

**UNITED STATES – DEFINITIVE SAFEGUARD MEASURES  
ON IMPORTS OF CERTAIN STEEL PRODUCTS**

Request for the Establishment of a Panel by Korea

The following communication, dated 21 May 2002, from the Permanent Mission of Korea to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 20 March 2000, Korea requested consultations with the United States pursuant to Article 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* (SA) regarding the definitive safeguard measures imposed by the United States on the imports of certain steel products, the investigations leading to such measures, and the related laws of the United States, including Sections 201 and 202 of the Trade Act of 1974 and Section 311 of the NAFTA Implementation Act.

Korea held consultations with the United States on 11-12 April 2002 in Geneva with five other Member countries – the EU, Japan, China, Norway and Switzerland, who also submitted requests for consultations on the matter concerned, for the purpose of reaching agreement on a mutually satisfactory solution. The consultation, however, has not led to a satisfactory solution of the matter.

Korea therefore requests that a panel be established pursuant to Article XXIII of GATT 1994, Article 6 of DSU and Article 14 of the SA, with the standard terms of reference as set out in Article 7 of the DSU. In this regard, Korea asks that this request be placed on the agenda for the earliest meeting of the Dispute Settlement Body to be convoked.

The Measures at Issue

Under the "Proclamation 7529 of 5 March 2002 – To Facilitate Positive Adjustment to Competition From Imports of Certain Steel Products" and the "Memorandum of 5 March 2002 – Action under Section 203 of the Trade Act of 1974 Concerning Certain Steel Products" by the President of the United States, published in the Federal Register Vol. 67, No. 45 on 7 March 2002, the United States imposed definitive safeguard measures on imports of certain steel products.<sup>1</sup> The

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<sup>1</sup> Included in certain steel products subject to the measures at issue are certain flat products (subheadings 9903.72.30 through 9903.72.48 for slabs, subheadings 9903.72.50 through 9903.72.60 for plate, subheadings 9903.72.62 through 9903.72.77 for hot-rolled steel, subheadings 9903.72.80 through 9903.72.98 for cold-rolled steel, and subheadings 9903.72.99 for coated steel), tin mill products (subheadings 9903.73.15 through 9903.73.27), hot-rolled bar (subheadings 9903.73.28 through 9903.73.38), cold-finished bar (subheadings 9903.73.50 through 9903.73.44), rebar (subheadings 9903.73.45 through 9903.73.50), certain tubular products (subheadings 9903.73.51 through 9903.73.62), carbon and alloy fittings and flanges (subheadings 9903.73.66 through 9903.73.72), stainless steel bar (subheadings 9903.73.74 through 9903.73.81),

safeguard measures at issue, however, do not apply to imports from the Free Trade Agreement partners of the United States, namely Canada, Mexico, Israel and Jordan.

The safeguard measures are in the form of an increase in duties on imports of subject steel products, with the exception of slab, on which a tariff rate quota is imposed.<sup>2</sup> The date of introduction of the measures is 20 March 2002, and the measures are expected to be in effect for a period of 3 years and 1 day.

### The Legal Basis for the Complaint

Korea considers that the United States is in violation of its obligations under GATT 1994 and the SA in the following respects:

1. The United States failed to comply with the provisions of Articles 2.1 and 4 of the SA and Article XIX of GATT 1994 with respect to the determination of the relevant domestic industries that produce like or directly competitive products.
2. The United States also failed to satisfy the obligations contained in Articles 2, 3 and 4 of the SA as well as Article XIX of GATT 1994 with respect to the investigation, findings, and decision regarding increased imports, serious injury, threat of serious injury and causation. The United States was in violation of Article X:3(a) as well with respect to tin mill products.
3. The United States is in breach of Article XIX:1 of GATT 1994 as regards the requirement to demonstrate that "unforeseen developments" led to the increase in imports. In this respect, not only did the United States fail to conduct separate analyses for each product concerned, but also the explanations were insufficient to satisfy the requirement.
4. The United States violated Article 2.2 of the SA and Articles I, XIII and XIX of GATT 1994 for failing to apply the safeguard measures to all imports irrespective of their sources on an MFN basis.
5. The United States' violation of Article 2.2 of the SA and Articles I and XIX of GATT 1994 was compounded with the violation of Article X:3 of GATT 1994 and Article 3 of the SA. In order to exempt imports from Canada and Mexico, the U.S. President reversed the ITC's findings made in accordance with Section 311(a) of the NAFTA Implementation Act without providing sufficient, if any, explanation.
6. The United States violated Article 2.1 of the SA in conjunction with Articles 2.2 and 4.2 of the SA by failing to meet the requirement of parallelism between the investigation and the measures.
7. The United States committed violations under Article 3 of the SA, in conjunction with Articles 2, 4 and 5 of the SA, because it failed to afford an opportunity for sufficient

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stainless steel rod (subheadings 9903.73.83 through 9903.73.89), and stainless steel wire (subheadings 9903.73.91 through 9903.73.96).

<sup>2</sup> Increases in duties on each subject steel products are as follows: certain flat steel other than slab, hot-rolled bar, cold-finished bar, and tin mill products (30, 24 and 8 per cent *ad valorem* in the first, second, and third years respectively); rebar, certain welded tubular products, stainless steel bar, and stainless steel rod (15, 12 and 9 per cent *ad valorem* in the first, second and third years respectively); carbon and alloy fittings (13, 10 and 7 per cent *ad valorem* in the first, second and third years respectively); and stainless steel wire (8, 7 and 6 per cent *ad valorem* in the first, second and third years respectively). As regards slab, a tariff rate quota of 4.90 million metric tons will be allotted in the first year of the relief, increasing to 5.25 and 5.81 million metric tons in the second and third years, with additional duty rates of 30 per cent *ad valorem* for imports above the within-quota level in the first year, and 24 and 18 per cent in the second and third years respectively.

participation by interested parties, to conduct an adequate investigation, to provide critical information on which it relied, and to set forth in the published report the findings and reasoned conclusions on all pertinent issues of fact and law, including the justification for the actual measure imposed and the justification for the exclusion of Canada, Mexico, Israel and Jordan.

8. The safeguard measures exceeded the extent necessary to prevent or remedy serious injury and to facilitate adjustment, and thus are in violation of Article 5 of the SA. The measures were not limited to the serious injury caused by increased imports.
9. The safeguard measures are also in violation of Article 7.1 of the SA because the duration of the measures extends beyond the period of time necessary to remedy or prevent serious injury.
10. The United States also violated various procedural provisions of Article 12 of the SA by failing to provide 'adequate opportunity' for consultations regarding the application of safeguard measures, to provide pertinent information, and to make appropriate notifications.
11. The United States is in breach of Article 8.1 of the Agreement of the SA because a substantially equivalent level of concessions between exporting Members and the United States has not been maintained.
12. The United States violated Article 9.1 of the SA by failing, *inter alia*, to exclude developing countries in a non-discriminatory manner.

Accordingly, Korea requests that the panel consider and find that the US measures concerning imports of certain steel products are inconsistent with the above listed provisions of the WTO Agreement.

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