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

(WT/DS488)

EXECUTIVE SUMMARY OF THE FIRST WRITTEN SUBMISSION OF THE UNITED STATES OF AMERICA

April 21, 2016

1. The Republic of Korea challenges U.S. antidumping (AD) duties imposed on oil country tubular goods (OCTG) from Korea. Korea's claims are without merit. As the record establishes and this submission explains, USDOC provided a reasoned and adequate explanation as to how the evidence on the record supported its factual findings and how those factual findings support its overall determination. And as this submission demonstrates, the arguments advanced by Korea otherwise fail to provide plausible alternative explanations of the record evidence before USDOC.

I. Korea's "As Such" Claim Regarding the "Viability Test" is Without Merit

A. Article 2.2 of the AD Agreement Does Not Prohibit an Investigating Authority from Considering the Volume of Third-Country Market Sales

2. Korea's claim rests on a fundamental misunderstanding of the applicable obligations. First, as acknowledged by Korea, Article 2.2 does not state a preferred alternative method to calculate normal value. Rather, the provision's use of "or" makes clear that an authority may choose to use either of the two available methods.

3. Second, the text of Article 2.2 does not impose an obligation on an authority to consider or analyze both of the two alternative methods before choosing one. Therefore, there is no basis for Korea to contend that application of a "viability test" could lead to an impermissible prohibition on consideration of third-country sales.

4. Third, Article 2.2 uses the qualifier "appropriate" in regard to the potential "third country" sales. This term indicates that, even were an investigating authority to consider third country sales in a particular instance, the authority would not breach Article 2.2 if it disregards third-country sales found not to be appropriate.

5. Based on the foregoing, Korea has failed to demonstrate that consideration of quantitative factors when analyzing the use of third-country sales is inconsistent with Article 2.2. On this basis alone, Korea's claim that an alleged "viability test" guiding the use of third-country sales is "as such" inconsistent with Article 2.2 of the AD Agreement must be rejected.

B. Korea's Claim Must Fail Because U.S. Law Does Not Impose a "Viability Test" As Argued by Korea

6. The focus of the examination in evaluating an "as such" challenge is to ascertain the meaning of the measure itself, and not whether any particular instance of application was inconsistent with the provision. To make such a demonstration, Korea therefore must present to the Panel evidence and legal argument sufficient to show that application of U.S. law necessarily results in an inconsistency with Article 2.2 of the AD Agreement – that is, that the measure necessarily requires WTO-inconsistent action or precludes WTO-consistent action.

7. The U.S. regulation at issue states that USDOC will consider the home market or third-country to be a "viable market" if sales are of a "sufficient quantity." The regulation's use of "normally" indicates that USDOC may define "sufficient quantity" based on the facts of a particular proceeding. The dictionary definition of "normally" is "under normal or ordinary conditions; as a rule, ordinarily." This definition suggests a preference, not a requirement, as distinguished from the use of "shall" or "in all cases."

8. Korea has failed to demonstrate that the U.S. regulation requires USDOC to make its decision whether to use third-country sales on the basis of a "viability test." Korea has therefore not shown that U.S. law necessarily results in a breach of Article 2.2, even on Korea's understanding of Article 2.2.

II. Korea's "As Applied" Claim Regarding the "Viability Test" is Also Without Merit

9. Korea's claim that USDOC's final determination in the OCTG investigation is inconsistent with Article 2.2 of the AD Agreement fails for the first reason its claim on the "viability test" "as such" fails: when the conditions are met for employing an alternative to home market sales for determining normal value, Article 2.2 does not require the use of third-country sales or limit the basis on which an investigating authority could choose to use constructed normal value. Therefore, USDOC's decision in the investigation at issue to use third-country sales data only if a sufficient volume of sales existed does not breach Article 2.2.

