with the obligation set forth under Art. 6.2 by failing to allow Indonesian exporters to comment on the KTC's injury re-determination.

## 3. OTHER ISSUES

- Prima facie case: The Panel found that Indonesia failed to make a prima facie case in connection with its claims under ADA Arts. 6.4, 6.5 and 6.9 regarding alleged disclosure violations, and its claim regarding the alleged acceptance of new information from the Korean industry.
- Judicial economy: The Panel applied judicial economy to a number of Indonesia's claims regarding the use of best information available, and those regarding alleged procedural violations in the implementation proceedings at issue.
- Request for a suggestion: The Panel rejected Indonesia's request that the Panel suggest that Korea implement the Panel's findings in these proceedings by basing the calculation of interest expenses of the two Indonesian companies at issue on the data pertaining to a certain trading company.

<sup>1</sup> Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia – Recourse to Article 21.5 of the DSU by Indonesia