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

**(DS546)**

**OPENING STATEMENT OF THE UNITED STATES OF AMERICA**

**AT THE PANEL'S SECOND VIDEOCONFERENCE WITH THE PARTIES**

**June 14, 2021**

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| *EC – Asbestos (AB)* | Appellate Body Report, *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, WT/DS135/AB/R, adopted 5 April 2001 |
| *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 |
| *US – Gasoline (AB)* | Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, adopted 20 May 1996 |
| *US – Lamb (AB)* | Appellate Body Report, *United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia*, WT/DS177/AB/R, WT/DS178/AB/R, adopted 16 May 2001 |
| *US – Line Pipe (AB)* | Appellate Body Report, *United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea*, WT/DS202/AB/R, adopted 8 March 2002 |
| *US – Tyres (China) (Panel)* | Panel Report, *United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China*, WT/DS399/R, adopted 5 October 2011, upheld by Appellate Body Report WT/DS399/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. The United States appreciates this opportunity to present its views on the issues in this dispute.

2. After presenting lengthy written submissions, statements at the Panel's first videoconference with the parties, and answers to the Panel's first set of questions, Korea has failed to show how the U.S. safeguard measure on large residential washers (washers safeguard measure) is inconsistent with GATT 1994[1] and the Safeguards Agreement.[2] Instead, Korea continues to voice positions that have no foundation in the text of these agreements or the record evidence. Applying such a misguided approach would not only be inconsistent with the Safeguards Agreement, but would also, as we have discussed previously, create a "procedural minefield" where no Member could, as a practical matter, use a safeguard measure.[3] The United States respectfully requests that the Panel reject Korea's attempt to rewrite the Safeguards Agreement and GATT 1994 through this dispute settlement process.

3. As the Panel is well familiar with both parties' submissions, we will not, in this statement, repeat every rebuttal to rebut Korea's erroneous arguments. Instead, we will focus on two central issues. First, we will discuss Article XIX:1 of the GATT 1994 and explain how the United States properly enacted a safeguard measure when increased imports of large residential

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[1] General Agreement on Tariffs and Trade 1994.

[2] Agreement on Safeguards.

[3] U.S. Opening Statement from the First Virtual Meeting, para. 3.

washers were a result of unforeseen developments and of the effect of the obligations incurred. Second, we will address Korea's erroneous argument that the U.S. International Trade Commission's (Commission) findings fail to satisfy obligations regarding the finding of a serious injury.

## I. UNFORESEEN DEVELOPMENTS AND THE OBLIGATIONS INCURRED

4. 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. As we explained in our second written submission, Article 3.1 of the Safeguards Agreement cannot be read to require the competent authorities to make findings as to unforeseen developments and obligations incurred.[4]

5. The plain language of GATT 1994 Article XIX:1(a) shows that the competent authorities investigate the "conditions" of increased imports as to cause or threaten serious injury. Those "conditions" are the subject of the disciplines of Safeguards Agreement Articles 2, 3, and 4. The competent authorities address these "conditions" as part of the obligation under Article 3.1 to "publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law."

[4] U.S. second written submission, paras. 11-15.

6. On the other hand, as we also described in our second written submission,[5] the Safeguards Agreement and GATT 1994 Article XIX:1 do not list unforeseen developments and obligations as "conditions." Therefore, there is no obligation for the competent authorities to address those issues in their findings regarding increased imports, serious injury, and causation.[6]

7. The United States notes that Korea complains that the United States did not seek a "supplemental report" on unforeseen developments.[7] For similar reasons, this argument also fails. As described at the outset, as there is no obligation for the competent authorities to include unforeseen developments in their report, there is no obligation to seek a "supplemental" report containing findings on those issues.

8. As demonstrated in the U.S. submissions, Korea's attempt to parse out excerpts from panel and appellate body reports or the placement of the U.S. tariff concessions[8] do not alter the meaning of the text or the factual record.[9] Both support the position that the washers safeguard measure is consistent with GATT XIX:1 and the Safeguards Agreement regarding unforeseen developments and of the effect of the obligations incurred.

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[5] U.S. second written submission, para. 12.

[6] U.S. first written submission, paras. 49-50 (discussing *Korea – Dairy (AB)* and *United States – Line Pipe (AB)*).

[7] Korea second written submission, paras. 50, 68.

[8] U.S. second written submission, paras. 19-22.

[9] U.S. second written submission, paras. 16-18.

