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KOREA - ANTI-DUMPING DUTIES ON PNEUMATIC VALVES FROM JAPAN

REQUEST FOR CONSULTATIONS BY JAPAN

The following communication, dated 15 March 2016, from the delegation of Japan to the delegation of Korea and to the Chairperson of the Dispute Settlement Body, is circulated 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 measures imposing anti-dumping duties on valves for pneumatic transmission ("pneumatic valves") from Japan, as set forth in the Korea Trade Commission ("KTC") notices and reports in Investigation Trade Remedy 23-2013-5, dated 20 January 2015, any and all annexes, amendments, or notices related to these anti-dumping measures, and the underlying documents and factual information that led the Korean authorities to impose these anti-dumping duties.

These measures at issue appear to be inconsistent with Korea's obligations under, among others, the following provisions of the GATT 1994 and the AD Agreement:

1. Articles 3.1 and 3.2 of the AD Agreement because Korea's analysis of the volume effects of the imports under investigation ("subject imports") 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 price effects of the subject imports did not involve an objective examination based on positive evidence;
3. Articles 3.1 and 3.4 of the AD Agreement because Korea's analysis of the impact of the subject imports on the domestic industry at issue did not involve an objective examination, on the basis of positive evidence, of the impact of the dumped imports on the domestic industry, including an evaluation of all relevant economic factors and indices having a bearing on the state of the domestic industry;
4. Articles 3.1 and 3.5 of the AD Agreement because Korea failed to demonstrate that the dumped imports were, through the effects of dumping, causing injury to the domestic industry, with an involvement of an objective examination of the alleged causal relationship between the subject imports 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 subject imports that were injuring the domestic industry at the same time and incorrectly attributed the effects of other factors to the subject imports;

6. Articles 3.1 and 3.5 of the AD Agreement because Korea's causation determination lacks any foundation in its analyses of the volume effects, price effects and/or impact of the subject imports, irrespective and independent of whether Korea's flawed volume analysis and/or flawed price depression/suppression analysis, on the one hand, and Korea's flawed impact analysis 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 made a determination of injury having improperly defined the domestic industry and, as a result, failed to base its determination on positive evidence and conduct an objective examination of the facts with respect to the domestic industry producing the like product;

8. Articles 6.5 and 6.5.1 of the AD Agreement because Korea: (a) treated as confidential information provided by the interested parties as such without good cause shown; (b) failed to require the applicants to furnish non-confidential summary thereof; and (c) 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;

9. Article 6.9 of the AD Agreement because Korea failed to inform the interested parties of the essential facts under consideration which form the basis for the decision to impose definitive anti-dumping measures;

10. Articles 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 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 imposition of final measures; and

11. Korea's anti-dumping measures on the subject imports also appear to be inconsistent with Article 1 of the AD Agreement and Article VI of the GATT 1994 as a consequence of the apparent 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.
