# *UNITED STATES – SAFEGUARD MEASURE ON IMPORTS OF LARGE RESIDENTIAL WASHERS*

**(DS546)**

**OPENING STATEMENT OF THE UNITED STATES OF AMERICA AT THE PANEL'S VIDEOCONFERENCE WITH THE PARTIES**

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## TABLE OF REPORTS

| Short Form | Full Citation |
|---|---|
| *Dominican Republic – Safeguard Measures (Panel)* | Panel Report, *Dominican Republic – Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric*, WT/DS415/R, WT/DS416/R, WT/DS417/R, WT/DS418/R, and Add.1, adopted 22 February 2012 |
| *Korea – Dairy (AB)* | Appellate Body Report, *Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products*, WT/DS98/AB/R, adopted 12 January 2000, as modified by Appellate Body Report WT/DS98/AB/R |

Mr. Chairperson, Members of the Panel:

1. The United States wishes to thank you, and the Secretariat staff assisting you, for your work on this Panel. These are difficult times, and striking a proper balance between caution and carrying out our work requires a considered approach. The United States appreciates this opportunity to present its views on the issues in this dispute.

2. The GATT 1994[1] and the Safeguards Agreement[2] establish a Member's right to suspend its obligations under the WTO Agreement,[3] if a product is being imported into its territory in such increased quantities and under such conditions as to cause serious injury or threat of serious injury to the Member's domestic industry. The availability of this escape valve is one of the factors that gives Members the comfort to make tariff concessions that could in the future otherwise impede their ability to forestall serious injury to their economies and their stakeholders. Protecting this right is accordingly critical to the continued acceptance of the WTO system in any Member in which government is accountable to its citizens.

3. To be clear, that is exactly what the Safeguards Agreement envisages. Its preamble calls for "multilateral control over safeguards" – not their elimination. Article 1 echoes this point, providing that the Agreement "establishes rules for the application of safeguard measures," and the remainder of the agreement elaborates on those rules. The assumption throughout is that Members will *use* safeguard measures in the specified circumstances. Korea's arguments invert

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[1] General Agreement on Tariffs and Trade 1994.

[2] Agreement on Safeguards.

[3] Marrakesh Agreement Establishing the World Trade Organization.

this logic, advocating instead a reading of the Agreement's disciplines such that no competent authorities and no Member could meet them in practice. Under this approach, rather than setting guidelines for Members, the Safeguards Agreement lays down a procedural minefield with no viable exit. The United States urges you to reject this view and its supposed grounding in past reports of panels and the Appellate Body, which Korea misreads in large part.

4. Our first written submission demonstrated that, by any reasonable standard, the USITC,[4] met the obligations of the Safeguards Agreement. It conducted an exhaustive investigation of the U.S. market for large residential washers,[5] including the conditions of competition and the roles played by imported and domestically produced products. It evaluated the effects of increased imports and of other possible factors affecting the industry and determined as a result that increased imports themselves caused serious injury to that industry. And finally, the USITC issued a massive report explaining its conclusions in detail. The report also expressly identified the tariff lines – that is, the bindings – as "obligations incurred", in the parlance of Article XIX of the GATT 1994. Moreover, the report described the ability of non-U.S. producers to rapidly scale up production of washers, which enabled them to shift production from country to country. Those are the unforeseen developments that, as the United States demonstrated in its first written submission, resulted in the increased imports that caused serious injury to the domestic industry.

[4] U.S. International Trade Commission (hereinafter USITC or Commission).

[5] Hereinafter washers or LRWs.

5. Our submission also demonstrated, at length, that Korea failed in its efforts to impugn the USITC's findings. We will not repeat all of those observations, but will focus on two overarching observations. First, Korea's arguments rest on a misreading of panel and Appellate Body reports which results in reading into the text of the GATT 1994 and Safeguards Agreement obligations that do not exist in those agreements. Second, Korea's arguments reflect logical inconsistencies that result from a selective examination of the issues.

