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Page: 1/5

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**UNITED STATES – SAFEGUARD MEASURE ON IMPORTS OF  
LARGE RESIDENTIAL WASHERS**

**REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE REPUBLIC OF KOREA**

The following communication, dated 14 August 2018, from the delegation of the Republic of Korea to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

1. On 14 May 2018, the Government of the Republic of Korea ("Korea") requested 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 large residential washers ("LRWs").

2. Consultations were held on 26 June 2018 with a view to reaching a mutually satisfactory solution. However, these consultations failed to resolve the dispute.

3. Therefore, Korea respectfully requests, pursuant to Article 6 of the DSU, Article XXIII of the GATT 1994, and Article 14 of the Agreement on Safeguards, that 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.

4. Pursuant to Article 6.2 of the DSU, Korea proceeds below to identify the specific measure at issue and to provide a brief summary of the legal basis of the complaint.

**I. IDENTIFICATION OF THE MEASURE**

5. This request concerns the definitive safeguard measure imposed by the United States on imports of LRWs. In accordance with Sections 201-204 of the Trade Act of 1974, as amended (19 U.S.C. §§ 2251-2254), the United States International Trade Commission ("USITC") initiated the LRWs investigation on 5 June 2017, covering the period January 2012 to March 2017, to determine whether increased imports of LRWs were a substantial cause of serious injury to domestic producers. On 5 October 2017, the USITC determined that imports of LRWs were imported in such increased quantities as to be a substantial cause of serious injury to a domestic industry in the United States, and on 21 November 2017 the USITC voted with respect to remedy issues. The final report of the USITC was submitted to the U.S. President on 4 December 2017, setting forth its injury findings and remedy recommendations.<sup>1</sup>

6. On 23 January 2018, the United States imposed a definitive safeguard measure on imports of LRWs pursuant to "Proclamation 9694 of January 23, 2018 – To Facilitate Positive Adjustment to Competition from Imports of Large Residential Washers" (83 FR 3553).

<sup>1</sup> See, U.S. International Trade Commission, Public Report, Large Residential Washers, Inv. No. TA-201-076, USITC Pub. 4745 (Dec. 2017); a summary of which was published on 8 December 2017 in the U.S. Federal Register under citation "82 FR 58026".

7. The measure took the form of tariff-rate quotas for imports of washers and parts, for a duration of three years, and with within-quota quantities and annual reductions in the rates of duty applicable to imports entered in excess of those quantities in the second and third years.<sup>2</sup> The measure applies to all sources of imports other than Canada and imports from certain developing countries.<sup>3</sup>

8. The safeguard measure on LRWs, which is the subject of this request, was notified to the WTO on 26 January 2018.<sup>4</sup>

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

## II. LEGAL BASIS

10. 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 to the provisions of that Article applied in accordance with the Agreement on Safeguards. In this respect, the safeguard measure imposed by the United States on LRWs is inconsistent with the obligations of the United States under the GATT 1994 and the Agreement on Safeguards.

11. In particular, Korea considers that the safeguard measure fails to comply with 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 provide any reasoned and adequate explanation of the "unforeseen developments" and the "obligations incurred" by the United States which would have resulted in the alleged increased imports of LRWs causing serious injury. In particular, among others:
  - The United States appears to have entirely failed to demonstrate as a matter of fact that these circumstances existed;
  - There is no indication in the published reports let alone a reasoned and adequate explanation of the link between any such developments and obligations incurred and each of the specific LRW products covered by the safeguard measure.
- b. Articles 2.1, 3.1, 4.1(c) and 4.2 of the Agreement on Safeguards because the United States failed to define properly the domestic industry. In particular, among others:
  - The United States failed to examine the "like or directly competitive" relationship between the LRWs and their parts;
  - The United States included in the examination of serious injury to the domestic industry products that were expressly excluded from the scope of the investigation. It thus defined the "domestic industry" in a way that created a mismatch with the scope of the subject imports covered by the investigation and the scope of the domestic industry used for purposes of making a serious injury determination.
- c. Articles 2.1 and 3.1 of the Agreement on Safeguards because the United States failed to properly determine that LRWs were imported in "such increased quantities, absolute or relative to domestic production, and under such conditions" to cause serious injury to the domestic industry. In particular, among others:

<sup>2</sup> See, "Proclamation 9694 of January 23, 2018 – To Facilitate Positive Adjustment to Competition from Imports of Large Residential Washers", 83 Federal Register 3553 (25 January 2018).

<sup>3</sup> See, Notification by the United States to the WTO Committee on Safeguards in document with reference: G/SG/N/8/USA/10/Suppl.3; G/SG/N/10/USA/8; and G/SG/N/11/USA/7U.S.

<sup>4</sup> Notification by the United States to the WTO Committee on Safeguards in document with reference: G/SG/N/8/USA/10/Suppl.3; G/SG/N/10/USA/8; and G/SG/N/11/USA/7.

