

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

Report of the Panel
 WT/DS179/R

*Adopted by the Dispute Settlement Body
 on 1 February 2001*

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1298
II. FACTUAL ASPECTS	1299
A. Plate	1300
B. Sheet	1301
III. PARTIES' REQUESTS FOR FINDINGS AND RECOMMENDATIONS	1303
A. Korea	1303
B. United States	1304
IV. ARGUMENTS OF THE PARTIES AND THIRD PARTIES	1304
V. INTERIM REVIEW.....	1304
VI. FINDINGS	1307
A. General Remarks	1307
B. Alleged "double conversion" of Certain Home Market Sales Prices.....	1309
1. Factual Background	1309
2. Claims under Article 2.4.1 of the AD Agreement	1310
(a) Arguments of the Parties	1310
(b) Evaluation by the Panel	1311
(i) Does Article 2.4.1 Prohibit Unnecessary Currency Conversions? ..	1311
(ii) Did the United States Properly Determine that the Local Sales Were Made in Won?	1312
(iii) Did the United States Perform Unnecessary Currency Conversions in Violation of Article 2.4.1 of the AD Agreement?	1324

 Report of the Panel

	Page
3. Claims under Article 2.4 of the AD Agreement ("fair comparison")	1325
(a) Arguments of the Parties	1325
(b) Evaluation by the Panel	1325
4. Claims under Article X:3(a) of GATT 1994 and Article 12 of the AD Agreement	1326
(a) Arguments of the Parties	1326
(b) Evaluation by the Panel	1327
(i) The Plate Investigation	1327
(ii) The Sheet Investigation	1329
C. Treatment of Unpaid Sales	1329
1. Factual Background	1329
2. Claims under Article 2.4 ("allowances")	1330
(a) Arguments of the Parties	1330
(b) Evaluation by the Panel	1331
(i) Was the DOC's Treatment of Unpaid Sales in Respect of POSAM Part of the Construction of the Export Price?	1331
(ii) Was the DOC's Adjustment for Unpaid Sales in Respect of Sales through Unaffiliated Importers a Permissible Allowance for a Difference Affecting Price Comparability?	1334
(iii) Is Korea's Claim Regarding the DOC's Adjustment for Unpaid Sales in Respect of Sales through POSAM to Construct an Export Price within the Panel's Terms of Reference?	1338
(iv) Is the DOC's Adjustment for Unpaid Sales in Respect of Sales through POSAM to Construct an Export Price Consistent with Article 2.4, Fourth Sentence, of the AD Agreement?	1340
3. Claims under Article 2.4 ("fair comparison")	1346
(a) Arguments of the Parties	1346
(b) Evaluation by the Panel	1346

	Page
D. Multiple Averaging	1347
1. Factual Background	1347
2. Claim under Article 2.4.2 of the AD Agreement	1347
(a) Arguments of the Parties	1347
(b) Evaluation by the Panel	1348
(i) Does Article 2.4.2 Prohibit Multiple Averaging?	1348
(ii) Was the Use of Multiple Averaging Permissible in these Investigations? ...	1350
3. Claim under Article 2.4.1	1355
(a) Arguments of the Parties	1355
(b) Evaluation by the Panel	1356
4. Claim under Article 2.4 ("fair comparison")	1357
(a) Arguments of the Parties	1357
(b) Evaluation by the Panel	1357
E. Other Claims by Korea.....	1359
1. Claims under Article X of GATT 1994 and Articles 6 and 12 of the AD Agreement	1359
2. Claims under Article VI of GATT 1994 and Article 1 of the AD Agreement	1359
VII. CONCLUSIONS AND RECOMMENDATION	1359
A. Conclusions	1359
B. Recommendation and Suggestion	1361
ANNEX 1 SUBMISSIONS OF KOREA	
Annex 1-1 First Submission of Korea.....	1363
Annex 1-2 Oral Statement of Korea at the First Meeting of the Panel....	1430
Annex 1-3 Written Questions from Korea to the United States at the First Meeting of the Panel	1450
Annex 1-4 Responses of Korea to Questions Posed by the Panel and by the United States at the First Meeting of the Panel.....	1454
Annex 1-5 Second Submission of Korea	1484
Annex 1-6 Oral Statement of Korea at the Second Meeting of the Panel.....	1553
Annex 1-7 Responses of Korea to Questions Posed by the Panel at the Second Meeting of the Panel.....	1576

