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UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN OIL COUNTRY TUBULAR GOODS FROM KOREA

REQUEST FOR CONSULTATIONS BY THE REPUBLIC OF KOREA

The following communication, dated 22 December 2014, from the delegation of the Republic of Korea to the delegation of the United States and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

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Upon instructions from my authorities, and on behalf of the Government of the Republic of Korea ("Korea"), I hereby request consultations with the Government of the United States of America ("United States") pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), and Article 17 of the *Agreement on Implementation of Article VI of the GATT 1994* ("Anti-Dumping Agreement"), with regard to the following anti-dumping measures adopted by the United States and with respect to certain aspects of the investigation underlying those measures.

I. Anti-Dumping Measures of the United States Related to Oil Country Tubular Goods (OCTG) from Korea, As Applied

Korea wishes to consult with the United States regarding anti-dumping measures on Oil Country Tubular Goods from the Republic of Korea (Inv. No. A-580-870), as set forth in the following measures:

1. Final Determination of Sales at Less Than Fair Value – Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances, 79 Fed. Reg. 41983 (July 18, 2014).

2. Issues and Decision Memorandum for the Final Affirmative Determination in the Less Than Fair Value Investigation of Certain Oil Country Tubular Goods from the Republic of Korea (July 10, 2014), available at http://enforcement.trade.gov/frn/summary/korea-south/2014-16874-1.pdf.

3. Antidumping Duty Orders – Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders, 79 Fed. Reg. 53691 (September 10, 2014).

4. Any related measure in the proceeding entitled Oil Country Tubular Goods from the Republic of Korea, including the investigation itself as well as all administrative reviews, new shipper reviews, changed circumstances reviews, sunset reviews, and other segments of the proceeding.

Korea considers these measures to be inconsistent with U.S. obligations under the following provisions of the GATT 1994 and the Anti-Dumping Agreement, including, but not limited to:

1. Articles 2.2.2 of the Anti-Dumping Agreement because, in its calculation of constructed value profit ("CV profit") for Korean respondents, the United States Department of Commerce ("USDOC"):

   a. Incorrectly interpreted and applied the term "same general category of products" in determining that it would not use the actual profit data submitted by both the mandatory and the voluntary respondents in the investigation to calculate CV profit;

   b. Improperly calculated CV profit based on information pertaining to an OCTG producer that did not produce or sell OCTG in Korea; and

   c. Failed to ensure that the profit rate that it calculated did not exceed the profit normally realized by other exporters or producers on sales of the same general category of products in the domestic market of the country of origin.

2. Article 2.2 of the Anti-Dumping Agreement because the USDOC's calculation of CV profit for Korean respondents was not "reasonable" in light of global profit margins, including profit margins in the United States, for oil country tubular goods.

3. Article 2.4 of the Anti-Dumping Agreement because the USDOC failed to make a fair comparison between the export price and the normal value by failing to make due allowance for differences between the products produced by the CV profit source and those produced by respondents.

4. Article 2.2.2 of the Anti-Dumping Agreement because the USDOC did not use actual data from the respondents' home market sales to determine the profit rate to be applied in the calculation of normal value.

5. Article 2.2.2 of the Anti-Dumping Agreement because the USDOC did not use actual data from the respondents' third-country sales to determine the profit rate to be applied in the calculation of normal value.

6. Article 2.2 of the Anti-Dumping Agreement because the USDOC disregarded respondents' sales of like products to a third country for the purposes of calculating normal value.

7. Article 2.3 of the Anti-Dumping Agreement because the USDOC improperly concluded that the Korean respondent NEXTEEL was affiliated with an unaffiliated supplier and an unaffiliated customer, in part based on the affiliation between the supplier and the customer. For this reason, the USDOC considered unreliable the export price from NEXTEEL to this customer.

   Article 2.2.1.1 of the Anti-Dumping Agreement because the USDOC calculated NEXTEEL's costs on the basis of the unaffiliated supplier's records based on an improper determination that NEXTEEL was affiliated with the supplier.