III. Korea's Claim Regarding the Calculation of CV Profit is Without Merit

A. Korea Has Failed to Establish that USDOC Acted Inconsistently with the Chapeau of Article 2.2.2

10. Notwithstanding the obligations established by Article 2.2, Korea argues that the preferred method for calculating profit necessitates that an investigating authority always use actual data pertaining to sales of the like product in the ordinary course of trade, regardless of the volume of sales represented by such data. Korea's proposed interpretation does not reflect the text or context of Article 2.2.2.

11. The chapeau of Article 2.2.2 does not require that an investigating authority "use" actual data from the production and sale of the like product. Rather, the chapeau requires that the amount for profits "shall be *based on*" actual data. An obligation that something be "based on" something else does not create an obligation to "use" something else. Thus the obligation of Article 2.2.2 that "profit shall be based on actual data" cannot be read as a strict requirement to *use* actual data in every circumstance.

12. The text of Article 2.2.2, understood in its context, does not require an investigating authority to use data from low-volume domestic sales to calculate CV profit. Therefore, Korea has failed to show that the United States acted inconsistently with Article 2.2.2 of the AD Agreement when USDOC determined that CV profit could not be calculated based on the chapeau because neither HYSCO nor NEXTEEL had sufficient home market sales during the period of investigation. In addition, contrary to Korea's assertion, USDOC did not have access to actual data pertaining to production and sales in the ordinary course of trade of the like product by HYSCO or by NEXTEEL in the home market during the period of investigation.

B. USDOC's Definition of the "Same General Category of Products" Is Consistent with Article 2.2.2(i) of the AD Agreement

13. Article 2.2.2 uses both the terms the "same general category" of products and "like product." The term "like product" is used with respect to the preferred method under Article 2.2.2 and alternative (ii), which may be employed when the preferred method is unavailable. The term "same general category" is used with respect to alternatives (i) and (iii), albeit in the latter alternative the term is only used with respect to the profit cap, not the method itself. By

their terms, and given their juxtaposition in the same provision, "like product" and "same general category" of products are distinct terms.

14. The term "category" is generally defined as "A class, a division." The term "general" when used as an adjective is defined as "Including, involving, or affecting all or nearly all the parts of a . . . whole," and the term "same" when used as an adjective is defined as "Identical with what is indicated in the following context." The double adjective combination "same general" modifies the noun "category," with each adjective naming separate attributes for the products that fall within the category. In the context of alternative (i), which is looking for actual profit amounts realized in domestic sales of the "same general category of products," and of alternative (iii), which is looking for a profit cap that does not exceed profit normally realized in domestic sales of "products of the same general category," the category thus encompasses products that fall within the definition of the "like product" plus other products that share many of the "same" fundamental characteristics of the "like product" without, of course, being the "like product."

15. USDOC defined the "same general category of products" more broadly than it did "like product" as including "subject OCTG, non-scope OCTG such as stainless steel tubular products, and drill pipes." USDOC's definition of "same general category of products" includes the "like product" plus "other tubular products that go into the exploration and production of oil and gas. These would be products that would exhibit the same fundamental characteristics for down hole applications." Therefore, in the Korea OCTG investigation, USDOC defined "same general category of products" more broadly than "like product."

16. USDOC set out in its final determination a reasoned and adequate explanation as to why it decided to exclude line, structural and standard, and downgraded pipe products from the definition of "same general category of products." USDOC found that "[t]he record shows that OCTG and non-OCTG are sold to different end users for use in different applications, and that these different end users have distinct forces which drive prices, demand, and profitability." The evidence in the record thus supports USDOC's final determination that "[t]he performance measures, production processes, alloys, and physical and mechanical characteristics of OCTG casing and tubing products differ in such significant ways from those of standard pipe and line pipe that these products should not be considered to be of the same general category of products as OCTG. The United States thus provided a reasoned and adequate explanation for its findings on the definition of the "same general category of products" as it employed a "reasonable method" consistent with Article 2.2.2(iii).