6. In making these observations, we draw the Panel's attention to three of the most salient issues in this dispute. First, contrary to Korea's assertions and its misreading of reports interpreting the Safeguards Agreement and Article XIX of the GATT 1994, the United States has acted consistently with the Safeguards Agreement in demonstrating that increased imports were the result of unforeseen developments and obligations incurred, consistent with Article XIX of the GATT 1994. Second, contrary to Korea's arguments, the USITC acted consistently with the Safeguards Agreement in defining the domestic like product and the domestic industry. Third, the Commission's detailed analysis on serious injury thoroughly explained how imports increased significantly "under such conditions" as to cause serious injury to the domestic industry.

7. Therefore, Korea has not carried out its burden to show that the safeguard measure on washers is inconsistent with the United States' obligations under the WTO Agreement, and we respectfully request that the Panel find that Korea has not established that the United States has acted inconsistently with respect to the washers safeguard measure.

## I. UNFORESEEN DEVELOPMENTS AND THE OBLIGATIONS INCURRED

8. Article XIX:1 of the GATT 1994 provides for a safeguard measure when increased imports are "as a result of" unforeseen developments and of the effect of the obligations incurred. Korea has erred by asserting that under Article XIX of the GATT 1994 and Articles 1 and 3.1 of the Safeguards Agreement, "it is therefore necessary for the published report to provide the required reasoned and adequate explanation of the existence of such unforeseen development."[6] However, these provisions impose no such obligation. The factual circumstances of unforeseen developments and obligations incurred by a Member are not among the "conditions" set out in Article 2.1 of the Safeguards Agreement for taking a safeguard measure. As we noted in our submission, the phrase "unforeseen developments" does not appear anywhere in the Safeguards Agreement, and thus is not one of the "pertinent issues of fact and law" that under Article 3.1 must be set forth in the report of the competent authorities. This difference, as set out in the relevant texts, has meaning and significance, in particular with respect to the Safeguards Agreement's explicit obligations on analysis of serious injury and causation, as contrasted with the absence of such obligations with respect to unforeseen developments.

9. As we showed in our submission, this difference leaves a Member discretion as to how, when, and where it demonstrates the existence of an unforeseen development. A Member may charge that task to the competent authorities responsible for the serious injury determination or to

[6] Korea first written submission, para. 84.

other authorities, or make the demonstration for the first time in a WTO dispute settlement proceeding. The proper role of a panel established under the DSU faced with a claim under Article XIX:1(a) of the GATT 1994 is to examine whether the complaining party has met its burden of proof, including by evaluating the responding Member's demonstration of unforeseen developments *where it occurs*. The U.S. first written submission contained such a demonstration, based on evidence cited and findings made in the USITC report, showing that Korea has not made a *prima facie* case that increased imports of washers were not as a result of unforeseen developments.

10. Turning to "obligations incurred" under Article XIX, there is no disagreement that the relevant obligations may include tariff concessions by the Member seeking to impose a safeguard measure. GATT 1994 uses the term "obligations" to refer to the substantive commitments that a Member undertakes with respect to the products of another Member under the provisions of the agreement. "Tariff concessions" refers to the Schedule of Concessions granted by a Member under Article II of the GATT 1994, and in particular to commitments not to impose ordinary customs duties in excess of the amount set out in the schedule. "Effect" means "{s}omething accomplished, caused or produced; a result, a consequence." Thus, the "effect of the obligations incurred" refers to the consequences of a Member's substantive commitments including tariff bindings – namely, that the Member cannot take certain trade-restrictive measures.[7]

[7] *Korea – Dairy (AB)*, para. 84 (emphasis added).

11. Korea bases its argument on the assertion that the USITC report contains no mention of the "obligations incurred." As Korea itself notes, however, the USITC report does contain a description of the tariff lines at issue, including the bound (MFN) rates.[8] These are the tariff concessions that the United States made, which prevented it from increasing applied tariffs so as to modulate the increase in imports. Thus, the ITC report explicitly demonstrates that the United States incurred obligations – tariff concessions – with respect to the washers at issue in this proceeding. Accordingly, the USITC report demonstrates that the United States undertook obligations with respect to the products at issue in this investigation. It was as a result of this fact that imports increased.

