

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

**(WT/DS488)**

**CLOSING STATEMENT OF THE UNITED STATES OF AMERICA  
AT THE FIRST SUBSTANTIVE MEETING OF THE PANEL**

**July 21, 2016**

Mr. Chairman, members of the Panel,

1. The United States would like to thank once again the Panel and the Secretariat for their service in this dispute and their engagement during the first substantive meeting. In this statement, we would like to briefly address a key issue in this dispute, and one which undermines each of Korea's claims: standard of review.

2. In its opening statement and responses to the Panel's questions, Korea invited the Panel essentially to redo Commerce's analysis with respect to, for example: (1) the definition of the "same general category of products"; (2) the selection of Tenaris's financial statements as the best available option for determining CV profit in this case; and (3) the association of NEXTEEL with the Customer by virtue of NEXTEEL's association with POSCO. With respect to each of these claims, Korea has pointed to factual disputes in the underlying investigation and has asked the Panel to come to a different conclusion than that of the investigating authority.

3. But while a panel is required to "undertake an in-depth examination of whether the explanations given disclose how the investigating authority treated the facts and evidence in the record and whether there was positive evidence before it to support the inferences made and conclusions reached by it,"<sup>1</sup> the standard of review applicable to a panel reviewing an antidumping duty determination "precludes a panel from engaging in a *de novo* review of the facts of the case 'or substitut[ing] its judgement for that of the competent authorities."<sup>2</sup>

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<sup>1</sup> Appellate Body Report, *US – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, para. 379, quoting Appellate Body Report, *US – Softwood Lumber VI (Article 21.5 – Canada)*, para. 93.

<sup>2</sup> See Appellate Body Report, *US – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, para. 379, quoting Appellate Body Report, *US – Steel Safeguards*, para. 299 (referring to Appellate Body Report, *Argentina – Footwear (EC)*, para. 121) (the Appellate Body's statement is directed at countervailing determinations but is equally applicable to antidumping determinations).

4. As the United States demonstrated in our First Written Submission, and again during this meeting, Commerce provided a reasoned and adequate explanation of how the evidence in the record supports its findings with respect to the definition of “same general category of products,” the use of Tenaris’s financial statement, and the association of NEXTEEL with its Customer by virtue of NEXTEEL’s association with POSCO.

5. The arguments advanced by Korea with respect to these issues do not support a finding by the Panel that Commerce failed to base its determinations on positive evidence or to provide a reasoned and adequate explanation for those determinations. Rather, Korea asks the Panel simply to draw different conclusions from those of the Commerce Department. For example, with respect to the identification of the “same general category of products,” Korea asks the Panel to second-guess Commerce’s findings with respect to the “performance requirements” and “use and testing requirements” as they relate to OCTG and non-OCTG products.<sup>3</sup> But as previous panels and the Appellate Body have repeatedly found, it is not the task of a panel to second-guess the findings of an investigating authority, so this Panel should decline Korea’s invitation to engage in such *de novo* review.

6. Thus because Korea has failed to provide the Panel with a legal basis to overturn Commerce’s findings, and for the additional reasons discussed in our First Written Submission, in our oral statement, and in our initial responses to the questions of this Panel, the United States respectfully requests that the Panel reject each of Korea’s claims.

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<sup>3</sup> Korea’s Oral Statement at the First Meeting of the Panel, paras. 65-67.

7. Mr. Chairman, members of the Panel, this concludes our closing statement. We thank you again for your attention.