Korean producers filed 55 antidumping petitions between 1994 and 2004. Of the 41 antidumping determinations by the Korean government during this period, 71 percent resulted in the imposition of antidumping duties. The number of Korean antidumping petitions has declined significantly since 1998; Korean producers filed only 12 cases between 1999 and 2004 compared to 43 cases between 1996 and 1998.

Legal Procedures

Any interested party may file an antidumping petition with the Trade Commission (the Commission) on behalf of the domestic industry.\(^1\) The Commission then undertakes an investigation into whether foreign products are imported at a price lower than the normal value, and whether those imports are causing or threatening to cause material injury to the domestic industry. The Minister of Finance and Economy determines whether or not to impose antidumping measures based on the results of the Commission’s investigation.

The Commission calculates the dumping margin as the difference between the weighted average normal value and the weighted average import price over the period of investigation. The Commission determines the normal value using one of the four methods. Whenever possible, the Commission defines the normal value as the exporting country’s sales price in its domestic market. However, if more than 20 percent of the exporting country’s domestic sales are made at prices below their average cost of production, or the value of exporting country’s domestic sales are less than five percent of the value of Korean imports from the exporting country, the Commission may calculate the normal value using one of two alternative methods. First, the Commission may use the price of sales from the exporting country to selected third countries. Alternatively, the Commission can calculate a “constructed” normal value from the exporting country’s cost of production plus a reasonable amount for administrative and selling costs and profits. If the exporting country is a state-controlled economy without a market economy system, the Commission calculates the normal value as either the price of the product in selected market economy countries other than Korea, the export price from a selected market economy country to selected third countries including Korea, or the constructed value. If the exporting country is in transition to a market economy system, the normal value may be determined using the same methods as employed with a market economy country.

The Commission generally calculates a separate antidumping margin for each supplier or supplying country; however, if it is difficult to conduct an investigation or verify information, a single antidumping duty may be imposed upon all firms within an exporting country or upon all countries targeted in the antidumping investigation. When the number of suppliers or products is too large, the Commission may select a sample of suppliers or products for the investigation using statistical sampling methods or by choosing those suppliers or products with the largest import volumes. The Commission calculates the dumping margin for those firms not in the

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\(^1\) An antidumping investigation may be initiated if domestic producers who support the petition account for at least 25 percent of total domestic production of the product same in kind and quality or the similar product and have collective output of more than 50 percent of the total production of such products produced by those producers who either support or oppose the petition.
sample using a weighted average of the dumping margins calculated for those suppliers selected for the investigation.

If any firm within the exporting country fails to provide requested information within a reasonable time limit, the Minister of Finance and Economy or the Commission may decide whether or not to take antidumping measures on the basis of the “facts available.” However, even though an interested party has provided material, if he refuses to make the material public or submit a non-confidential summary without a justifiable reason, the Minister of Finance and Economy and the Commission may choose not to use information and evidence submitted by the interested parties unless the accuracy of the material has been sufficiently demonstrated.

When determining whether the foreign imports are causing or threatening to cause material injury to the domestic industry, the Commission considers a number of factors including the volume and price of the dumped products, the degree of the dumping margin, the exporting country’s production and export capacity, and the domestic industry’s output, market share, prices, profits, productivity, and employment.

The Commission must submit a preliminary report to the Minister of Finance and Economy within three months of the initiation of the investigation. The Minister of Finance and Economy then determines whether or not to impose provisional antidumping measures. Korean antidumping measures take one of two forms. If the fixed rate method is used, Korea imposes a firm-specific, ad valorem antidumping duty of not more than the calculated dumping margin over the period of investigation. Alternatively, Korea may impose a specific dumping duty equal to the difference between a defined base import price and the customs value of the unit. The base import price is typically defined by the average adjusted normal value of the product plus import-related expenses over the period of investigation.

If an exporter promises to revise its price immediately and stop exporting at the “dumped” prices within six months in an “undertaking” agreement, the Minister of Finance and Economy may suspend or terminate the antidumping investigation without applying provisional antidumping measures. If the exporter fails to uphold the undertaking agreement, the Minister of Finance and Economy may impose provisional antidumping measures immediately based on the best information available.

If the preliminary determination is affirmative, the Commission initiates a final investigation and makes a final determination within three months. Based on the Commission’s report on the results of final investigation, the Minister of Finance and Economy decides whether or not to impose more permanent antidumping measures.

The antidumping duty or undertaking agreement is usually lifted after five years. The Minister of Finance and Economy may review the need to modify the measures after the one year anniversary of imposition of the measures upon request. A review is also undertaken six months before the expiration of the antidumping duties or the undertaking. The Commission carries out all reviews, determining whether the imposition of the antidumping measures is still warranted and calculating a dumping margin for all exporting firms involved in the review. The modified antidumping measure or undertaking agreement that is imposed as a result of the review is
effective for five years from the date of the modification, unless the imposition period is determined independently.

**Compliance with the WTO Antidumping Agreement**

On June 4, 2004, Indonesia filed a complaint with the World Trade Organization’s (WTO) dispute settlement body, charging that Korea’s antidumping investigation and the imposition of definitive antidumping duties on certain paper from Indonesia failed to comply with the WTO’s Antidumping Agreement. Specifically, Indonesia argued that Korea:

- initiated an investigation without sufficient and adequate evidence in the petition of dumping, injury and a causal link between the two;
- did not provide any information on what evidence the injury determination was based upon in the Notice of Initiation;
- improperly granted confidential treatment; and
- failed to properly conduct certain aspects of the investigation such as the definition of like product, the calculation of the constructed value, the calculation of individual dumping margins, the use of best information available, the denial of access to information, the treatment of certain firms as a single exporter, and the assessment of the impact of dumped imports in the preliminary and final determination.

On October 28, 2005, a WTO dispute settlement panel found that the Korean Trade Commission acted inconsistently with the antidumping agreement in determining the dumping margin for one Indonesian company. For two Indonesian companies, the Commission failed to provide proper disclosure of the verification results and the detailed calculation of the constructed values, and neglected to properly utilize secondary information in these calculations. The panel also found that the Trade Commission failed to properly treat confidential information and correctly assess the impact of dumped imports on the domestic industry. However, the panel also concluded that the Trade Commission did not violate the antidumping agreement when it rejected the domestic sales data submitted by these two companies and resorted to facts available to calculate the constructed value. It was also appropriate for the Commission to treat three Indonesian companies as a single exporter and assign a single dumping margin to them.

Korea accepted these recommendations, but noted that it would need a reasonable period of time to implement them. On February 10, 2006, Indonesia and Korea informed the Dispute Settlement Body that Korea would implement the WTO ruling by July 28, 2006.