

***KOREA – ANTI-DUMPING DUTIES ON PNEUMATIC VALVES FROM JAPAN***

**(AB-2018-3/DS504)**

**EXECUTIVE SUMMARY OF THE  
THIRD PARTICIPANT SUBMISSION  
OF THE UNITED STATES OF AMERICA**

**June 22, 2018**

## EXECUTIVE SUMMARY

1. Among other matters, Japan and Korea appeal findings that certain claims were within or outside the Panel's terms of reference. The Parties dispute whether DSU Article 6.2 requires complainants to articulate "how and why" a challenged measure is inconsistent with a provision of a covered agreement.
2. DSU Article 6.2's requirement that a panel request "provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly" entails connecting the challenged measure with the provision allegedly infringed. Thus, a panel request that identifies the measure at issue and links the measure directly to a provision of a covered agreement meets the prerequisite for stating a claim under DSU Article 6.2. Where the provision is detailed and specific, paraphrasing the provision may be precise enough to "present the problem clearly."
3. DSU Article 6.2 does not require complainants to explain "how or why" a measure is inconsistent with a provision. Such an exercise might require complainants to develop legal theories or present examples in their panel requests and such statements would amount to argumentation. Indeed, the Appellate Body has found examples in panel requests to be "in the nature of arguments rather than claims." DSU Article 6.2 requires "the claims – not the arguments be set out in a panel request in a way that is sufficient to present the problem clearly."