17. Because the record evidence contradicts Korea's contentions, Korea finds itself in the tenuous position of advocating that calculations concerning normal value of OCTG should be based on profit from non-OCTG products instead of the OCTG-specific data that USDOC used. Korea has failed to show any support in the AD Agreement for its position. Most important, Korea has failed to show that USDOC's interpretation and application in the OCTG investigation is inconsistent with Article 2.2.2.

18. In the instant case, the record and decision memoranda demonstrate that that USDOC engaged in an extensive analysis of the like product and general category of products. Korea, meanwhile, fails to engage the substantive issue, but instead implies that USDOC must be held to the scope definitions for other AD proceedings, preliminary statements in initial questionnaires, or different decisions made in other AD proceedings pursuant to unrelated

evidentiary records. The arguments advanced by Korea with respect to the definition of "same general category" of products as understood for the purpose of alternatives (i) and (iii) thus do not provide plausible alternative explanations of the record evidence before USDOC. Therefore, the United States respectfully requests that the Panel find USDOC's definition of the "general category of products" in the Korea OCTG investigation was not inconsistent with Articles 2.2.2(i) and 2.2.2(iii) of the AD Agreement.

C. USDOC's Calculation of CV Profit Was Consistent with Article 2.2.2(iii) of the AD Agreement

19. Korea argues that USDOC otherwise had "abundant data" to calculate a profit cap from allegedly dumped OCTG in the United States or sales of non-OCTG products in Korea, but this argument serves to further confirm the soundness of USDOC's decision. First, there is no support in alternative (iii), or anywhere else in the AD Agreement, for the proposition that normal value should be determined on the basis of profit from the allegedly dumped sales. Indeed, the use of allegedly dumped sales in the export market to calculate normal value runs contrary to the concept of determining a dumping margin, which under Article 2.1 is a comparison of normal value with the export price.

20. Korea's other argument, that "the unavailability of data does not excuse a Member from complying with the requirements of the Anti-Dumping Agreement," simply does not address the fact that its proffered information is not relevant to the calculation of a cap under alternative (iii). Korea has failed to demonstrate that USDOC's calculation of amounts of profit for constructed value is inconsistent with the positive obligation imposed by Articles 2.2 and 2.2.2 to determine amounts for profit on the basis of another "reasonable method". The evidence proffered by the Korean companies was not relevant to the profit cap calculation, and there was no other evidence in the record that would permit USDOC to calculate a profit cap. In that circumstance, the United States used a "reasonable method" as the basis to determine the amounts of profit and therefore did not act inconsistently with Articles 2.2 and 2.2.2.

D. USDOC's Calculation of the CV Profit on the Basis of Audited Profit of an OCTG Producer is Consistent with Article 2.2.2(iii)

21. USDOC's use of Tenaris's financial statement to calculate CV profit resulted from a reasoned consideration of the evidence before it, rationally directed at approximating what the Korean respondents' profit margin for the like product would have been if the like product had been sold in the ordinary course of trade in the Korea. USDOC thus provided a reasoned and adequate explanation for why the use of Tenaris's financial statement constitutes a reasonable method to calculate CV profit.

22. Korea does not identify any flaw, mistake, or inaccuracy in Tenaris's audited financial statement. Nor does Korea explain why profit from sales of OCTG does not reasonably reflect constructed profit for the same product.

23. Instead, according to Korea, Article 2.1 defines dumping in a manner that prohibits an investigating authority from calculating a dumping margin "by comparing an export price to a normal value that, for the most part, represents the international market (as opposed to the single domestic market of the exporting country)." Korea's interpretation is flawed. As an initial matter, Article 2.1 is a definitional provision that, "read in isolation, do[es] not impose

independent obligations." Although the Article 2.1 provides when "a product is to be considered as being dumped," it does not specify how the normal value is to be determined. The determination of normal value is governed by Article 2.2 instead.

