

Statements by the United States at the Meeting of the WTO Dispute Settlement Body

Geneva, August 9, 2019

1. UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN OIL COUNTRY TUBULAR GOODS FROM KOREA
 - A. RECOURSE TO ARTICLE 22.2 OF THE DSU BY KOREA (WT/DS488/14)
 - On July 29, 2019, Korea requested that the DSB authorize Korea to suspend concessions and related obligations under the GATT 1994.
 - By letter dated August 8, 2019, the United States objected to the level of suspension of concessions or other obligations proposed by Korea.
 - Under the terms of Article 22.6 of the DSU, the filing of such an objection automatically results in the matter being referred to arbitration. Article 22.6 does not refer to any decision by the DSB, and no decision is therefore required or possible.
 - Consequently, because of the U.S. objection under Article 22.6, the matter already has been referred to arbitration. Nevertheless, although unnecessary, the DSB may take note of that fact and confirm that it may not therefore consider Korea's request for authorization.

OTHER BUSINESS: STATEMENT BY THE UNITED STATES CONCERNING
TRANSPARENCY IN UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN
OIL COUNTRY TUBULAR GOODS FROM KOREA (DS488)

- In light of today’s meeting, the United States wishes to make a statement relating to transparency in the dispute *US – Anti-Dumping Measures on Certain Oil Country Tubular Goods from Korea* (DS488) and to take this opportunity to again underscore the systemic importance of transparency in the dispute settlement system.
- We recall that, while the DSU does not mandate or ensure transparency, it also does not prohibit decisions by Members to provide transparency. Thus, there is no DSU impediment to Members taking action today to improve the transparency in WTO dispute settlement by agreeing to make submissions public, and to permit observation of the meetings and hearings in their disputes by all Members and the public.
- In the *US – Anti-Dumping Measures on Certain Oil Country Tubular Goods from Korea* dispute, the United States sought to make its statements at the panel meetings observable by other WTO Members and the public at the time those statements were delivered.
- We were disappointed that Korea objected to a U.S. request for open meetings at the panel stage and, furthermore, that Korea sought to keep U.S. statements confidential at the time of their delivery. Korea also sought to maintain the confidentiality of its own statements.
- This was surprising, given that Korea’s position was contrary to its own views on transparency in other venues, including under other trade agreements.
- For example, Korea has agreed to make submissions public and to open panel meetings under the Korea-US Free Trade Agreement.¹

¹ Free Trade Agreement between the Republic of Korea and the United States of America, Article 22.10(1) (“subject to subparagraph (f) [on protection of confidential information], any hearing before the panel shall be open to the public”) (“Korea-US FTA”); *id.*, Model Rules of Procedure, para. 41 (“All hearings of the panel shall be open for the public to observe, except that the panel shall close the hearing for the duration of any discussion of confidential information.”) (footnote omitted).

- But that is not all. Korea has also committed to support transparency under other trade agreements, such as the EU-Korea FTA,² the Canada-Korea FTA,³ and the Korea-New Zealand FTA.⁴
- We do not see any reason why Korea would consider that the WTO dispute settlement system should be less transparent than these other trade agreements to which Korea is a party.
- If an arbitration pursuant to Article 22.6 of the DSU were to become necessary, it would provide another opportunity for Korea to reaffirm the views on transparency it has expressed elsewhere in the context of WTO dispute settlement.
- To that end, the United States will seek Korea's agreement to promote transparency in any further proceeding in this dispute, such as an open arbitral meeting and public submissions.

² Free Trade Agreement between the European Union and its Member States and the Republic of Korea, Article 14.14(2) ("Any hearing of the arbitration panel shall be open to the public in accordance with Annex 14-B.") ("EU-Korea FTA"); *id.*, Annex 14-B, Article 7(7) ("The hearings of the arbitration panels shall be open to the public, unless the Parties decide that the hearings shall be partially or completely closed to the public.").

³ Canada-Korea Free Trade Agreement, Article 21.8 ("Unless the Parties agree otherwise, the rules of procedure of a panel shall ensure ... (d) subject to subparagraph (g) [on the protection of confidential information], that hearings of the panel are open to the public[.]") ("Canada-Korea FTA").

⁴ Free Trade Agreement between the Republic of Korea and New Zealand, Model Rules of Procedure for Arbitration Panels, para. 21 ("Hearings shall be open to the public, unless the Parties otherwise agree.")