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KOREA - ANTI-DUMPING DUTIES ON PNEUMATIC VALVES FROM JAPAN

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY JAPAN

The following communication, dated 9 June 2016, from the delegation of Japan to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

My authorities have instructed me to request the establishment of a panel with respect to the measures by the Republic of Korea ("Korea") imposing anti-dumping duties on valves for pneumatic transmission ("pneumatic valves") from Japan. Japan submits this request pursuant to Articles 4.7 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article XXIII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Article 17.4 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("AD Agreement").

On 15 March 2016, Japan requested consultations with Korea.¹ Japan and Korea held consultations on 28 April 2016, with a view to reaching a mutually satisfactory solution. Unfortunately, the consultations failed to settle the dispute.

Korea's measures imposing anti-dumping duties on pneumatic valves from Japan are set forth in the Korea Trade Commission's "Resolution of Final Determination on Presence of Dumped Facts of Valves for Pneumatic Transmissions from Japan and Injury to the Domestic Industry", a determination based on the Office of Trade Investigation's "Final Report on Dumping Fact and Injury to Domestic Industry of Japanese Produced Valves for Pneumatic Transmissions" in Investigation Trade Remedy 23-2013-5, both dated 20 January 2015, including any and all annexes and amendments thereto.²

Japan considers that these measures are inconsistent with Korea's obligations under the following provisions of the AD Agreement:

1. Articles 3.1 and 3.2 of the AD Agreement because Korea's analysis of a significant increase of the imports under investigation did not involve an objective examination based on positive evidence;
2. Articles 3.1 and 3.2 of the AD Agreement because Korea's analysis of the effect of the imports under investigation on prices in the domestic market for like products did not involve an objective examination based on positive evidence; and because Korea failed to properly consider whether the effect of the imports under investigation was to depress prices to a significant degree or prevent price increase, which otherwise would have occurred, to a significant degree;
3. Articles 3.1 and 3.4 of the AD Agreement because Korea's analysis of the impact of the imports under investigation on the domestic industry at issue did not involve an objective examination based on positive evidence, including an evaluation of all relevant economic factors and indices having a bearing on the state of the domestic industry at issue;

¹ WTO/DS504/1, circulated on 16 March 2016

² These anti-dumping measures are identified in Korea's notification G/ADP/N/280/KOR dated 6 April 2016.

4. Articles 3.1 and 3.5 of the AD Agreement because Korea failed to demonstrate that the imports under investigation were, through the effects of dumping, causing injury to the domestic industry based on an objective examination of the alleged causal relationship between the imports under investigation and the alleged injury to the domestic industry, on the basis of all relevant positive evidence before the authorities;
5. Articles 3.1 and 3.5 of the AD Agreement because Korea failed to consider adequately all known factors other than the imports under investigation that were injuring the domestic industry at the same time and therefore incorrectly attributed injury caused by these other factors to the imports under investigation;
6. Articles 3.1 and 3.5 of the AD Agreement because Korea's demonstration of causation lacks any foundation in its analyses of the volume of the imports under investigation, the effects of the imports under investigation on prices, and/or the impact of the imports under investigation on the domestic industry at issue, irrespective and independent of whether Korea's flawed analysis of the volume and/or flawed analysis of the effects of the imports under investigation on prices, on the one hand, and Korea's flawed analysis of the impact of the imports under investigation on the domestic industry on the other, would be inconsistent with, respectively, Articles 3.1 and 3.2 of the AD Agreement and Articles 3.1 and 3.4 of the AD Agreement;
7. Articles 3.1 and 4.1 of the AD Agreement because Korea failed to make an objective examination based on positive evidence in defining the domestic industry producing the like product and consequently in making a determination of injury;
8. Article 6.5 of the AD Agreement because Korea treated allegedly confidential information provided by the interested parties as confidential without good cause shown;
9. Article 6.5.1 of the AD Agreement because Korea: (a) failed to require the applicants to furnish non-confidential summaries of their submissions, questionnaire responses, and amendments thereof; and (b) where such summaries were provided, they were not in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence;
10. Article 6.9 of the AD Agreement because Korea failed to inform the interested parties of the essential facts under consideration which formed the basis for the decision to impose definitive anti-dumping measures;
11. Article 12.2 of the AD Agreement because Korea failed to provide in sufficient detail the findings and conclusions reached on all issues of fact and law the investigating authorities considered material by the investigating authorities; and
12. Article 12.2.2 of the AD Agreement because Korea failed to make available all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures.

As a consequence of the apparent breaches of the AD Agreement described above, Korea's anti-dumping measures on the imports under investigation are also inconsistent with Article 1 of the AD Agreement and Article VI of the GATT 1994.

Korea's measures also nullify or impair the benefits accruing to Japan directly or indirectly under the cited agreements.

Accordingly, Japan respectfully requests that, pursuant to Articles 4.7 and 6 of the DSU, Article XXIII of the GATT 1994, and Article 17.4 of the AD Agreement, the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

Japan asks this request to be placed on the Agenda for the meeting of the Dispute Settlement Body to be held on 22 June 2016.