8. Articles 6.2, 6.4, and 6.9 of the Anti-Dumping Agreement because the USDOC did not inform interested parties of its decision to accept CV profit data that petitioners submitted after statutory deadlines, and it also did not inform interested parties of correspondence that the USDOC received from other branches of the U.S. government and from U.S. industry representatives. Moreover, the USDOC did not provide respondents ample opportunity to respond to this new information prior to issuing its final determination.

9. Article 6.10, including Articles 6.10.1 and 6.10.2,of the Anti-Dumping Agreement because the USDOC unreasonably selected only two mandatory respondents, and did not examine the voluntary responses of three non-selected producers. SeAH, for instance, was the only Korean exporting company that carried out further processing and created additional added-value in the United States. Yet despite having a sales channel completely different from all other Korean OCTG producers through which the

company sells not only to distributors but also directly to end-users, SeAH was not selected as a voluntary respondent.

10. Article 12.2.2 of the Anti-Dumping Agreement because the USDOC's Final Determination and Issues and Decision Memorandum did not contain sufficient explanations addressing the issues and arguments raised by respondents regarding the USDOC's calculation of CV profit, as well as other issues and arguments, including NEXTEEL's affiliation with its customer, the USDOC's acceptance of untimely information, and the USDOC's arm's-length analysis with respect to affiliated party input.

11. Article I of the GATT 1994 because the USDOC's actions subsequent to the issuance of the preliminary determination resulted in less favorable treatment of OCTG from Korea compared to like products originating from other countries under investigation.

12. Article X:3 of the GATT 1994 because the USDOC did not administer its regulations in a uniform, impartial, and reasonable manner by permitting petitioners to place new CV profit data on the record after its own regulatory time limit for submission of new factual information on the record had lapsed.

II. Anti-Dumping Measures of the United States Related to OCTG from Korea, As Such

Korea also wishes to consult with the United States with regard to the methodology by which, when a respondent's home market sales are not viable for purposes of calculating normal value, the USDOC automatically disregards the respondent's exports to third-country markets if those sales constitute less than five percent of the respondent's sales to the United States, including in – but not limited to – the aforementioned anti-dumping proceedings pertaining to OCTG from Korea. This methodology is established by the following measures:

1. The Tariff Act of 1930, including sections 771(35)(A)and 777A(c) and (d) (19 U.S.C. §§ 1677(35)(A) and 1677f-1(c)).

2. The Statement of Administrative Action that accompanied the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. I.

3. The implementing regulations of the USDOC, 19 C.F.R. Part 351, including paragraphs 351.404(b)(1) and(2).

4. The USDOC's Import Administration Antidumping Manual, including any amended versions, and the computer program(s) to which it refers.

5. Any other related, subsequent measures that enable or implement the so-called "viability test" in anti-dumping investigations, administrative reviews and other segments of anti-dumping proceedings.

Korea considers that the USDOC's methodology, which disregards a respondent's third-country sales for failing to meet a 5 per cent "viability test," violates Article 2.2 of the Anti-Dumping Agreement because the USDOC's methodology is not relevant to considering whether the prices at which the like products are sold to the third-country market are "representative."

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The United States' measures at issue are also inconsistent with Article 1 of the Anti-Dumping Agreement and Article VI of the GATT 1994 as a result of the breaches of the Anti-Dumping Agreement and the GATT 1994 described above. The measures are also inconsistent with Article XVI:4 of the *Marrakesh Agreement Establishing the World Trade Organization* and Article 18.4 of the Anti-Dumping Agreement insofar as the United States has not taken all steps to ensure the conformity of its laws, regulations, and administrative procedures with the provisions of the GATT 1994 and the Anti-Dumping Agreement.

Moreover, the United States' measures appear to nullify or impair the benefits accruing to Korea directly or indirectly under the cited agreements.

Korea reserves its rights to raise additional factual and legal issues during the course of the consultations and in any request for the establishment of a panel.

We look forward to receiving the United States' response to this request in due course, in accordance with Article 4.3 of the DSU, and to scheduling a mutually convenient date and venue for consultations.

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