Report of the Panel

	Page
ANNEX 2 SUBMISSIONS OF THE UNITED STATES	
Annex 2-1 First Submission of the United States	1592
Annex 2-2 Oral Statement of the United States at the First Meeting of the Panel	1655
Annex 2-3 Written Questions from the United States to Korea at the First Meeting of the Panel	1666
Annex 2-4 Responses of the United States to Questions Posed by the Panel and by Korea at the First Meeting of the Panel	1667
Annex 2-5 Second Submission of the United States	1702
Annex 2-6 Oral Statement of the United States at the Second Meeting of the Panel	1724
Annex 2-7 Responses of the United States to Questions Posed by the Panel at the Second Meeting of the Panel	1737
ANNEX 3 SUBMISSIONS OF THE THIRD PARTIES	
Annex 3-1 First Submission of the European Communities	1751
Annex 3-2 First Submission of Japan	1756
Annex 3-3 Oral Statement of the European Communities at the First Meeting of the Panel	1768
Annex 3-4 Oral Statement of Japan at the First Meeting of the Panel	1771

I. INTRODUCTION

1. On 30 July 1999, Korea requested consultations with the United States regarding the preliminary and final determinations of the United States Department of Commerce ("DOC") on imports of stainless steel plate in coils ("Plate") from Korea, dated 4 November 1998 and 31 March 1999, respectively, and the preliminary and final determinations of the DOC on imports of stainless steel sheet and strip in coils ("Sheet") from Korea, dated 4 January 1999 as amended 26 January 1999 and 8 June 1999, respectively. Korea made its request pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "Dispute Settlement Understanding" or "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" or "AD Agreement").¹ The United States and Korea held consultations on 17 September 1999, but failed to reach a mutually satisfactory solution.

¹ WT/DS179/1.

2. On 14 October 1999, Korea requested the establishment of a panel with the standard terms of reference set out in Article 7 of the DSU. Korea made its request pursuant to Article 6 of the DSU, Article XXIII:2 of GATT 1994 and Article 17.5 of the AD Agreement.² In that request, Korea identified the United States measures at issue as the anti-dumping duty order on imports of Plate from Korea, dated 21 May 1999, including actions by the DOC preceding this measure, such as the preliminary and final determinations of the DOC dated 4 November 1998 and 31 March 1999, respectively, and the anti-dumping duty order on imports of Sheet from Korea, dated 27 July 1999, including actions by the DOC preceding this measure, such as the preliminary and final determinations of the DOC dated 4 January 1999 as amended 26 January 1999 and 8 June 1999, respectively.

3. At its meeting on 19 November 1999, the Dispute Settlement Body ("DSB") established a panel pursuant to the above request.³ At that meeting, the parties to the dispute agreed that the Panel should have standard terms of reference. The terms of reference were:

"To examine, in light of the relevant provisions of the covered agreements cited by Korea in document WT/DS179/2, the matter referred to the DSB by Korea in that document, and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements".

4. The European Communities and Japan reserved their rights as third parties to the dispute.

5. On 24 March 2000, the Panel was constituted as follows:

Chairman: Mr. José Antonio S. Buencamino

Members: Mr. G. Bruce Cullen

Ms. Enie Neri de Ross

6. The Panel met with the parties on 13-14 June 2000 and 12-13 July 2000. It met with the **third parties on 14 June 2000**.

7. **The Panel submitted** its interim report to the parties on 9 November 2000. The Panel submitted its final report to the parties on 14 December 2000.

II. FACTUAL ASPECTS

2.1 This dispute concerns the imposition of definitive anti-dumping duties by the DOC on imports of Plate and Sheet from Korea. The DOC imposed definitive duties on Plate and Sheet through separate proceedings.

² WT/DS179/2.

³ WT/DS179/3.

