UNITED STATES – ANTI-DUMPING AND COUNTERVAILING MEASURES
ON LARGE RESIDENTIAL WASHERS FROM KOREA

Recourse to Article 22.6 of the DSU by the United States

(DS464)

RESPONSES OF THE UNITED STATES OF AMERICA
TO ADDITIONAL QUESTIONS FROM THE ARBITRATOR FOLLOWING THE
SUBSTANTIVE MEETING OF THE ARBITRATOR WITH THE PARTIES

August 29, 2018

TABLE OF REPORTS AND AWARDS

Short Form	Full Citation
US – Offset Act (Byrd Amendment) (EC) (Article 22.6 – US)	Decision by the Arbitrator, *United States – Continued Dumping and Subsidy Offset Act of 2000, Original Complaint by the European Communities – Recourse to Arbitration by the United States under Article 22.6 of the DSU*, WT/DS217/ARB/EEC, 31 August 2004

94. **To both parties:** The arbitrators in *US – Offset Act (Byrd Amendment) (Article 22.6 – US)* adopted a formula in which the calculation of the level of suspension depends, inter alia, upon a coefficient.[1] With respect to the use of a formula and coefficient to possibly calculate nullification or impairment for non-LRW products, please comment on the following issues:

    a.   Deriving a formula similar to *US – Offset Act* based on either the perfect substitutes model or the Armington model to capture the trade effect of any future anti-dumping measure calculated on the basis of the W-T comparison methodology;

    b.   Using a single (as in *US – Offset Act*) vs. multiple (e.g. HS-Chapter specific) coefficient(s) to determine the level of suspension of concessions on non-LRW products;

    Response:

1.   The selection of an appropriate economic model or formula to calculate the level of nullification or impairment is based on a number of critical factors, such as the appropriate estimation technique to apply (simulation or econometrics), substitutability of products, and other variables that could affect market demand and supply conditions. It is not feasible to determine whether it is appropriate to use a single model, or formula, or coefficient (or multiple coefficients) to calculate the level of nullification or impairment related to products other than large residential washers ("non-LRW products") without first examining the characteristics of the different industries that produce those products, and the different markets in which those products are traded, to determine if the assumptions underlying the model or formula hold for the different products. If the underlying assumptions do not hold for a non-LRW product, then applying the model or formula would result in an estimate that is not equivalent to the level of nullification or impairment, contrary to the requirement of Article 22.4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). This is equally true for the Armington-based imperfect substitutes partial equilibrium model, the perfect substitutes partial equilibrium model, or some other approach, such as the use of a coefficient or coefficients, as referenced in the question.

2.   Korea has not even attempted to establish the basis for determining that the same formula – premised on the same economic assumptions, which are flawed in the case of LRWs – could be used to analyze all of the non-LRW products at issue in this dispute. And it necessarily would be impossible to do the required analysis for potential future antidumping measures on other non-LRW products about which there is literally no information before the Arbitrator. Such an approach could not accurately estimate the level of nullification or impairment. This is a key reason why Korea's proposed formula approach cannot result in a level of suspension that is consistent with the DSU. It is also a key reason why the approach referenced in the question – using a coefficient or coefficients – is not feasible, *i.e.*, it, too, <u>cannot</u> result in a level of suspension that is consistent with the DSU.

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[1] Decision by the Arbitrator, *US – Offset Act (Byrd Amendment) (EC) (Article 22.6 – US)*, para. 3.80.

United States – Anti-Dumping and Countervailing Measures on
Large Residential Washers from Korea – Recourse to Article
22.6 of the DSU by the United States (DS464)

U.S. Responses to Additional Questions
Following the Arbitrator Meeting
August 29, 2018 – Page 2

3.   As explained in the U.S. response to question 52, Korea has requested to suspend concessions not at a particular numerical level but instead on the basis of a formula that Korea described in its methodology paper. The United States has demonstrated that Korea's proposed formula necessarily would overstate the level of nullification or impairment. Accordingly, one can conclude that Korea's requested suspension is not equivalent to the level of nullification or impairment, even without knowing precisely what the numerical level of nullification or impairment actually may be, or what a correct formula approach for determining the level of suspension may be. The analysis should end there. For the reasons explained in the U.S. response to question 52, to continue on and devise a formula or other approach for calculating the level of nullification or impairment, the Arbitrator would need to go well beyond what is required under Article 22.6 of the DSU, *i.e.*, determining whether the <u>requested</u> level of suspension is <u>equivalent</u> to the level of nullification or impairment. It is difficult to imagine how the Arbitrator could do that without taking on the responsibilities of Korea.

