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Page: 1/2

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**UNITED STATES – SAFEGUARD MEASURE ON IMPORTS OF CRYSTALLINE
SILICON PHOTOVOLTAIC PRODUCTS**

REQUEST FOR CONSULTATIONS BY THE REPUBLIC OF KOREA

The following communication, dated 14 May 2018, from the delegation of the Republic of Korea to the delegation of the United States and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

1. Upon instructions from my authorities, and on behalf of the Government of the Republic of Korea ("Korea"), I hereby request consultations with the Government of the United States of America ("United States") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), and Article 14 of the *Agreement on Safeguards*, regarding the definitive safeguard measure imposed by the United States on imports of certain crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products (including, but not limited to, modules, laminates, panels, and building-integrated materials) ("crystalline silicon photovoltaic products").

2. The United States imposed the definitive safeguard measure on imports of crystalline silicon photovoltaic products pursuant to "Proclamation 9693 of January 23, 2018 – To Facilitate Positive Adjustment to Competition from Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled Into Other Products) and for Other Purposes"(83 FR 3541).¹

3. This request also concerns any modification, review, replacement or amendment to the definitive safeguard measure, including any closely connected, subsequent measures affecting the form and amount of the safeguard remedy, as well as the underlying reports, memoranda and other documents supporting the safeguard measure.

4. Korea notes that according to Article 11.1(a) of the Agreement on Safeguards, a Member shall not take or seek any emergency action on imports of particular products as set forth in Article XIX of the GATT 1994 unless such action conforms with the provisions of that Article applied in accordance with the Agreement on Safeguards. In this respect, Korea is concerned that the safeguard measure imposed by the United States on crystalline silicon photovoltaic products are inconsistent with the obligations of the United States under the GATT 1994 and the Agreement on Safeguards. In particular, Korea considers that the safeguard measure fails to comply with, but not limited to, the following provisions:

- a. Article XIX:1(a) of the GATT 1994 and Articles 1 and 3.1 of the Agreement on Safeguards because the United States failed to make a proper determination and provide a reasoned and adequate explanation of any unforeseen developments and the effect of the obligations incurred under the GATT 1994, which allegedly resulted in the increased imports causing serious injury to the domestic industry;

¹ The safeguard measure on crystalline silicon photovoltaic products is based on the USITC determination of injury on 22 September 2017 and the report to the President on 13 November 2017 regarding the Investigation No. TA-201-75; See, Public Report, Crystalline Silicon Photovoltaic Cells (Whether or not Partially or Fully Assembled into Other Products), Inv. No. TA-201-75, USITC Pub. 4739 (Nov. 2017), a summary of which was published in the U.S. Federal Register on 21 November 2017 under citation "82 FR 55393".

- b. Articles 2.1 and 3.1 of the Agreement on Safeguards since the United States failed to properly make a determination, including a reasoned and adequate explanation that the subject imports increased "in such quantities and under such conditions" to cause serious injury to the domestic industry;
 - c. Articles 2.1, 3.1, 4.1 and 4.2 of the Agreement on Safeguards as the United States failed to make a proper determination and to provide a reasoned and adequate explanation of a significant overall impairment in the position of the domestic industry to support its conclusion that the domestic industry was suffering "serious injury or threat of serious injury";
 - d. Articles 2.1, 3.1 and 4.2 of the Agreement on Safeguards because the safeguard measure is not supported by a reasoned and adequate explanation of how the subject imports "caused or threatened to cause" serious injury to the domestic industry and because the United States failed to properly conduct a non-attribution analysis to separate and distinguish the effects of "other factors" causing or threatening to cause injury;
 - e. Articles 2.1, 3.1, 4.1(c) and 4.2 of the Agreement on Safeguards since the United States did not properly define the domestic industry as it failed to limit the scope to only those producers producing the "like or directly competitive products" to the subject imports;
 - f. Articles 3.1 and 3.2 of the Agreement on Safeguards because the United States did not provide the interested parties with sufficient opportunities to participate in the investigation, including as a result of the failure to respect the requirements on granting confidential treatment and the availability of sufficiently informative non-confidential summaries, and because the United States failed to set forth in the published report the findings and reasoned conclusions on all pertinent issues of fact and law, including the conditions on which the measure was imposed, the nature and level of the actual measure, and a ground for excluding certain sources;
 - g. Articles 5.1 and 7.4 of the Agreement on Safeguards as the United States failed to grant relief only to the "extent necessary" and limit such relief to serious injury caused by increased imports at the time of the imposition of the measure as well as at the stages of progressive liberalization;
 - h. Article 7.1 of the Agreement on Safeguards since the United States failed to grant relief only "for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment";
 - i. Article 8.1 of the Agreement on Safeguards to the extent that the United States failed to endeavor to maintain a substantially equivalent level of concessions and other obligations under the GATT 1994 between the United States and Korea in accordance with Article 12.3 of the Agreement on Safeguards;
 - j. Articles 12.1, 12.2 and 12.3 of the Agreement on Safeguards because the United States failed to provide immediate notifications with all pertinent information and failed to provide Korea with an adequate opportunity to commence prior consultations;
 - k. Article X:3 of the GATT 1994 since the measure is not based on uniform, impartial and reasonable administration of the relevant US laws and regulations; and
 - l. Article XIII of the GATT 1994 and Article 5.2 of the Agreement on Safeguards-because the measure is inconsistent with respect to the allocation of tariff rate quotas;
5. In sum, Korea is concerned that the safeguard measure on imports of crystalline silicon photovoltaic products is inconsistent with the relevant obligations of the United States under the GATT 1994 and the Agreement on Safeguards. The United States' measure appears to nullify or impair the benefits accruing to Korea directly or indirectly under the above Agreements.
6. Korea reserves the right to raise additional factual and legal issues, and to address additional measures and claims regarding the above matter, in the course of the consultations and in any request for the establishment of a panel.
7. Korea looks forward to receiving the United States' reply to this request and to setting a mutually acceptable date and venue for consultations.
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