## II. THE USITC'S SERIOUS INJURY DETERMINATION

12. The United States will next address Korea's claims concerning the USITC's determination that increased imports seriously injured the domestic industry. As the United States explained in detail in its first written submission, Korea has failed to show that the Commission's determination was in any way inconsistent with the cited articles of the Safeguards Agreement.

### A. Definition of the Domestic Industry

13. First, the Commission complied with Articles 2.1, 3.1, 4.1(c) and 4.2 of the Safeguards Agreement in defining the domestic industry. The Commission defined the domestic like product to include all domestically produced merchandise that was like the imported

[8] Korea first written submission, para. 81.

merchandise within the scope of the investigation. This included washers and three major subcomponents used to produce LRWs, known as "covered parts." Based on the preponderance of similarities with respect to physical properties, uses, customs treatment, manufacturing processes, and marketing channels, the Commission found that domestically produced LRWs, as well as domestically produced belt driven washers, were like imported LRWs.[9] The Commission also found that domestically produced covered parts were like imported covered parts, while recognizing that imports of covered parts were used to repair specific imported LRWs and thus did not compete head-to-head with domestic covered parts for use in the identical LRWs.[10] Having defined the domestic like product to include LRWs, belt driven washers, and covered parts, the Commission defined the domestic industry as producers as a whole of LRWs, belt driven washers, and covered parts.[11] Still further supporting a definition of the domestic industry to include producers of covered parts, the Commission found, pursuant to its "product line" approach, that most covered parts production was undertaken by domestic producers of LRWs for assembly into LRWs in vertically integrated production facilities.[12]

14. The Commission reasonably included belt driven washers in the domestic like product because the record showed that such washers were virtually indistinguishable from imported

[9] USITC Report, pp. 12-16 (Exhibit KOR-1).

[10] USITC Report, pp. 16-17 (Exhibit KOR-1).

[11] USITC Report, pp. 19 (Exhibit KOR-1).

[12] USITC Report, pp. 19 (Exhibit KOR-1).

LRWs, as respondents themselves argued during the investigation.[13] Contrary to Korea's argument, there is no requirement under the Safeguards Agreement that competent authorities define a like or directly competitive domestic product that perfectly matches the product under investigation.[14] In fact, in its first written submission Korea grudgingly acknowledges, inversely, that there are "no specific disciplines in respect of the definition of the product scope."[15] Thus, as with the GATT Article XIX issues covered in the first part of our statement today, Korea is importing obligations that simply are not in the covered agreements themselves.

15. Similarly, the Commission also reasonably included covered parts in the domestic like product because the record showed that they were like imported covered parts. There is no basis for Korea's argument that domestic covered parts also had to be like or directly competitive with imported LRWs in order to be to be included in the domestic like product. Nothing in the Safeguards Agreement precludes competent authorities from defining a single domestic like product encompassing multiple domestic articles that are not like or directly competitive with each other, such as covered parts and LRWs, as long as each domestic article is like an imported article subject to investigation. Nor is there any basis for Korea's argument that domestic covered parts had to be both like and directly competitive with imported covered parts to be included in the domestic like product. Articles 2.1 and 4.1(c) of the Safeguards Agreement

[13] *See* LG and Samsung's Prehearing Injury Brief at 28-29 (quoting *LRWs from China*, USITC Pub. 4666 at 7 n.24) (Exhibit KOR-11).

[14] *See* United States' first written submission, paras. 164-167.

[15] Korea first written submission, para. 198.

define "domestic industry" in the disjunctive as "producers of like *or* directly competitive products."[16] Accordingly, the Commission's finding that domestic covered parts were like imported covered parts was a sufficient basis for including covered parts in the domestic like product.