24. Also, in this investigation, USDOC had to select one of the two alternatives for determining normal value: (1) data that is specific to the product under consideration from global sales of a company that operates in many countries, including Korea, but not specific solely to Korea; or (2) data that is not specific to the product under consideration or the general category of products, albeit specific to the exporting country. Korea has provided no basis in Article 2.2.2 to conclude that only home market sales and production data for products falling *outside* the same general category of products would provide a reasonable method for calculating CV profit, much less that global market (including Korea) profit data for a producer of the *like product*, OCTG, is not a reasonable method. Given the record evidence concerning the differences between OCTG and non-OCTG products, USDOC reasonably selected the data that it considered more accurately reflected the profit amount for the product under consideration.

25. Korea asserts that "no reasonable basis exists to conclude that Tenaris's profit rate is reflective of the profit rate that the Korean producers would have achieved if they had sold OCTG in the country of export," but Korea itself acknowledges that Tenaris produces and sells a broad range of OCTG products around the world. As such, Korea has not demonstrated any flaw or inaccuracy in the audited financial statements of Tenaris, nor has it demonstrated that the global prices of OCTG are unrepresentative. Absent evidence to the contrary, there is nothing unreasonable about using the average profit from a broad range of OCTG products sold by a company that operates around the globe, including in Korea, as a reasonable proxy for the profit expected to be made from a sale of OCTG in a specific market.

26. The arguments advanced by Korea do not provide plausible alternative explanations as to why the use of Tenaris's financial statement does not constitute a reasonable method by which to calculate CV profit. Therefore, Korea has failed to establish that the United States acted inconsistently with Article 2.2.2 of the AD Agreement in its determination of CV profit.

E. USDOC's Acted Consistently with Article 2.4 of the Antidumping Agreement

27. Article 2.4 obligates an investigating authority to make a "fair comparison" between the export price and the normal value when determining the existence of dumping and calculating a dumping margin. The essential requirement for any adjustment under Article 2.4 is that a factor for which adjustment is requested must affect price comparability. The use of constructed normal value does not preclude the need for due allowances or adjustments *between* the export price and the normal value. However, the construction of normal value through the selection of costs pursuant to Article 2.2.1, or profit pursuant to Article 2.2.2, is not a relevant difference *between* the export value and the normal value, because these selections do not relate to a difference between the export and domestic transactions being compared.

28. Korea challenges the calculation of a component of constructed normal value, namely CV profit. Korea's Article 2.4 claim thus is entirely derivative of its claim under Article 2.2.2. If USDOC determined CV profit consistently with Article 2.2.2, the profit amount for purpose of normal value is reasonable. The profit component of normal value does not constitute a difference affecting price comparability between the export price and the normal value, and thus

is not relevant to the fair comparison obligation between the export price and the normal value set forth under Article 2.4 of the AD Agreement.

IV. USDOC's Decision to Disregard NEXTEEL's Export Price Was Not Inconsistent with Article 2.3 of the AD Agreement

29. Article 2.3 permits an authority to disregard export prices based on "association." The term "association" does not indicate a limitation to only those entities that may be "related" to the exporter. The nature of the relationship between the exporter and the importer, rather than actual pricing information, are what inform an authority's consideration of whether prices "appear" to be unreliable under Article 2.3.

30. Korea attempts to equate the term "association" with the term "related," as defined in footnote 11, and Korea devotes considerable discussion to interpreting footnote 11. However, footnote 11 defines a different term in a different article of the AD Agreement. Because Korea's claim is premised on its erroneous understanding of "association" in Article 2.3, its claim can be rejected on this basis alone.

31. USDOC properly found NEXTEEL to be associated with the Customer, and therefore did not act inconsistently with Article 2.3 in disregarding export price. USDOC's analysis considered two relationships: (1) POSCO and NEXTEEL and (2) NEXTEEL and Customer. USDOC's finding of association between NEXTEEL and POSCO was based on the unique and remarkably close relationship in which POSCO was positioned to "affect[] the pricing, production, and sale of OCTG" by NEXTEEL. As USDOC concluded in its final determination, NEXTEEL and POSCO coordinated closely in the production, marketing, and sale of OCTG.