> **c.   Use the following data-sources to determine the magnitude of the coefficient(s):**
>
> > **i.   USITC Dataweb 2017 trade data on the Korean share of total United States' imports[2];**

<u>Response:</u>

4.   Both the United States and Korea have proposed that the Arbitrator rely on trade data queried using the USITC's DataWeb. Querying DataWeb for data on imports for consumption – as opposed to general imports – would be an appropriate method of compiling 2017 trade data on the Korean share of total U.S. imports.

> > **ii.   the Global Trade Analysis Project 2014 database for the share of imports in demand (domestic and imported) in the United States[3];**

<u>Response:</u>

5.   It would not be appropriate to use the Global Trade Analysis Project ("GTAP") 2014 database for the share of imports of total demand (domestic and imported) in the United States. GTAP data are available only at a very aggregated level, and thus cannot be used to estimate the level of nullification or impairment accurately. Additionally, GTAP data are updated with each new release of the GTAP database. An approach that relies on GTAP data should use the most recent data available at the time the data are to be used.

> > **iii.   Hillberry and Hummels (2013) for the size of the supply elasticity[4];**

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[2] Available at: dataweb.usitc.gov.

[3] Available at: www.gtap.org.

[4] Hillberry, Russell & Hummels, David (2013). "Trade Elasticity Parameters for a Computable General Equilibrium Model", Handbook of Computable General Equilibrium Modeling, Elsevier.

United States – Anti-Dumping and Countervailing Measures on　　U.S. Responses to Additional Questions
Large Residential Washers from Korea – Recourse to Article　　　　Following the Arbitrator Meeting
22.6 of the DSU by the United States (DS464)　　　　　　　　　　　August 29, 2018 – Page 3

        iv.　　Reimer and Hertel (2004) for the size of demand elasticities[5]; and

        v.　　Soderbery (2015) for the size of substitution elasticities.[6]

        vi.　　In addition, the parties are invited to indicate alternative sources of data that, in their view, are more precise or have been updated more recently.

　　Response:

6.　　The United States and Korea both have proposed previously that the Arbitrator rely on estimates of elasticities made by the U.S. International Trade Commission ("USITC") during the course of its investigations, specifically the median of the range of such estimated elasticities.[7] The estimates made by the USITC during the course of its investigations are particularly well suited for use in a model to estimate the level of nullification or impairment in this dispute, because the USITC's estimates are for the specific products at issue, and because the estimates were made after analyzing responses from purchasers, producers, and importers to questionnaires concerning the market of the product under investigation, as well as arguments made by interested parties.

7.　　For these reasons, the elasticities estimated by the USITC are preferable to elasticities presented in the sources referenced in the sub-questions. Only if the USITC has not estimated the necessary elasticities for a particular product should alternative sources be considered. In that situation, where it is necessary to seek elasticities from an alternate source, a number of questions arise. The selection of the appropriate data to determine the magnitude of the coefficients is based on a number of product-specific factors, which at this point are unknown. It is critical to match these relevant characteristics to the specific subject product and industry under investigation. That is why the USITC estimates are preferable, and any other estimates would be a second-best option. How would the relevant elasticities be identified? What level of aggregation should be used? What should be done in situations where there are products for which there are multiple elasticity estimates covering a range of HTS numbers? How would a single estimate be determined for purposes of a model? What if no elasticity has been estimated for the specific product in question? It is not possible to answer these questions without knowing what the relevant products will be.

8.　　There are a range of estimates for demand, supply, and substitution elasticities in the academic literature for aggregate categories (for example, the GTAP database) and more

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[5] J. Reimer and T.W. Hertel (2004). "International Cross-Section Estimates of Demand for US in the GTAP Model", GTAP Technical Paper No. 23. Center for Global Trade Analysis, West Lafayette, Indiana.

[6] Soderbery, Anson, "Estimating Import Supply and Demand Elasticities: Analysis and Implications", Journal of International Economics, 96(1), May 2015: pp 1-17.

[7] *See*, *e.g.*, Methodology Paper of the Republic of Korea (February 23, 2018), para. 45; Written Submission of the United States of America (March 23, 2018), paras. 107-111. Of course, Korea also has objected to the use of elasticities of substitution estimated by the USITC. *See*, *e.g.*, Korea's Replies to Questions from the Arbitrator After the Meeting with the Parties (June 21, 2018), paras. 73-75.