## B. Absolute Increase in Imports

16. Second, the Commission complied with Articles 2.1 and 3.1 of the Safeguards Agreement in finding that imports increased significantly in absolute terms and relative to domestic production during the period of investigation. As an initial matter, the Commission appropriately analyzed increased imports with respect to the product under investigation, consistent with Article 2.1. The Commission reasonably defined the product under investigation as washers and covered parts, consistent with the scope of the investigation defined in the petition and published in the *Federal Register*.[17] Based on that definition, the Commission was obligated to consider increased imports with respect to LRWs and covered parts in the aggregate. As recognized by the panel in *Dominican Republic – Safeguard Measures*, competent authorities need not demonstrate that imports increased with respect to each separately identifiable product within a product under investigation, but only with respect to the overall product under investigation.[18]

[16] Safeguards Agreement, art. 2.1, 4.1(c) (emphasis added).

[17] *See* Petition, pp. 5-9 (Exhibit US-3); Institution Notice, (Exhibit US-3).

[18] *Dominican Republic – Safeguard Measures (Panel)*, para. 7.236.

17. Based on an examination of data covering the entire five-year period of investigation, the Commission found that imports increased in absolute terms and relative to domestic production in every year of the period, with the absolute volume of imports nearly doubling between 2012 and 2016.[19] The Commission also provided a thorough explanation for its finding that imports increased notwithstanding lower import volume in January to March 2017 (*i.e.*, interim 2017) compared to the same January to March period in 2016 (*i.e.*, interim 2016).[20] Thus, the Commission found that import volumes remained substantial in interim 2017, and that the record evinced two temporary factors explaining why interim 2017 volumes were lower than volumes for the same three months of 2016. Specifically, the Commission found that import volumes were reduced by supply disruptions caused by LG and Samsung's transfer of production from China to Thailand and Vietnam to escape antidumping duties; and the Commission additionally found that the temporary decline in volumes in interim 2017 reflected Samsung's recall of 2.8 million units posing a risk of personal injury or property damage.[21] The Commission reasonably found import volume remained significant in interim 2017, though down from interim 2016 levels due to these temporary factors, after peaking just three months earlier at nearly double the level of 2012.

18. The Commission also considered the rate of the increase in import volume based upon the actual annual increases in absolute import volume over the period of investigation, as well as

[19] USITC Report, pp. 20, 39 (Exhibit KOR-1).

[20] USITC Report, pp. 30, 38 (Exhibit KOR-1).

[21] USITC Report, pp. 30, 38 (Exhibit KOR-1).

the annual percentage increases in such volumes.[22] Consistent with its finding that imports increased significantly, the Commission also found that subject import market share was several percentage points higher in 2016 than in 2012, after increasing in every year but 2016, and higher in interim 2017 than in interim 2016.[23] All of these findings supported the Commission's conclusion that there had been a significant "absolute increase" in import volume during the period, consistent with Article 2.1.

19. Furthermore, the Commission considered the "conditions of competition" and "relevant factors" prevailing in the U.S. market in explaining how imports increased "under such conditions" as to cause serious injury to the domestic industry. In particular, the Commission explained that there was a moderate to high degree of substitutability between subject imports and the domestic like product and that price was an important factor for purchasers choosing between imported and domestic LRWs.[24] Based on these and other conditions of competition, the Commission found that the significant and growing volume of subject imports priced lower than comparable domestically produced LRWs had forced domestic producers to reduce their own prices.[25] In turn, by depressing and suppressing domestic prices, subject imports caused the domestic industry's increasing financial losses and reduced capital and research and development expenditures.[26] Thus, contrary to Korea's arguments, the Commission provided a

[22] USITC Report, p. 20 (Exhibit KOR-1).

[23] USITC Report, pp. 38-39 (Exhibit KOR-1).

[24] USITC Report, pp. 27-32 (Exhibit KOR-1).

[25] USITC Report, pp. 42-44 (Exhibit KOR-1).

[26] USITC Report, pp. 38, 44 (Exhibit KOR-1).

reasoned and adequate explanation for its finding that the significant increase in subject import volume was sufficiently recent, sudden, sharp, and significant, quantitatively and qualitatively, to cause serious injury.