32. During the relevant period, USDOC found that POSCO supplied NEXTEEL HRC used for the production of OCTG. HRC accounts for an overwhelming percentage of the cost of producing OCTG. The volume of HRC purchased and consumed by NEXTEEL from POSCO was a key basis of USDOC's finding of association. USDOC concluded that the nature of this supplier relationship extended beyond that of an independent buyer-seller transaction.

33. USDOC's final determination referred to public acknowledgements by POSCO that it "took charge of NEXTEEL's overseas {public relations} campaign for its global launch." USDOC found that the two companies shared technology and market information pertaining to OCTG.

34. USDOC concluded that NEXTEEL worked closely with POSCO at every step of the process: production, marketing, and sale of OCTG. USDOC explained that "POSCO has a history of working closely with on-sight NEXTEEL departments and providing marketing assistance and other promotional activities for the benefit of NEXTEEL. USDOC's final determination demonstrates NEXTEEL's close association with POSCO. Accordingly, so too must NEXTEEL be associated with Customer.

35. USDOC concluded that NEXTEEL was associated with Customer, a relationship that, by its very nature, prevented an arm's length transaction of OCTG. USDOC appropriately utilized the first sale to an independent buyer of OCTG in the United States. Accordingly, Korea's claim fails because, in these circumstances, USDOC's use of a constructed export price was not inconsistent with Article 2.3.

V. USDOC's Use of Calculated Costs Based on NEXTEEL's Supplier's Records Was Not Inconsistent with Article 2.2.1.1 of the AD Agreement

36. Korea's argument would appear to accept that a proper finding of association justifies deviation from a respondent's books and records in the cost calculation. As demonstrated above, USDOC's final determination properly found an association to exist between NEXTEEL and POSCO. Accordingly, Korea's claim is without merit.

37. Article 2.2.1.1 of the AD Agreement permits an authority to depart from a respondent's books and records in calculating constructed value where the authority provides a rationale for doing so. Where an authority provides a reasoned explanation for why it was required to use market prices for a cost calculation – as here – the authority has not acted inconsistently with Article 2.2.1.1. The obligation of Article 2.2.1.1 to use the books and records of the exporter under investigation is qualified by the use of "normally." The term 'normally' in conjunction with the two conditions ('provided that') in Article 2.2.1.1 indicates that use of a producer's or exporter's books or records is not necessary in every case and the investigating authority has the ability to consider other available evidence in limited instances.

38. USDOC's final determination explained the reasons justifying deviation from NEXTEEL's reported costs. This decision was based on the interconnected business relationship between NEXTEEL and POSCO. USDOC provided a thorough and reasoned explanation for its decision to deviate from NEXTEEL's books and records. USDOC's actions are not inconsistent with Article 2.2.1.1 of the AD Agreement.

VI. Korea's Claims Regarding Respondent Selection Are Without Merit

39. As with several claims already discussed, Korea appears to acknowledge that the AD Agreement allows for the action taken by USDOC – that is, to limit the examination of respondents – but argues that the action was not appropriate under the circumstances of the proceeding at issue. Korea's argument is without merit. USDOC provided detailed explanations of its reasoning for limiting the number of respondents individually examined and for not individually examining voluntary respondents, and those explanations comport with the obligations of Articles 6.10 and 6.10.2 of the AD Agreement.

40. Article 6.10 of the AD Agreement allows Members to determine individual margins of dumping for a reasonable number of exporters and producers, and does not require the determination of an individual margin of dumping for all exporters and producers where a large number of exporters and producers is involved. The authority may limit its examination where the number of exporters or producers is so large as to make a determination of individual margins of dumping for all exporters or producers "impracticable." USDOC's decision to limits its examination to two mandatory respondents fully complied with this requirement. Korea has presented no evidence to argue that USDOC's actions were unreasonable, and the Panel therefore should reject Korea's claims that the United States breached Article 6.10.

