

## UNITED STATES – ANTI-DUMPING MEASURES ON STAINLESS STEEL PLATE IN COILS AND STAINLESS STEEL SHEET AND STRIP FROM KOREA

### Request for the Establishment of a Panel by Korea

The following communication, dated 14 October 1999, from the Permanent Mission of Korea to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 30 July 1999, the Government of the Republic of Korea (Korea) requested consultations with the Government of the United States pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), and Article 17.3 of the Agreement on Implementation of Article VI of GATT 1994 (the Anti-Dumping Agreement) regarding the final actions of the U.S. Government to levy definitive anti-dumping duties on Stainless Steel Plate in Coils from Korea and Stainless Steel Sheet and Strip in Coils from Korea. That request was circulated to the Members of the WTO on 6 August 1999 (WT/DS179/1).

On 17 September 1999, Korea and the United States held consultations in Geneva in an attempt to reach a mutually satisfactory solution. Unfortunately, the consultations have failed to settle the matter and there are no indications to suggest that further consultations are likely to be productive.

Korea therefore respectfully requests that a Panel be established pursuant to Article 6 of the DSU, Article XXIII:2 of GATT 1994 and Article 17.5 of the Anti-Dumping Agreement with the standard terms of reference as set out in Article 7 of the DSU.

### The Measures at Issue

The principal United States measures at issue in this request include:

- The Anti-Dumping Duty Order concerning Stainless Steel Plate in Coils (SSPC) from Korea, dated 21 May 1999 (published as Notice of Anti-Dumping 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)), including actions by the United States Department of Commerce (DOC) preceding this measure, such as the Preliminary and Final Determinations of the DOC that SSPC from Korea is being sold in the United States at less than fair value, dated 4 November 1998 and 31 March 1999, respectively (published as Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea, 63 Fed. Reg. 59535 (4 November 1998) and Notice of Final

Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea, 64 Fed. Reg. 15444 (31 March 1999), respectively); and

- the Anti-Dumping Duty Order concerning Stainless Steel Sheet and Strip in Coils (SSSS) from Korea, dated 27 July 1999 (published as Notice of Anti-Dumping Duty Order: Stainless Steel Sheet and Strip in Coils from United Kingdom, Taiwan, and South Korea, 64 Fed. Reg. 30555 (27 July 1999)), including actions by the DOC preceding this measure, such as the Preliminary and Final Determination of the DOC that SSSS from Korea is being sold in the United States at less than fair value, dated 4 January 1999 and 8 June 1999, respectively (published as Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 64 Fed. Reg. 137 (4 Jan. 1999) and 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), respectively).

#### The Legal Basis for the Complaint

Korea believes that the measures referred to above are inconsistent with several agreements of the World Trade Organization for, without limitation, the following reasons:

- (a) The DOC treated sales of SSPC and SSSS to a customer that went bankrupt and did not pay the Korean exporter as "bad debt," which the DOC then treated as a "direct selling expense" and deducted from the calculation of the U.S. export price. That deduction was improper, however, because the fact that the Korean exporter was not paid for certain sales is not a difference in the "conditions and terms" of these sales and has not been demonstrated to affect "price comparability" within the meaning of Article 2.4 of the Anti-Dumping Agreement. Thus, the anti-dumping measures concerning imports of SSPC and SSSS from Korea were not based on a "fair comparison . . . between the export price and the normal value," as required by Article 2.4 of the Anti-Dumping Agreement.
- (b) The DOC included in its calculation of the U.S. export price sales for which payment was not received because of a customer's bankruptcy. However, such sales cannot be regarded as sales in the "ordinary course of trade" and their inclusion in the price calculation was therefore inconsistent with Article 2.1 of the Anti-Dumping Agreement. Thus, the anti-dumping measures concerning imports of SSPC and SSSS from Korea were not based on a "fair comparison . . . between the export price and the normal value," as required by Article 2.4 of the Anti-Dumping Agreement.
- (c) The DOC treated certain sales of SSPC and SSSS in the Korean domestic market, which were priced in U.S. dollars, as being sales in Korean won. The DOC then used the converted won values, which were listed on company books for accounting purposes, as the domestic sales price, and converted that price into U.S. dollars at a different exchange rate to determine the normal value for comparison to the U.S. export price. The conversion of prices from dollars to won to dollars was unnecessary and distorted the basis of the price comparison, and is therefore inconsistent with Article 2.4 of the Anti-Dumping Agreement. Thus, the anti-dumping measures concerning imports of SSPC and SSSS from Korea were not based on a "fair comparison . . . between the export price and the normal value," as required by Article 2.4 of the Anti-Dumping Agreement.