### C. The USITC's Finding of Serious Injury

20. Third, the Commission's finding that the domestic industry was seriously injured was consistent with Articles 2.1, 3.1, 4.1(a), and 4.2(a) of the Safeguards Agreement. As the Commission explained, the domestic industry had invested heavily in competitive new washers and should have been well positioned to capitalize on strong and growing demand for LRWs during the period of investigation.[27] As increased imports of low-priced LRWs forced down domestic prices, however, the industry suffered "dramatically worsening financial losses during the period."[28] Specifically, the Commission found that the industry's operating and net losses worsened in every year of the period and continued in interim 2017.[29] The industry's operating losses also worsened as a ratio to net sales in every year but 2015.[30] As a direct result of these mounting losses, the domestic industry slashed its capital and research and development spending in 2016 relative to both 2015 and 2012.[31] The Commission found the industry's cancellation and postponement of numerous new LRW products particularly significant in light

[27] USITC Report, p. 33 (Exhibit KOR-1).

[28] USITC Report, p. 37 (Exhibit KOR-1).

[29] USITC Report, p. 33 (Exhibit KOR-1).

[30] USITC Report, pp. 33-34 (Exhibit KOR-1).

[31] USITC Report, p. 36 (Exhibit KOR-1).

of the importance of innovation and features to driving LRW sales.[32] Both the large magnitude of the industry's financial losses and the resulting cuts to capital and R&D spending led the Commission to conclude that there had been a significant overall impairment to the position of the domestic industry.[33]

21. Contrary to Korea's allegations, the Commission based its serious injury finding on an examination of all relevant factors, fully explaining how the evidence supported its conclusions. As just discussed, the Commission examined both the rate of the increase in import volume and the market share taken by imports.[34] The Commission also considered how these factors affected the domestic industry. Addressing the rate of increase, the Commission found that imports had "increased steadily" during the period of investigation based on the evolution of import volume in each year of the period and the percentage increase in import volume between years.[35] The Commission also found that subject imports "increased their penetration of the U.S. market to a significant degree" based on the increase in subject import market share in every year of the period but 2016, the overall increase in subject import market share between 2012 and 2016, and the increased subject import market share in interim 2017 relative to interim 2016.[36] Contrary to Korea's claim that the Commission was somehow obligated to lay out and discuss these factors in the "serious injury" section of its report, neither Article 3.1 nor Article 4.2(c)

[32] USITC Report, pp. 36-37 (Exhibit KOR-1).

[33] USITC Report, p. 37 (Exhibit KOR-1).

[34] *See* USITC Report, pp. 20, 38-29 (Exhibit KOR-1).

[35] USITC Report, p. 20 (Exhibit KOR-1).

[36] USITC Report, p. 39 (Exhibit KOR-1).

dictate the organization of the reports competent authorities are required to publish. The Commission reasonably evaluated the rate of the increase in import volume and the market share taken by imports in those portions of its report where these considerations were most relevant – in the increased imports and causation sections.[37]

22. Based on its examination of all the relevant factors, the Commission thoroughly explained how the factors – positive and negative – supported its serious injury determination. The Commission concluded that there had been a significant overall impairment in the position of the domestic industry based upon the industry's "dramatically worsening financial losses during the period of investigation," "the magnitude" of the losses," and "the resulting . . . cuts in capital and R&D spending."[38] The Commission reasonably attached weight to the domestic industry's large and worsening financial losses, as perhaps the best indicator of serious injury in a market economy, but it did not limit its analysis to profits and losses, as Korea claims. Numerous adverse factors supported the Commission's serious injury finding. In addition to the precipitously declining financial performance, the Commission found that other factors of particular relevance in this investigation exhibited adverse trends, specifically the significant increase in import volume as well as a decline in the industry's sales prices, an increase in the

[37] *See* USITC Report, pp. 20, 38-39 (Exhibit KOR-1).