Report of the Panel

A. *Plate*

2.2 On 31 March 1998, a number of U.S. steel companies and U.S. steel workers' associations filed an anti-dumping application with the DOC alleging that imports of Plate from Korea and five other countries were being exported to the United States at less than their fair value and that such imports were materially injuring an industry in the United States. The DOC received supplemental information from the petitioners in April 1998. On 27 April 1998, the DOC published a notice announcing the initiation of an anti-dumping investigation on imports of Plate from Korea and the five other countries concerned.⁴ The period of investigation selected by the DOC for the purpose of determining whether dumping had occurred went from 1 January 1997 through 31 December 1997.⁵

2.3 On May 27 1998, the DOC issued investigation questionnaires to two Korean companies, including Pohang Iron and Steel Company ("POSCO").⁶ POSCO replied to Section A of the investigation questionnaire on 1 July 1998 and to Sections B through D of that same questionnaire on 20 July 1998. Additionally, in July, August, September and October 1998, POSCO submitted replies to supplemental questionnaires. In turn, the petitioners filed comments with respect to POSCO's submissions in July, August and September 1998.⁷ On 4 November 1998, the DOC published a preliminary affirmative dumping determination, and instructed the U.S. Customs Service to require a cash deposit or the posting of a bond on imports of Plate from Korea, equal to the calculated dumping margins (2.77% for both POSCO and all the other Korean exporters).⁸

2.4 In November-December 1998, the DOC verified the sales data and the cost data submitted by POSCO. POSCO submitted revised sales data on 30 November 1998. Additionally, both POSCO and the petitioners filed case briefs on 26 January 1999, commenting on the preliminary determination, and rebuttal briefs, commenting on the case briefs, on 2 February 1999.⁹ On 31 March 1999, the DOC published a final affirmative dumping determination, and instructed the U.S. Customs Service to continue requiring a cash deposit or the posting of a

⁴ *Initiation of Antidumping Duty Investigations: Stainless Steel Plate in Coils from Belgium, Canada, Italy, Republic of South Africa, South Korea, and Taiwan*, Federal Register Vol. 63, No. 80, at pages 20580-20585. Korea Exhibit 3.

⁵ *Notice of Preliminary Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea ("Preliminary Determination on Plate")*, Federal Register Vol. 63, No. 213, at page 59536. Korea Exhibit 4.

⁶ In what follows, we only make reference to POSCO's participation in the investigation since Korea is not challenging the actions taken by the DOC with respect to the other Korean company.

⁷ *Preliminary Determination on Plate*, at page 59536. Korea Exhibit 4.

⁸ *Ibid.*

⁹ *Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea ("Final Determination on Plate")*, Federal Register Vol. 64, No. 61, at page 15444. Korea Exhibit 11.

bond on imports of Plate from Korea, equal to the calculated dumping margins (16.26% for both POSCO and all the other Korean exporters).¹⁰

2.5 On 4 May 1999, the United States International Trade Commission informed the DOC of its final affirmative injury determination concerning imports of Plate from the six investigated countries, including Korea.¹¹ Following this notification, on 21 May 1999 the DOC published an anti-dumping duty order with respect to imports of Plate from these countries, setting a cash deposit rate for imports of Plate from Korea equal to the dumping margins arrived at by the DOC in its final determination (16.26% for both POSCO and all the other Korean exporters).¹²

B. Sheet

2.6 On 10 June 1998, a number of U.S. steel companies and U.S. steel workers' associations filed an anti-dumping application with the DOC alleging that imports of Sheet from Korea and seven other countries were being exported to the United States at less than their fair value and that such imports were materially injuring an industry in the United States. The DOC received supplemental information from the petitioners in June 1998. On 13 July 1998, the DOC published a notice announcing the initiation of an anti-dumping investigation on imports of Sheet from Korea and the seven other countries concerned.¹³ The period of investigation selected by the DOC for the purpose of determining whether dumping had occurred went from 1 April 1997 through 31 March 1998.¹⁴

2.7 On 3 August 1998, the DOC issued investigation questionnaires to five Korean companies: POSCO, Incheon Iron and Steel Co., Ltd ("Inchon"), Taihan Electric Wire Co., Ltd. ("Taihan"), Sammi Steel Co., Ltd., and Dai Yang Metal Co., Ltd.¹⁵ On 21 September 1998, the DOC selected three mandatory respondents for the investigation, including POSCO. POSCO replied to Section A of the investigation questionnaire on 8 September 1998 and Sections B through D of that same questionnaire on 23 September 1998. Additionally, POSCO submitted replies to supplemental questionnaires in November 1998. In turn, the

¹⁰ *Final Determination on Plate*, at page 15456. Korea Exhibit 11

¹¹ *Antidumping Duty Orders: Certain Stainless Steel Plate in Coils from Belgium, Canada, Italy, the Republic of Korea, South Africa and Taiwan ("Anti-Dumping Duty Order on Plate")*, Federal Register Vol. 64, No. 98, at page 27756. Korea Exhibit 13.