- (d) In the final determinations of sales at less than fair value, which underpin the anti-dumping measures concerning imports of SSPC and SSSS from Korea, the DOC divided the period of investigation into two sub-periods and calculated separate weighted average normal values and export prices for each sub-period. That methodology, however, is inconsistent with Article 2.4.2 of the Anti-Dumping Agreement, which provides for comparison of a single weighted average normal value and export price for the full period of investigation. Thus, the anti-dumping measures concerning imports of SSPC and SSSS from Korea were not based on a "fair comparison . . . between the export price and the normal value," as required by Article 2.4 of the Anti-Dumping Agreement.
- (e) In its preliminary determinations concerning sales of SSPC and SSSS at less than fair value, the DOC calculated a single weighted average normal value and export price for the full period of investigation as the basis for price comparison. The DOC then changed its policy without informing the interested parties of this "essential fact" in a manner that would have allowed the parties to defend their interests, as required by Article 6.9 of the Anti-Dumping Agreement. Thus, the anti-dumping measures concerning imports of SSPC and SSSS from Korea are based on procedures that did not provide the Korean exporter a "full" and "ample opportunity" to defend its interests, as required by Articles 6.1 and 6.2 of the Anti-Dumping Agreement.
- (f) In its final determination concerning sales of SSPC and SSSS at less than fair value, the DOC altered its calculation methodology to account for the devaluation of the won against the dollar in a manner prejudicial to the Korean exporter, whereas Article 2.4.1 of the Anti-Dumping Agreement only permits (and, indeed, requires) the DOC to alter its calculation methodology to account for the movement of a foreign currency against the dollar when that currency appreciates against the dollar. Thus, the anti-dumping measures concerning imports of SSPC and SSSS from Korea were not based on a "fair comparison . . . between the export price and the normal value," as required by Article 2.4 of the Anti-Dumping Agreement.
- (g) The anti-dumping measures concerning imports of SSPC and SSSS from Korea are based in various respects on determinations that are inconsistent with the past practice of the DOC and judicial decisions of the U.S. courts. Thus, the anti-dumping measures concerning imports of SSPC and SSSS from Korea were not based on a "fair comparison . . . between the export price and the normal value," as required by Article 2.4 of the Anti-Dumping Agreement.
- (h) The DOC final determinations also failed to set forth "in sufficient detail the findings and conclusions on all issues of fact and law" that were material to its determinations and to provide "all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures," particularly (without limitation) with regard to the conversion of Korean domestic market sales priced in U.S. dollars into Korean won, as required by Articles 12.2 and 12.2.2 of the Anti-Dumping Agreement.
- (i) For all these reasons, the U.S. anti-dumping measures concerning imports of SSPC and SSSS from Korea are applied pursuant to investigations that were not initiated and conducted in accordance with the provisions of the Anti-Dumping Agreement, as required by Article 1 of the Anti-Dumping Agreement and Article VI of the GATT 1994.

- (j) For all these reasons, the DOC did not administer the anti-dumping laws in a "uniform, impartial, and reasonable manner," as required by Article X:3 of GATT 1994.

The above summary is designed to briefly describe the legal basis of the complaint sufficient to present the problem clearly, but is not to be taken as restricting the arguments that Korea may develop before the Panel.

Korea requests that the Panel consider and find that the U.S. anti-dumping measures concerning imports of SSPC and SSSS from Korea, including actions preceding these measures, are inconsistent with the provisions of the WTO agreements as set forth above; nullify or impair benefits accruing directly or indirectly to Korea under the WTO agreements; and impede the achievement of the objectives of the WTO agreements.

Korea further requests that the Panel recommend that the Dispute Settlement Body request that the United States revoke the anti-dumping duty orders on SSPC and SSSS from Korea.

Korea asks that this request be placed on the agenda for the next meeting of the Dispute Settlement Body, scheduled for 27 October 1999.

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