[38] USITC Report, p. 37 (Exhibit KOR-1).

industry's cost of goods sold to net sales ratio, and a decline in the industry's capital and R&D expenditures.[39]

23. The Commission also explained how the factors showing seemingly neutral or positive trends did not detract from its serious injury determination. Korea's enumeration of such neutral or positive trends in its submission is, on its face, not entirely logical. Korea concedes that some trends – for example, average unit value of domestic sales, total domestic LRW revenue, and the domestic industry's R&D expenditures – show negative, not positive or neutral, signals.[40] While recognizing that the domestic industry's market share in 2016 was similar to that in 2012, the Commission explained that the industry had been forced to defend its market share from increasing volumes of low-priced imports by slashing its prices, directly resulting in large and growing financial losses.[41] The Commission also found that the industry's increased capacity, production, and capacity utilization, and thus the industry's increased employment and productivity, was "{i}n line with the domestic industry's substantial capital expenditures during the period."[42] As the Commission explained, these investments in competitive new washer products should have positioned the industry to capitalize on growing demand.[43] Instead, the investments yielded large and growing negative returns as competition from increasing volumes

[39] USITC Report, pp. 33, 36-37, 39, 42-43, V-28 (Exhibit KOR-1).

[40] Korea first written submission, para. 274.

[41] *See* USITC Report, pp. 38, 40, 44 (Exhibit KOR-1).

[42] USITC Report, pp. 36-37 (Exhibit KOR-1).

[43] USITC Report, p. 33 (Exhibit KOR-1).

of low-priced imports forced the industry to cut prices.[44] The Commission thus provided a reasoned and adequate explanation for how the industry suffered serious injury, taking into account both negative and seemingly positive trends. The Commission was not compelled, as Korea argues – again, without basis or persuasive support – to ignore these injury factors or subordinate them to other so-called positive factors that Korea selectively favors.[45]

24. Additionally, in analyzing the domestic industry's financial performance, the Commission reasonably relied on the operating and net profit data reported by domestic producers and certified as accurate instead of the alternative data proffered by respondents. The Commission evaluated and reasonably rejected respondents' argument that, effectively, it should have considered profitability based on an industry consisting of both LWR and dryer production.[46] Under respondents' "joint pricing" theory, they alleged that domestic producers offset losses on washers with profits on matching dryers sold at the same wholesale price.[47] In rejecting this argument, the Commission explained that the focus of its analysis was producers of the like or directly competitive product, which was limited to large residential washers.[48] Moreover, the record belied respondents' theory. Whirlpool's Chairman and CEO stated under oath that Whirlpool expected to earn positive returns on washers alone and did not subsidize

[44] *See* USITC Report, pp. 33, 36, 38, 44 (Exhibit KOR-1).

[45] Korea first written submission, para. 370.

[46] *See* USITC Report, pp. 34-36, 45-47 (Exhibit KOR-1).

[47] USITC Report, p. 34 (Exhibit KOR-1).

[48] USITC Report, p. 34 (Exhibit KOR-1).

washers with profits from dryers.[49] GE likewise stated that it did not produce dryers domestically but rather imported them pursuant to a contract manufacturing agreement that precluded outsize profits.[50] The Commission also explained that the domestic industry could not have offset its growing losses on sales of washers with profits on sales of matching dryers because dryer prices and profits would have declined with washer prices and profits under respondents' theory.[51]

25. The Commission also evaluated and reasonably rejected respondents' efforts to expand even further the industry for serious injury purposes, to cover all of the producers' domestic operations including for products others than washers. In respondents' view, Whirlpool's reported losses on sales of washers somehow conflicted with the profitability of Whirlpool's overall North American operations. But as the Commission explained, Whirlpool's financial results for its North American operations largely reflected sales of products other than washers, which accounted for only 13.1 to 13.5 percent of Whirlpool's North American revenues.[52] Consequently, the profitability of Whirlpool's overall North American operations did not conflict with the losses Whirlpool reported on sales of washers. Furthermore, Commission staff audited Whirlpool's books and records in the antidumping investigation of *LRWs from China*, which

[49] USITC Report, p. 35 (Exhibit KOR-1) (quoting Hearing Tr. 56-57 (Fetig) (Exhibit US-2)).

[50] USITC Report, p. 35 (Exhibit KOR-1).

[51] USITC Report, p. 47 (Exhibit KOR-1).