## II. SERIOUS INJURY DETERMINATION

9. The United States will next address Korea's claims concerning the Commission's determination that increased imports seriously injured the domestic industry. In its second written submission, Korea largely recapitulates the arguments made in its first written submission and at the first virtual exchange, and the arguments remain unpersuasive. Once again, the United States does not attempt to address all of Korea's arguments here, but will first focus on some key points. Korea argues: (1) that competent authorities may only find a domestic article "like" a product under investigation if the two articles are also "directly competitive" with one another, ignoring the conjunction "or" and rendering the term "like" superfluous;[10] (2) that articles within the domestic like product must perfectly match the articles within the product under investigation;[11] and (3) that competent authorities must address certain issues in particular sections of their reports. None of these assertions is found in the Safeguards Agreement, and Korea's arguments on these bases are accordingly invalid.[12]

10. First, as the United States has explained, the Commission complied with Articles 2.1, 3.1, 4.1(c) and 4.2 in defining the domestic industry. In its second written submission, Korea repeats its argument that the Commission should have excluded covered parts and belt driven washers

[10] Korea's second written submission, para. 138.

[11] Korea's second written submission, para. 21.

[12] Korea's second written submission, para. 155.

from its definition of the domestic like product, even though the record evidence showed they were like imported covered parts and LRWs.[13] Under Articles 2.1 and 4.1(c), however, the Commission was required to define the domestic industry as "producers as a whole of the like or directly competitive products." The Commission found that domestically produced covered parts were like imported covered parts, and Korea has not challenged the factual basis of this finding.[14] The Commission also agreed with respondents Samsung and LG that domestically produced belt driven washers were virtually indistinguishable from imported LRWs.[15] Based on these factual findings, the Commission reasonably defined the domestic industry to include producers of covered parts and belt driven washers.

11. As the United States explained in its second written submission, Korea's argument that the Commission could not define the domestic like product to include domestically produced covered parts because they were not directly competitive with imported covered parts would read the word "like" out of Articles 2.1 and 4.1(c).[16] Those articles permit competent authorities to define the domestic industry to include producers of "like or directly competitive" articles, using the disjunctive "or" to indicate that domestically produced articles like the products under investigation need not be directly competitive with them. If "like" were merely a subset of

[13] *See* Korea's second written submission, paras. 127, 143.

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

[15] *See* U.S. second written submission, paras. 32-33.

[16] *See* U.S. second written submission, paras. 47-50.

"directly competitive," as Korea argues, competent authorities could always define the domestic industry as producers of directly competitive articles. The term "like" would be rendered superfluous, contrary to customary rules for the interpretation of public international law.[17] As the United States explained in its second written submission, the meaning of the term "like" as used in the context of Article III:2 of GATT 1994, on which Korea relies, makes no sense in the context of the Safeguards Agreement.[18]

12. The Commission's finding that domestic covered parts were like imported covered parts was consistent with the dictionary definition of the word "like" to mean "the same or nearly the same (as in nature, appearance, or quantity)," and the U.S. Congresses' understanding of the term to mean "substantially identical in inherent or intrinsic characteristics (*i.e.*, materials from which made, appearance, quality, texture, etc.)."[19] These factors are relevant to an assessment of likeness and have been recognized as such in other instances as well.[20] The Panel should therefore reject Korea's argument and find the Commission's definition of the domestic like product to include covered parts consistent with the Safeguards Agreement.

[17] *US – Gasoline (AB)*, p. 23.

[18] U.S. second written submission, paras. 48-50.

[19] *See* U.S. second written submission, paras. 39-41.

[20] *See* U.S. first written submission, para. 151; *see, e.g.*, *EC – Asbestos (AB)*, para. 101.

13. Nor did the Commission "gerrymander" the domestic like product definition, as Korea contends.[21] As Korea recognizes, the Safeguards Agreement contains no obligations concerning a competent authority's definition of the product under consideration.[22] In this case, the Commission reasonably defined the product under investigation as LRWs and covered parts, consistent with the scope of Whirlpool's petition and the scope published in the Commission's institution notice in the *Federal Register*.[23] Based on this definition of the product under consideration, the Commission was required to define the domestic industry as producers as a whole of all articles like imported LRWs and covered parts. As all parties to the Commission's investigation agreed, the record evidence showed that domestic belt driven washers were like imported LRWs.[24] The Commission was therefore required to include them within its definition of the domestic like product, together with domestically produced LRWs and covered parts.

14. The Panel should also reject Korea's effort to invent a new obligation that the product types within a domestic like product must "match" the product types within the product under investigation.[25] Under Articles 2.1 and 4.1(c), competent authorities must define the domestic

[21] *See* U.S. first written submission, para. 151; *EC – Asbestos (AB)*, para. 101.

[22] *See* Korea's second written submission, para. 129.

[23] *See* U.S. first written submission, para. 198.

[24] *See* U.S. first written submission, para. 162.

[25] Korea's second written submission, para. 21.

like product to include product types "like or directly competitive" with the imported products under consideration, not product types that perfectly "match" the imported products.

