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

### REQUEST FOR THE ESTABLISHMENT OF A PANEL BY JAPAN

The following communication, dated 13 September 2018, 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") continuing the imposition of anti-dumping duties on stainless steel bars ("SSB") imported 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 18 June 2018, Japan requested consultations with Korea.<sup>1</sup> Japan and Korea held consultations on 13 August 2018, with a view to reaching a mutually satisfactory solution. Unfortunately, the consultations failed to settle the dispute.

Korea's measures to continue the imposition of anti-dumping duties on stainless steel bars from Japan is 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.<sup>2</sup>

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

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, due to, *inter alia*, the 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

<sup>1</sup> WT/DS553/1, circulated on 21 June 2018.

<sup>2</sup> This determination in the third sunset review is identified in Korea's notification G/ADP/N/300/KOR dated 17 August 2017.

For the sake of completeness, the measures include 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") dated 1 February 2017, to the extent it is referred to in paragraph 4 below.

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 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 cause injury to the domestic industry. It did so 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 products;

- (b) When it determined that the expiry of the duties would be likely to lead to continuation or recurrence of injury to the domestic industry, Korea improperly attributed the likelihood of injury to the imports from Japan, even though Korea acknowledged that the profitability of the domestic industry had not sufficiently recovered during the period of review due to factors other than the imports under review. Such factors include (i) the growing volume and market share of imports of SSB from third countries, such as China, Taiwan and Italy; (ii) the decline of the sales price of such imports; (iii) the decline of material costs; (iv) the continuing trend of slow growth in domestic demand; and (v) the continuing trend of decrease in the volume of exports by the domestic industry and the ratio of the export volume to the total volume of sales by the domestic industry.
- (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 making this finding, Korea, as stated in paragraph 2 below, declined to accept and properly consider the actual production capacity data submitted by each of the Japanese exporters, and instead adopted 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 finding 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 would lead to the increase of the imports from Japan under review and that such imports would affect prices of SSB produced by the domestic industry. However, Korea failed to show any plausible reason why imports from Japan of SSB of the models, types or grades which are the same as or comparable with those imported from other countries 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, (i) whether and how the expiry of the duties would lead to the alleged increase in imports of SSB from Japan and the alleged decrease in prices of SSB imported from Japan, and (ii) whether and how such alleged factors could affect, together with imports of SSB from other countries, SSB produced by the domestic industry.

In light of, in particular, but not limited to, reasons (a) to (d) above, the measures at issue are also 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 third party data regarding the production capacity of Japanese exporters and thereby 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. For example, Korea did not examine the accuracy of the information from the 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 of their submissions, questionnaire responses, and amendments thereof, and (c) irrespective of whether such summaries have been provided, would also have failed to require that such summaries be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence;
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 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 a continuation or recurrence of dumping and injury, and the determination of the nexus between the expiry of the duties and the continuation or recurrence of dumping and injury. The essential facts underlying these two determinations include facts relating to (a) the cumulative assessment of the effects of the imports under review, (b) additional production capacity, and the capacity for exports, of foreign producers including those in Japan, (c) the effects of imports in terms of volume and price, (d) factors other than the allegedly dumped imports to which the alleged recurrence of injury could be attributed, and (e) the effects of the anti-dumping measures during the period of investigation; 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:
- (a) the 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 products;
  - (b) the finding of additional production capacity, and the capacity for exports, of foreign producers including those in Japan;
  - (c) the finding of a nexus between the expiry of the duties and a continuation or recurrence of dumping and injury by imports under review, despite acknowledging the impact of other known factors on the domestic industry; and
  - (d) any other findings underlying the determination of the continuation or recurrence of dumping and injury and the determination of the nexus between the expiry of the duties and a continuation or recurrence of dumping and injury.

As a consequence of the apparent breaches of the AD Agreement described above, Korea's continuation of the imposition of antidumping measures on the imports under review is 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.

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