[52] *See* USITC Report, p. 34 n.210 (Exhibit KOR-1).

involved the same subject merchandise and most of the same period of investigation, and verified the accuracy of Whirlpool's reported financial losses on washers.[53]

26. The Commission also evaluated and reasonably rejected respondents' argument that imports increased not because of low pricing but due to their superior innovation compared to domestic LRWs.[54] In rejecting this argument, the Commission found that domestic and imported LRWs were comparable in terms of non-price factors, including innovation, based upon a wide range of evidence. In particular, all purchasers who responded to the Commission's questionnaires reported that domestic and imported LRWs were either always or usually interchangeable.[55] Most also reported that domestic LRWs were comparable or superior to imported LRWs in terms of 23 factors that influenced purchasing decisions, including brand, features, reliability, and product range.[56] Domestic producers reported introducing numerous innovative features during the period of investigation, and their LRWs were ranked among the ten best by Consumer Reports and Reviewed.com.[57] Furthermore, the Commission found "{r}espondents' claim that sales of imported LRWs were driven by features and innovations favored by consumers, which should have commanded a price premium . . . belied by both the extent to which imported LRWs were priced lower than domestically produced LRWs, and the declining prices of the imported LRW models that respondents identified as particularly

[53] *See* USITC Report, p. 34 n.210 (Exhibit KOR-1).

[54] *See* USITC Report, pp. 27-32, 42 (Exhibit KOR-1).

[55] USITC Report, p. 29 (Exhibit KOR-1).

[56] USITC Report, p. 29 (Exhibit KOR-1).

[57] USITC Report, pp. 29-30 (Exhibit KOR-1).

innovative."[58] The Commission therefore provided a thorough explanation for its rejection of respondents' innovation argument.

### D. Causal Link

27. Finally, the Commission's finding of a causal link between increased imports and the domestic industry's serious injury was fully consistent with Articles 2.1, 3.1, 4.2(b) and 4.2(c) of the Safeguards Agreement. The Commission found that the dramatic worsening of the domestic industry's financial performance during the period of investigation coincided with the significant increase in subject import volume. Relying on quarterly sales price data for six narrowly defined washers products, the Commission found that imported LRWs were priced lower than comparable domestic LRWs in most quarterly comparisons, often by considerable margins.[59] Of note, the respondents themselves advocated five of the six pricing products as being representative of competition in the U.S. market, and pricing product data covered an "appreciable percentage" of domestic producer and importer shipments during the period of investigation.[60] Especially given the moderate-to-high degree of substitutability between domestic and imported LRWs and the importance of price to purchasers, the Commission reasoned that the increasing volumes of low-priced imports had forced the domestic industry to defend its market share by reducing its prices.[61]

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[58] USITC Report, p. 42 (Exhibit KOR-1).

[59] USITC Report, p. 42 (Exhibit KOR-1).

[60] USITC Report, pp. 40-41 & n.255 (Exhibit KOR-1).

[61] USITC Report, pp. 42-43 (Exhibit KOR-1).

28. The domestic industry's declining prices on all six pricing products, coupled with increasing costs, placed the industry in a cost-price squeeze that resulted in worsening operating and net losses.[62] During a time when the domestic industry should have thrived, due to strong demand growth and competitive new products, the industry instead suffered financial losses that worsened to the point where domestic producers curtailed their capital and R&D expenditures.[63] The Commission thus reasonably concluded that the pervasively lower prices of imported LRWs forced domestic producers to defend their sales by lowing their prices at a time of increasing costs, resulting in the industry's cost-price squeeze. The Commission did not merely consider "what is happening to domestic prices," as Korea contends, but rather fully explained how increasing volumes of low-priced imports caused the domestic industry's declining prices and cost-price squeeze. This analysis demonstrated, with a thorough explanation, a coincidence between subject imports and the industry's dire and worsening financial losses and cuts to capital and R&D spending.

29. The Commission also fully explained why neither covered parts nor agitator-based LRWs detracted from the causal link between subject imports and the domestic industry's serious injury, contrary to Korea's claim that the Commission overlooked these factors. In examining causation, the Commission reasonably focused its analysis on competition between imported and domestic LRWs, having recognized that imports of covered parts do not compete with domestic

[62] USITC Report, pp. 42-43 (Exhibit KOR-1).