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- The United States failed to make a proper determination of an increase in imports with respect to each of the LRWs products;
  - The United States failed to separate the determination on an alleged increase in imports of parts from the alleged increase in imports of LRWs;
  - The United States failed to provide the requisite reasoned and adequate explanation of the sufficiently recent, sudden, sharp and significant nature both qualitatively and quantitatively of such an alleged increase in LRWs imports to support a finding that LRWs were imported in "such increased quantities" warranting an emergency safeguard measure;
  - The United States did not undertake the required investigation into whether LRWs increased "under such conditions" as it failed to provide a reasoned and adequate explanation of the conditions of competition and the explanatory force of the alleged increase in imports given the import trend developments over time.
- d. Articles 2.1, 3.1, 4.1, and 4.2(a) of the Agreement on Safeguards because the United States failed to provide a reasoned and adequate explanation of the existence 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 thereof". In particular, among others:
- The United States failed to examine all relevant injury factors;
  - The United States failed to conduct the requisite substantive evaluation of the "significant overall impairment" of the domestic industry, focusing instead on a very few injury factors such as profits and losses without conducting a holistic assessment of the many injury factors that did not trend negatively;
  - The United States failed to explain adequately why under these limited circumstances the injury is so "serious" as to justify an emergency safeguard measure;
  - The United States' analysis of serious injury includes data from the domestic industry for products that were excluded from the scope of the investigation thus distorting the analysis of serious injury caused by increased imports;
  - The United States failed to evaluate the relevant injury data pertaining to the entire period of investigation, instead focusing on isolated developments.
- e. Articles 2.1, 3.1 and 4.2(b) of the Agreement on Safeguards because the United States did not provide a reasoned and adequate explanation of the "causal link" between the alleged increased imports of LRWs and serious injury or threat thereof and failed to ensure that injury caused by other factors was not attributed to the increased imports. In particular, among others:
- The United States failed to provide a reasoned and adequate explanation of the alleged causal link in light of the lack of coincidence in time of several trends and the specific conditions of competition, including, but not limited to, prices and the domestic industry's reliance on under-performing agitator LRWs that make up half of all domestic sales;
  - The United States failed to ensure comparability when undertaking price comparisons, thus failing to provide a reasoned and adequate explanation of the explanatory force of the increased imports in terms of the injury developments that were highly price and profit-related;
  - The United States failed to properly evaluate and assess the plausible alternative explanations offered by other factors causing injury, contradicting the existence of a causal link and failed to separate and distinguish the effects of such other factors causing injury;
  - The United States did not provide a reasoned and adequate explanation of the methodology it allegedly used to separate and distinguish other causal factors,

such as for example the impact of the "joint-selling" of LRWs and dryers by the domestic industry;

- Finally, the United States failed to provide a reasoned and adequate explanation of how it reached the conclusion of a causal link in the light of contradictory conclusions that imports from certain sources, such as imports from Korea were found not to be a substantial cause of serious injury or threat thereof.
- f. Articles 3.1, 3.2 and 4.2(c) of the Agreement on Safeguards because the United States did not provide the interested parties with sufficient opportunities and appropriate means to participate in the investigation and present their evidence and views including the opportunity to respond to the presentations of other parties. Furthermore, the United States granted confidential treatment without "cause being shown" and did not require or provide sufficiently informative non-confidential summaries of such confidential information. In addition, the United States failed to set forth in the published report a "detailed analysis" of the case and of 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 the grounds for excluding certain sources. In particular, the published reports of the competent authorities fail to present the required "reasoned and adequate explanation" and "detailed analysis" of the case under investigation as well as a demonstration of the relevance of the factors examined.
- g. Articles 5.1 and 7.4 of the Agreement on Safeguards because the United States failed to apply the safeguard measure "only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment". In particular, among others:
- The United States failed to limit the application of the measure to the serious injury allegedly caused by increased imports and not by other factors;
  - The United States failed to provide a reasoned and adequate explanation of the methodology used to support the particular type of measure and the level at which the measure was imposed, given less restrictive measures that were available and that provided an equivalent contribution to preventing or remedying injury and facilitating adjustment;
  - The United States failed to provide a reasoned and adequate explanation of the extent to which the measure would facilitate adjustment;
  - The United States failed to ensure that the measure was not applied beyond what is necessary not only at the time of the imposition of the measure but also at the various stages of progressive liberalization;
  - The United States failed to provide a reasoned and adequate explanation why it was necessary to apply the safeguard measure to imports from Korea given the determination made that such imports were not a substantial cause of serious injury or threat thereof to the domestic industry, and were in any case already subject to anti-dumping and countervailing duty measures.
- h. Article 7.1 of the Agreement on Safeguards because the United States failed to apply the safeguard measure only for such period of time as was necessary to prevent or remedy serious injury and to facilitate adjustment. In particular, the United States failed to provide a reasoned and adequate explanation of the basis for its determination of the length of time the measure was necessary to stay in place and for the time needed for the adjustment efforts that would be undertaken by the domestic industry;
- i. Article 8.1 of the Agreement on Safeguards because 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. In particular, the United States failed to provide an adequate opportunity for prior consultations on adequate means of trade compensation with Korea given the very short period of time provided for such prior consultations;

- j. Articles 12.1, 12.2 and 12.3 of the Agreement on Safeguards because the United States failed to provide immediate notifications of the different decisions given the time between the decision and the related notification to the WTO. In addition, in its notifications, the United States failed to provide all pertinent information including evidence of serious injury or threat thereof caused by increased imports, among others, as a result of the undue redaction of allegedly confidential information and the failure to provide adequate non-confidential summaries. Furthermore, the United States failed to provide Korea with an adequate opportunity to engage in meaningful prior consultations given the short period of time between the decision to apply the measure, its notification, and the application of the measure; and
- k. Article II:1 of the GATT 1994 because the safeguard measure amounts to a withdrawal or modification of the United States' concessions without a justification under Article XIX of the GATT 1994, the Agreement on Safeguards or any other provisions of the WTO Agreement.

### **III. CONCLUSION**

12. The United States' safeguard measure on imports of LRWs is inconsistent with the relevant obligations of the United States under the GATT 1994, the Agreement on Safeguards, and nullifies or impairs benefits accruing to Korea, directly or indirectly, under the cited agreements.

13. Therefore, Korea respectfully requests, pursuant to Article 6 of the DSU, Article XXIII of the GATT 1994, Article 14 of the Agreement on Safeguards, that 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.

14. Korea further asks that this request for the establishment of a panel be placed on the agenda of the next meeting of the Dispute Settlement Body to be held on 27 August 2018.

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