¹² *Anti-Dumping Duty Order on Plate*, at page 27757. Korea Exhibit 13.

¹³ *Initiation of Antidumping Duty Investigations: Stainless Steel Sheet and Strip in Coils from France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom*, Federal Register Vol. 63, No. 133, at pages 37521-37528. Korea Exhibit 15.

¹⁴ *Notice of Preliminary Determination of Sales at Less than Fair Value: Stainless Steel Sheet and Strip in Coils from South Korea ("Preliminary Determination on Sheet")*, Federal Register Vol. 64, No. 1, at page 139. Korea Exhibit 16.

¹⁵ In what follows, we only make reference to POSCO's participation in the investigation since Korea is not challenging the actions taken by the DOC with respect to the other Korean companies.

Report of the Panel

petitioners filed comments with respect to POSCO's submissions in October 1998.¹⁶ On 4 January 1999, the DOC published a preliminary affirmative dumping determination, and instructed the U.S. Customs Service to require a cash deposit or the posting of a bond on imports of Sheet from Korea, equal to the calculated dumping margins (12.35% for POSCO, 0% for Inchon, 58.79% for Taihan, and 12.35% for all the other Korean exporters).¹⁷

2.8 On 28 December 1998, POSCO filed a brief before the DOC alleging that the Department had made "significant ministerial errors" in the calculation of POSCO's dumping margin for the purpose of the preliminary determination (signed on 17 December 1998 and made available to parties thereafter). On 26 January 1999, after reviewing these allegations, the DOC published an amendment to its preliminary determination, which revised the cash deposit rate for POSCO to 3.92%.¹⁸

2.9 In December 1998 and February-March 1999, the DOC verified the cost data and the sales data submitted by POSCO. POSCO submitted revised sales data on 8 March 1999. Additionally, both POSCO and the petitioners filed case briefs on 15 April 1999, commenting on the preliminary determination, and rebuttal briefs, commenting on the case briefs, on 21 April 1999. A public hearing was held on 26 April 1999.¹⁹ On 8 June 1999, the DOC published a final affirmative dumping determination, and instructed the U.S. Customs Service to continue requiring a cash deposit or the posting of a bond on imports of Sheet from Korea, equal to the calculated dumping margins (12.12% for POSCO, 0% for Inchon, 58.79% for Taihan, and 12.12% for all the other Korean exporters).²⁰

2.10 On 19 July 1999, the United States International Trade Commission informed the DOC of its final affirmative injury determination concerning imports of Sheet from three of the eight investigated countries, including Korea.²¹ Following this notification, on 27 July 1999 the DOC published an anti-dumping duty order with respect to imports of Sheet from these three countries, setting a cash deposit rate for imports of Sheet from Korea equal to the dumping margins arrived at by the DOC in its final determination (12.12% for POSCO, 0% for Inchon, 58.79% for Taihan, and 12.12% for all the other Korean exporters).²²

¹⁶ *Preliminary Determination on Sheet*, at page 137, Korea Exhibit 16.

¹⁷ *Ibid.*, at page 147, Korea Exhibit 16.

¹⁸ *Notice of Amended Preliminary Determination of Sales at Less than Fair Value: Stainless Steel Sheet and Strip in Coils from Korea*, Federal Register, Vol. 64, No. 16, at page. 3930. Korea Exhibit 18.

¹⁹ *Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea ("Final Determination on Sheet")*, Federal Register Vol. 64, No. 109, at page 30665. Korea Exhibit 24.

²⁰ *Final Determination on Sheet*, at page 30688. Korea Exhibit 24.

²¹ *Notice of Antidumping Duty Order: Stainless Steel Sheet and Strip in Coils from the United Kingdom, Taiwan and South Korea ("Anti-Dumping Duty Order on Sheet")*, Federal Register Vol. 64, No. 143, at page 40556. Korea Exhibit 26.

²² *Anti-Dumping Duty Order on Sheet*, at pages 40556-40557. Korea Exhibit 26.