41. Korea claims that the United States breached Article 6.10.2 of the AD Agreement in failing to individually examine voluntary responses submitted by three Korean companies. Korea has not reconciled how USDOC's finding that resource constraints precluded investigation of the three companies is somehow inconsistent with the exception in Article 6.10.2 that an authority need not individually examine a voluntary response "where the number of

exporters or producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation."

VII. The Procedural and Due Process Safeguards of the Korea OCTG Investigation Complied with Articles 6.2, 6.4, 6.9, and 12.2.2 of the AD Agreement

A. USDOC Provided Respondents with a Full Opportunity To Defend Their Interests

42. Throughout the Korea OCTG investigation, USDOC provided Korean respondents ample opportunity for the defense of their interests. Before the preliminary determination, respondents were on notice that USDOC might rely on Tenaris's financial data for its dumping calculations. Respondents argued against the use of the Tenaris profit margin through several written submissions before the preliminary determination. Subsequently, after petitioners submitted comments arguing that USDOC should base its calculations on Tenaris's profit information, respondents addressed the Tenaris profit margin extensively in their pre-preliminary determination rebuttal comments.

43. Following the preliminary determination, NEXTEEL and HYSCO had the opportunity to provide views on the Tenaris financial statements that U.S. Steel placed on the record in response to NEXTEEL's Section D Questionnaire. NEXTEEL did so at least three times in writing – once in its request that USDOC reject the document, and twice more in its brief and rebuttal brief. Similarly, HYSCO, AJU Besteel, and Husteel used the opportunity to challenge Tenaris's profit data, including the data in the financial statements, by providing written arguments against the use of the underlying data.

44. Korea's submission fails to acknowledge that in their written submissions made before and after the preliminary determination, as well as during oral arguments at USDOC's hearing, Korean respondents extensively argued that the information in Tenaris's financial data was not a proper CV profit source. Korea has failed to establish that USDOC did not provide Korean respondents a full opportunity to defend their interests. Therefore, the panel should reject Korea's claim under Article 6.2 of the AD Agreement.

45. Korea also does not explain why the opportunities provided to respondents in the Korea OCTG investigation did not comply with Article 6.4. The Korean respondents were aware that the evidence had been submitted by petitioners, respondents did "see" that information which was evidently relevant to the presentation of their case, and they not only had but utilized numerous opportunities to prepare presentations responding to the evidence, Therefore, Korea has failed to establish that USDOC did not provide Korean respondents timely opportunities to see the Tenaris financial statements and to provide presentations on the basis of information in those statements. Accordingly, Korea's claims that the United States acted inconsistently with Article 6.4 of the AD Agreement must fail.

46. Finally, Korea's claim under Article 6.9 is without merit because Korea fails to correctly identify the "essential facts" that are subject to the disclosure obligation of that provision. As is clear from the record, all interested parties to the investigation had access to Tenaris's financial data and were aware that USDOC was considering that data in its investigation. Korea has failed to establish otherwise. Therefore, Korea has failed to establish that the information contained in

the Tenaris financial statements was not disclosed to all interested parties in a manner consistent with Article 6.9 of the AD Agreement.

B. Korea Fails to Establish that the U.S. Breached Articles 6.4 and 6.9 of the AD Agreement with Respect to *Ex Parte* Communications

47. Korea argues that the United States breached Articles 6.4 and 6.9 because USDOC "delay[ed] in disclosing" certain *ex parte* communications, particularly several letters, to Korean respondents. Korea fails to explain why the communications referenced constituted information that was "relevant" to the presentation of the respondents' cases, or how the information would have been "used" by USDOC in its investigation. Korea also fails to demonstrate that the relevant correspondences were "essential facts" under consideration that formed the basis for USDOC's decision to apply definitive measures. Further, the record demonstrates that the Korean respondents had ample opportunity to respond to the relevant communications. Therefore, Korea has failed to make a *prima facie* case under Articles 6.4 and 6.9 of the AD Agreement because USDOC was not required to disclose the referenced communications under Articles 6.4 and 6.9 and because USDOC made the letters available to Korean respondents in a timely manner.

