

***Korea – Anti-dumping Duties on Imports  
of Certain Paper from Indonesia:  
Recourse to Article 21.5 of the DSU by Indonesia***

(WT/DS312)

**Oral Statement of the United States at the Third Party Session  
of the Substantive Meeting of the Panel with the Parties**

**April 25, 2007**

1. Mr. Chairman and members of the Panel, the United States is pleased to present its views as a third party in this proceeding. Today, I will offer two brief observations regarding Korea's redetermination of injury and Indonesia's claims under Articles 6.4 and 6.9 of the Antidumping Agreement.

2. First, Indonesia's claim under Article 6.4 is premised on the argument that the Korean Trade Commission ("KTC") "fail[ed] to disclose that it was using the same information as in the original determination, [and] fail[ed] to provide the Indonesian exporters with an opportunity to comment."<sup>1</sup> Under Article 6.4, authorities must:

whenever practicable provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases, that is not confidential ..., and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.

As recently noted by the panel in *United States – OCTG from Argentina (21.5)*, "the text of Article 6.4 makes it clear that it does not apply to the *reasoning* of the investigating authorities."<sup>2</sup>

By its express terms, Article 6.4 applies only to "information." The Panel should bear this

---

<sup>1</sup> See Indonesia's First Article 21.5 Submission, paras. 173-76.

<sup>2</sup> *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina; Recourse to Article 21.5 of the DSU by Argentina*, WT/DS268/RW, 30 November 2006, para. 7.124 (emphasis added) (hereinafter "*United States – OCTG from Argentina (21.5)*").

distinction in mind in assessing Indonesia’s claim, especially given Korea’s assertions that it did not obtain any additional data relating to the injury issues in the course of the implementation proceeding,<sup>3</sup> and that the parties had already been given an opportunity to see and comment on all of the previously-collected data. To the extent that Korea’s assertions are correct, the United States notes that Article 6.4 would not impose any further obligations in terms of disclosing the *analysis* of the information or *how* the investigating authorities would use (or not use) that information in support of its determination.

3. Second, Indonesia argues that the KTC failed to “inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures,” within the meaning of Article 6.9 of the Antidumping Agreement. As an initial matter, the United States notes that Article 6.9 of the Antidumping Agreement does not deal with opportunity for comment. It deals only with the disclosure of “essential facts.”

4. In addition, as the panel explained in *United States – OCTG from Argentina (21.5)*, “Article 6.9 imposes a one-time disclosure obligation on the investigating authorities regarding the essential facts under consideration which would then form the basis of the authorities' final determination whether to apply definitive measures.”<sup>4</sup> In addition, the panel noted that “the text of Article 6.9 clarifies that this obligation applies with respect to facts, as opposed to the reasoning of the investigating authorities.”<sup>5</sup>

---

<sup>3</sup> KTC’s First Article 21.5 submission, para 61.

<sup>4</sup> *United States – OCTG from Argentina (21.5)*, para. 7.148.

<sup>5</sup> *United States – OCTG from Argentina (21.5)*, para. 7.148.

5. In the present dispute, Korea asserts that, with respect to the facts under consideration which would form the basis of the authorities' final determination, the KTC had disclosed these fact to the parties in the original proceeding and that no new facts were gathered in the course of the implementation proceeding. To the extent these assertions are factually correct, Korea satisfied its obligations under Article 6.9.
6. This concludes my comments. Thank you for your attention.