United States – Anti-Dumping and Countervailing Measures on   U.S. Responses to Additional Questions
Large Residential Washers from Korea – Recourse to Article   Following the Arbitrator Meeting
22.6 of the DSU by the United States (DS464)   August 29, 2018 – Page 4

disaggregated products (Soderberry (2015) and Broda, Limao and Weinstein (2008), though the elasticities they estimated are based on data from 1993-2007 and 1994-2003, respectively). For the non-LRW products, which are to be determined, the selection of the appropriate elasticity would depend on a number of factors usually determined by industry experts based on market information that lead to an appropriate selection from the range of estimates in the literature. Again, without knowing which particular non-LRW products may be at issue, it is impossible to determine what elasticities should be used.

95.   <u>To both parties</u>: In 2017, what was the percentage share of exports from Korea to the United States made by Korean firms, assigned anti-dumping duty rates calculated on a W-T basis, in terms of the total amount of exports from Korea to the United States, subject to anti-dumping orders? Please provide the numbers used to arrive at this figure.

<u>Response:</u>

9.   The information necessary to respond to this question does not yet exist, because antidumping duty rates have not yet been assigned to all exports from Korea to the United States for all months of the year 2017.

10.   The United States employs a retrospective system for the assessment of antidumping duties. Under U.S. law, the U.S. Department of Commerce ("USDOC") provides the opportunity to request annual administrative reviews of antidumping orders in the month in which occurs the anniversary date of the publication of the antidumping order. If an administrative review is requested, the USDOC has 365 days to complete the review, but may extend that time limit by up to 180 days.[8] Thus, for example, if the anniversary date of the publication of an antidumping order were in January 2018, then in early 2018 the USDOC would have initiated an administrative review for the preceding period of full-year 2017 (*i.e.*, January 1, 2017 to December 31, 2017). The earliest date that such an administrative review normally would be completed would be early February 2019, based on the normal 365-day timetable (*i.e.*, where the USDOC does not extend the statutory due dates). For antidumping orders published in months other than January, administrative reviews covering certain months in 2017 may be completed even later. Indeed, for antidumping orders that originally were published during the months of September to December, there has not yet even been an opportunity to request an administrative review of entries made during the period from September to December 2017.

11.   Additionally, an antidumping order published in a month other than January would have a twelve-month period of review that does not correspond to the calendar year, with some months being in one calendar year and the remaining months being in the following calendar year. So, even if antidumping administrative reviews had been completed for all antidumping orders on all products from Korea for all months of 2017, responding to this question would require combining the partial results of two consecutive administrative reviews for many products. As indicated in the preceding paragraph, the information necessary to provide such a response does not yet exist. Furthermore, even if the relevant administrative reviews had all

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[8] *See* 19 U.S.C. § 1675(a)(3)(A).

United States – Anti-Dumping and Countervailing Measures on   U.S. Responses to Additional Questions
Large Residential Washers from Korea – Recourse to Article   Following the Arbitrator Meeting
22.6 of the DSU by the United States (DS464)   August 29, 2018 – Page 5

been completed, the information requested – *i.e.*, the percentage share of exports from Korea to the United States made by Korean firms, assigned antidumping duty rates calculated on a W-T basis, in terms of the total amount of exports from Korea to the United States, subject to antidumping orders – is not information that the USDOC or any other U.S. government agency collects in the ordinary course of business. Such information is not necessary for the purpose of administering the U.S. antidumping law, and administrative reviews for different periods are treated as separate segments of an antidumping proceeding, so the USDOC does not combine data from different administrative reviews periods as contemplated by the question.

96. **To both parties: In 2017, what was the percentage of Korean firms that exported products, subject to anti-dumping duty rates calculated on a W-T basis, into the United States, in terms of the total number of Korean firms subject to United States' anti-dumping orders? Please provide the numbers used to arrive at this figure.**

Response:

12.   For the reasons given above in response to question 95, the information necessary to respond to this question does not yet exist, because antidumping duty rates have not yet been assigned to all exports from Korea to the United States for all months of the year 2017.

13.   Additionally, while the United States is aware of the existence of companies that export products to the United States from Korea, the United States does not know, and cannot know, the total number of Korean firms subject to U.S. antidumping orders, because there may have been companies subject to the "all others" antidumping rates that never identified themselves to the United States. Accordingly, it is not possible to respond to this question.