[63] USITC Report, pp. 33, 44 (Exhibit KOR-1).

covered parts.[64] In fact, no party to the investigation ever argued that the increase in subject imports during the period of investigation consisted of covered parts rather than LRWs or that imports of covered parts otherwise attenuated competition between subject imports and the domestic industry.

30. The Commission also fully explained that even though agitator-based top load LRWs accounted for half of domestic industry shipments but few imports, import competition was not significantly attenuated.[65] As the Commission observed, half of domestic industry shipments consisted of front load and impeller-based top load LRWs that competed directly with imported LRWs, and consumers regularly cross-shopped the different types of LRWs.[66] Further, the imported LRWs competed at all price points in the U.S. market. In fact, the evidence incorporated from the recent antidumping duty investigation of LRWs from China showed that the more full-featured imported impeller-based top load LRWs were priced lower than domestic agitator-based top load LRWs.[67] The Commission also explained that the domestic industry's production of agitator-based top load LRWs had not prevented the industry from producing a full range of innovative front load and impeller-based top load LRWs that purchasers found to be comparable to subject imports in terms of nearly all non-price factors.[68]

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[64] USITC Report, p. 19 (Exhibit KOR-1).

[65] *See* USITC Report, p. 32 (Exhibit KOR-1).

[66] *See* USITC Report, p. 32 (Exhibit KOR-1).

[67] *See* USITC Report, p. 32 & n.202 (Exhibit KOR-1).

[68] *See* USITC Report, p. 50 (Exhibit KOR-1).

31. Korea's arguments concerning non-attribution are also unavailing. The Commission explained why neither of the alternative causes of injury argued by respondents could have contributed to the injury experienced by the domestic industry. Rejecting respondents' theory that profits on dryers compensated for losses on matching washers sold for the same price, the Commission explained that the focus of its injury analysis was the domestic industry producing LRWs, not dryers, and that the record did not support respondents' theory, for the reasons we have already discussed.[69] The Commission also rejected respondents' argument that non-price factors caused consumers to favor imports over domestic LRWs because the record showed that imported and domestic LRWs were comparable in terms of non-price factors.[70] Thus, Korea's argument that "the USITC's finding makes only a *relative* finding of injury … {and} suggests that certain 'other causes' … may have contributed to the alleged serious injury of the domestic industry, but considers that these were not 'more important' than increased imports,"[71] is inapposite. The ITC examined whether there were other causes – namely those put forward by respondents, as just discussed – and found there were none.

32. Having found that the factors argued by respondents caused no injury to the domestic industry, there was nothing for the Commission to separate and distinguish from the injury caused by increased imports. Thus, even aside from the lack of any "separate and distinguish"

[69] *See* USITC Report, pp. 45-47 (Exhibit KOR-1).

[70] *See* USITC Report, pp. 47-51 (Exhibit KOR-1).

[71] Korea first written submission, para. 421.

obligation in Article 4.2 of the Safeguards Agreement,[72] Korea's claim fails on the facts of this investigation. Korea's assertion that "there is no explanation provided by the USITC of how it separated and distinguished the injury caused by these other factors from the injury allegedly caused by the increased imports,"[73] is nonsensical. There were no other factors.[74] Accordingly, the Commission reasonably concluded that the *only* explanation for the industry's worsening financial losses was the significant increase in low-priced imports during the period.[75]

## III. CONCLUSION

33. Based on the evidence and the law, Korea has failed to meet its burden to show that the safeguard measure on washers is inconsistent with U.S. obligations under the GATT 1994 and the Safeguards Agreement. This concludes the U.S. opening statement. We thank you and we look forward to responding to your questions to the extent practicable, in light of the limitations of this virtual format. Thank you.

[72] *See* U.S. first written submission, paras. 313-16.

[73] Korea first written submission, para. 421.

[74] U.S. first written submission, paras. 313-16.

[75] USITC Report, pp. 38, 44 (Exhibit KOR-1).