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KOREA – SUNSET REVIEW OF ANTI-DUMPING DUTIES ON STAINLESS STEEL BARS

REQUEST FOR CONSULTATIONS BY JAPAN

The following communication, dated 18 June 2018, from the delegation of Japan to the delegation of the Republic of Korea, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

Upon instructions from my authorities, I hereby request, on behalf of the Government of Japan ("Japan"), consultations with the Government of the Republic of Korea ("Korea") pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Articles 17.2 and Article 17.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("AD Agreement").

These consultations are with respect to Korea's determination to continue the imposition of anti-dumping duties on stainless steel bar ("SSB") from Japan as a conclusion in the third sunset review as set forth in the Korea Trade Commission's ("KTC") "Resolution of Final Determination on the Sunset Review of Anti-Dumping Duties on Stainless Steel Bars from Japan, India and Spain" ("Resolution of Final Determination") and in the Office of Trade Investigation's "Final Report on the Sunset Review of Anti-Dumping Duties on Stainless Steel Bars from Japan, India and Spain" ("Final Report") with respect to Investigation Trade Remedy 23-2016-3, both dated 20 March 2017, including any and all annexes and amendments thereto.¹

These measures at issue appear to be inconsistent with Korea's obligations under the following provisions of the GATT 1994 and the AD Agreement, in particular, but not limited to:

1. Article 11.3 of the AD Agreement, because Korea failed to properly determine, as the basis to continue the imposition of antidumping duties on the imports from Japan, that the expiry of the duties would be likely to lead to continuation or recurrence of injury. Specifically, Korea failed to demonstrate the nexus between the expiry of the duties and a continuation or recurrence of injury and to comply with the fundamental requirement that such determination shall rest on a sufficient factual basis and reasoned and adequate conclusions concerning the likelihood of continuation or recurrence of injury, due to, *inter alia*, following reasons:
 - (a) Korea's determination that the expiry of the duties would be likely to lead to continuation or recurrence of injury was based on its cumulative assessment of the effects of the imports from Japan, India and Spain. However, such cumulative assessment was not based on positive evidence and an objective examination. For example, Korea cumulatively assessed the effect of the imports from Japan, India and Spain without properly examining, in a manner which would establish that there is a basis to continue the imposition of the duties on the imports from Japan, whether the conditions of competition between the imported products, as well as the conditions of competition between the imports from Japan and the like domestic products, are such that the imports from Japan, together with the imports from India and Spain would

¹ This determination in the third sunset review is identified in Korea's notification G/ADP/N/300/KOR dated 17 August 2017.

cause injury to the domestic industry, even though the vast majority of the models, types or grades of SSB imported from Japan during the period of review were distinct from those of the imports from India and of the like domestic product;

- (b) When it determined that the expiry of the duties would be likely to lead to continuation or recurrence of injury, Korea improperly attributed the likelihood of continuation or recurrence of injury to the imports from Japan, even though such injury would be caused by certain factors, other than the imports under review, which may have caused injury to the domestic industry irrespective of the expiry of the duties. Such factors include (i) the growing volume and market share of the imports of SSB from third countries, such as China, Taiwan and Italy; (ii) the declining material cost; and (iii) the continuing trend of slow growth in domestic demand, even though Korea found that the profitability of the domestic industry had not sufficiently recovered during the period of review due to, among others, these three factors;
- (c) Korea's determination that the expiry of the duties would be likely to lead to continuation or recurrence of injury relied on, among others, the finding that Japan's SSB sector had sufficient additional production capacity for exports. In this finding, Korea, as stated in paragraph 2 below, declined, without any reasonable grounds, to accept and properly consider the actual production capacity data of each of the Japanese exporters, which were submitted by those exporters, and instead based its determination on information from a secondary source that was both inaccurate and irrelevant when calculating the production capacity of Japan's SSB sector. As a result, Korea's analysis that the Japanese producers had the capability to increase their production and exports to Korea was neither based on positive evidence nor on an objective examination; and
- (d) Korea's determination that the expiry of the duties would be likely to lead to continuation or recurrence of injury relied on, among others, the finding that the expiry of the duties on the imports from Japan lead to the increase of the imports under the review. However, Korea failed to show any plausible reason for expecting that the imports from Japan of SSB of the models, types or grades same as or comparable with those imported from countries other than Japan or produced by the domestic industry would increase after the expiry of the duties. As a result, Korea failed to demonstrate, based on positive evidence and an objective examination, how the alleged increase in the imports of SSB from Japan could affect the imports of SSB from countries other than Japan and/or SSB produced by the domestic industry.

In light of, in particular, (a) to (d) above, but not limited to these reasons, the measures at issue also appear to be inconsistent with Korea's obligations under Article VI:6(a) of the GATT 1994, because Korea is levying the antidumping duties without establishing that the effect of the dumping is such as to cause or threaten material injury to an established domestic industry.

2. Articles 11.4 and 6.8 and paragraphs 3 and 7 of Annex II of the AD Agreement, because, to the extent that Korea used the third party data regarding the production capacity of the Japanese exporters and thus resorted to facts available, *inter alia*, (a) Korea failed to take into account the information regarding actual production capacity which each of the Japanese exporters submitted, even though such information was verifiable, was appropriately submitted so that it could be used in the investigation without undue difficulties and was supplied in a timely fashion, and (b) Korea adopted information from a secondary source regarding the production capacity of Japanese exporters without special circumspection, and, more specifically, Korea did not examine the accuracy of the information from a secondary source by comparing it with the information obtained from the Japanese exporters;
3. Articles 11.4, 6.5 and 6.5.1 of the AD Agreement, because Korea, *inter alia*, (a) treated the information provided by the applicants as confidential information without good cause shown; (b) failed to require the applicants to furnish non-confidential summaries thereof; and (c) failed to require that such summaries be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, should such summaries have been provided;

4. Articles 11.4 and 6.9 of the AD Agreement, because Korea failed to inform all interested parties of the essential facts under consideration which formed the basis for the decision to extend the anti-dumping duties. Specifically, Korea merely informed the Japanese exporters that the Resolution of Final Determination and the Final Report, as well as the Office of Trade Investigation's "Preliminary Report regarding the Sunset Review of Anti-dumping Duties on Japanese, Indian, and Spanish Stainless Steel Bar (Amended after Public Hearing)" ("Preliminary Report") in so far as its contents did not contradict those of the Final Report, constituted such essential facts. However, none of the Resolution of Final Determination, the Final Report and the Preliminary Report fully disclosed the essential facts underlying the determination of the continuation or recurrence of dumping and injury, notably, *inter alia*, with regard to the cumulative assessment of the effects of the imports under review, and the determination of the nexus between the expiry of the duties and a continuation or recurrence of dumping and injury; and
5. Articles 12.3, 12.2 and 12.2.2 of the AD Agreement, because Korea failed to provide in sufficient detail the findings and conclusions reached on all issues of fact and law that the investigating authorities considered material, as well as all relevant information on the matters of fact and law and reasons which have led to the sunset review determination, including, *inter alia*, with respect to Korea's determination that a cumulative assessment of the effects of the imports under review is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

Korea's determination to continue the imposition of anti-dumping duties on SSB from Japan also appears to be inconsistent with Article 1 of the AD Agreement and Article VI of the GATT 1994 as a consequence of the breaches of the AD Agreement described above.

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

Japan reserves the right to address further factual claims and legal issues under other provisions of the WTO Agreement regarding the above matters during the course of the consultations.

Japan looks forward to receiving Korea's reply to the present request in due course. Japan is ready to consider with Korea mutually convenient dates and venue for consultations.