C. USDOC's Public Notice Was Consistent with Article 12.2.2 of the AD Agreement

48. Korea asserts that USDOC's public notice and explanation of its final determination did not satisfy the requirements of Article 12.2.2 of the AD Agreement. Once again, Korea fails to make out its claim. In its public notice, USDOC set forth in sufficient detail all the relevant information and reasons underlying the final determination.

49. USDOC's Issues and Decision Memorandum set forth a detailed analysis of the reasoning behind USDOC's determination to use the Tenaris financial data in the final determination. As the public notice explains, after USDOC considered all arguments on the CV profit issue, it determined that it was not appropriate to use profit information derived from the Korean respondents because of the physical characteristics of the products sold by those respondents in the home market. USDOC determined that using information pertaining to the same product as that under consideration in the OCTG investigation was appropriate for purposes of its CV profit calculation. Based on these considerations, USDOC provided a thorough explanation as to why Tenaris' profit data was the best available option, in light of Tenaris's OCTG production, volume of sales, and customer base.

50. USDOC's final determination explained the underlying facts and rationale that led USDOC to find the existence of an association between NEXTEEL, POSCO, and the Customer. Korea has failed to establish that USDOC did not provide all relevant information and reasons underlying its final determination, including relevant arguments presented by NEXTEEL. Therefore, the United States did not act inconsistently with the obligations of Article 12.2.2.

VIII. Korea's Claim Under Article I:1 of the GATT 1994 is Flawed

51. Korea's argues that procedural differences constitute an "advantage." But Korea's argument fails to take into account that differences do exist in antidumping proceedings – even

investigations involving like products – including differences among the companies under investigation.

52. USDOC made procedural decisions through the course of these proceedings that were based on the specific circumstances of the Korea OCTG investigation and the other OCTG investigations. Unlike in *EU – Footwear*, in which the measure at issue granted an advantage based solely on the country of origin of the products, several factors may have contributed to the treatment accorded to Korean companies and other foreign companies, which resulted in their particular antidumping rates. Korea has failed to demonstrate that any different treatment was not explained by the facts immediately before the investigating authority, here, including the characteristics of the companies participating in the investigation.

IX. Korea Fails To Establish That the United States Administered Its Laws, Regulations, Decisions, and Rulings in a Manner Inconsistent With Article X:3(a)

53. All of Korea's claims under Article X:3(a) of the GATT 1994 must fail because Korea challenges the substance of USDOC's final determination, rather than the United States' administration of relevant laws, regulations, rulings or decisions. Even aside from the fact that Korea has not identified any measure of general application for its claim to fall within the scope of Article X:3(a), Korea has failed to demonstrate that the United States did not administer any laws, regulations, decisions or rulings in a uniform, impartial, and reasonable manner, inconsistent with Article X:3(a).

54. With respect to uniformity, Korea has not shown, nor could it, that the factual circumstances underlying an investigation regarding imports of OCTG produced in Korea required the same procedures as an investigation regarding the imports of OCTG produced in Turkey. Therefore, Korea has failed to establish that the United States did not administer its anti-dumping laws and regulations in a uniform manner.

55. With respect to impartiality, Korea merely concludes that "in the absence of any other reasonable explanation," these letters and meetings "suggest" that "political pressure" impacted the final determination. However, as demonstrated at length, the USDOC provided a reasoned and adequate explanation for its calculation of CV profit, consistent the requirements of the AD Agreement. Therefore, Korea cannot succeed in its claim that USDOC failed to act in an impartial manner as required under Article X:3(a).

56. Finally, with respect to reasonableness, the United States has already established that USDOC had a reasonable basis for its reliance on the Tenaris financial statements in calculating CV profit. Therefore, Korea has not satisfied the high burden of establishing that the United States' administration of its laws, regulations, decisions, and rulings with respect to the Tenaris financial statements was unreasonable.

X. CONCLUSION

57. The United States respectfully requests that the Panel reject Korea's claims that the United States has acted inconsistently with the covered agreements.