III. PARTIES' REQUESTS FOR FINDINGS AND RECOMMENDATIONS

A. *Korea*

3.1 Korea respectfully requests the Panel to find that the U.S. anti-dumping measures at issue, including actions preceding those measures, are inconsistent with the following provisions of the AD Agreement and GATT 1994:

- Article VI:1 of *GATT 1994* and Article 2.4 of the *AD Agreement*, which permit adjustments to be made only for differences that are demonstrated to affect price comparability;
- Article 2.4 of the *AD Agreement*, which also requires the investigating authorities to make a fair comparison of the export price and the normal value;
- Article 2.4.1 of the *AD Agreement*, which permits alterations to the standard price comparison methodology to account for currency movements only when the exporting country's currency is appreciating against the importing country's currency;
- Article 2.4.1 of the *AD Agreement*, which also permits currency conversions only when such conversions are required;
- Article 2.4.2 of the *AD Agreement*, which requires that the calculation of dumping margins be based on a comparison of a single average normal value to a single average of prices of all comparable export transactions;
- Articles 6.1, 6.2, and 6.9 of the *AD Agreement*, which require the investigating authorities to give exporters notice of all essential facts in order to provide them with a full and ample opportunity to defend their interests;
- Article 12.2 of the *AD Agreement*, which requires the investigating authorities to provide a full explanation of the reasons for their determinations;
- Article X:3(a) of *GATT 1994*, which requires each WTO Member to administer its laws, regulations, decisions, and rulings in a uniform, impartial, and reasonable manner; and
- Article VI of *GATT 1994* and Article 1 of the *AD Agreement*, which only permit anti-dumping measures to be imposed in the circumstances provided for in Article VI and pursuant to investigations conducted in accordance with the *AD Agreement*.

3.2 Therefore, Korea requests that the Panel find that: (i) the United States has nullified or impaired a benefit accruing to Korea, directly or indirectly, under the *WTO Agreements*; and (ii) the United States is impeding the achievement of the objectives of the *WTO Agreements*.

Report of the Panel

3.3 Korea further requests that the Panel recommend that the United States bring its anti-dumping measures against Plate and Sheet from Korea into conformity with the *WTO AD Agreement* and *GATT 1994*. Specifically, Korea requests that the Panel suggest that the United States revoke the anti-dumping duty orders concerning Plate and Sheet from Korea.

B. United States

3.4 The United States respectfully requests the Panel to find that the actions of the United States in conducting the investigations at issue were in conformity with the requirements of the *AD Agreement* and *GATT 1994*.

3.5 The United States further requests that, should the Panel agree with Korea on the merits of the case, the Panel nonetheless should reject Korea's request to revoke the anti-dumping duty orders concerning Plate and Sheet from Korea, and make a general recommendation and suggestions for implementation, consistent with the DSU and established GATT/WTO practice.

IV. ARGUMENTS OF THE PARTIES AND THIRD PARTIES

4.1 With the agreement of the parties, the Panel has decided that, in lieu of the traditional descriptive part of the Panel report setting forth the arguments of the parties, the parties' submissions will be annexed in full to the Panel report. Accordingly, the parties' first and second written submissions and oral statements, along with their written responses to questions, are attached at **Annex 1** (Korea) and **Annex 2** (the United States). The written submissions and oral statements of the third parties are attached at **Annex 3**.

V. INTERIM REVIEW

5.1 The **United States** did not make any comments on the interim report. **Korea** did however offer a number of comments on the interim report, as discussed below. Neither party requested an interim review meeting.

5.2 **Korea** considers that the Panel misread the discussion of 'local sales' in the Final Determination in Plate. The interim report assumes that the DOC made a factual determination that the 'local sales' were denominated in won rather than in dollars. The Final Determination however does not address the issue of denomination at all. Moreover, the interim report appears to read the Plate Final Determination as if the DOC made a factual determination that 'local sales' were paid in won using the exchange rate prevailing on the date of invoice. Once again, no such determination was made. Although the DOC did say that the customer pays in won, it did not say how many won were paid or what exchange rate was used to calculate the amount of won paid. This confusion may result from a misunderstanding about the significance of a charge to the sales ledger. There is no connection between the exchange rate that applies to the sales ledger