15. Similarly unavailing is Korea's repeated argument that the Commission did not evaluate the rate and amount of the increase in subject import volume or the share of the domestic market taken by subject imports because the Commission's evaluation of the factors was not included in the serious injury section of its report.[26] Nothing under the Safeguards Agreement dictates the organization of a competent authority's report.[27] The Commission reasonably evaluated these factors in the causation section of its report because the significant increase in subject import volume and market share was more relevant to its analysis of causation than to its analysis of the domestic industry's performance.[28] In the causation section of its report, the Commission provided a reasoned and adequate explanation for how the significant increase in the volume and market share of low-priced subject imports seriously injured the domestic industry, even though the industry was able to maintain a relatively stable market share.[29] There is no merit to Korea's repeated assertion that the Commission somehow failed to evaluate these factors.

16. Next, the United States will focus on some examples of Korea's mischaracterization of the Commission's analysis. Korea argues that the Commission: (1) rejected respondents' "joint

[26] Korea's second written submission, para. 155.

[27] *See* U.S. first written submission, paras. 232-36.

[28] *See* U.S. first written submission, paras. 232-36.

[29] *See* U.S. second written submission, para. 83; *See* USITC Report, pp. 38, 40, 43-44 (Exhibit KOR-1).

pricing" theory solely on the basis of the testimony of Whirlpool's Chairman and CEO;[30] (2) overlooked respondents' innovation argument; (3) based its finding that subject imports depressed and suppressed domestic prices "on a mere price decrease;"[31] (4) did not make a separate serious injury determination with respect to covered parts; (5) failed to demonstrate a causal link between increased imports and serious injury; and (6) neglected to conduct a non-attribution analysis.[32] The United States has firmly refuted all of these assertions based on objective record evidence.

17. The Commission provided a reasoned an adequate explanation for its rejection of respondents' illogical "joint pricing" theory, contrary to Korea's argument that the Commission rejected the argument based solely on the testimony of Whirlpool's Chairman and CEO.[33] In rejecting this argument, the Commission relied not only on the highly relevant and persuasive sworn testimony of Whirlpool's Chairman and CEO that Whirlpool did not compensate for losses on LRWs with profits on matching dryers[34] – it also relied on GE's statement that it imported dryers pursuant to a contract manufacturing agreement that precluded outsize profits on dryers.[35] It also thoroughly examined the evidence proffered by respondents, and excerpted by

[30] Korea's second written submission, paras. 176, 271.

[31] Korea's second written submission, para. 240.

[32] Korea's second written submission, para. 277.

[33] Korea's second written submission, paras. 176, 271.

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

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

Korea in its second written submission, and found that none of it rebutted the sworn testimony of the Whirlpool and GE officials themselves that they did not engage in "joint pricing" of LRWs and matching dryers.[36] The Commission also explained that domestic producers could not have compensated for their increasing losses on sales of LRWs with increasing profits on sales of matching dryers because dryer prices would have declined with LRW prices under respondents' theory.[37] Given that the record did not support respondents' "joint pricing" theory, and the fact that the domestic like product did not include dryers, the Commission reasonably evaluated the domestic industry's increasing financial losses on sales of LRWs.

18. Furthermore, the Commission provided a reasoned and adequate explanation for its rejection of the respondents' argument that differences in innovation explained the increase in subject import volume and market share, contrary to Korea's assertion that the Commission overlooked the argument.[38] As the United States has explained, the Commission found that domestically produced LRWs were comparable to subject imports in terms of non-price factors, including innovation.[39] Indeed, the Commission found that domestic producers had made substantial investments to develop new front load and impeller-based top load LRWs that were ranked among the best LRWs available by Consumer Reports and Reviewed.com – both

[36] USITC Report, p. 46 n.277 (citing Hearing Tr., 157 (Tubman) (Exhibit US-2), 160-61 (Tubman), 162 (Pepe)) (Exhibit KOR-1); *see also* U.S. first written submission, paras. 321-23.

[37] USITC Report, p. 36 n.217, 46-47 (Exhibit KOR-1).

[38] Korea's second written submission, para. 204.

[39] U.S. first written submission, paras. 264-68.

influential third party reviewers.[40] Expressly rejecting respondents' innovation argument, the Commission found the argument "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 innovative."[41] Korea did not contest the factual basis of the Commission's finding that that domestic and imported LRWs were comparable in terms of non-price factors, with a moderate to high degree of substitutability, when the Panel invited Korea to do so.[42] Thus, contrary to Korea's argument, the evidence in the record supports the Commission's finding that the increasing volume and market share of subject imports was driven by low prices and not innovation.[43]

19. The Commission also demonstrated that the significant and increasing volume of low-priced subject imports caused the domestic industry's declining performance by depressing and suppressing domestic like product prices, directly resulting in the industry's cost-price squeeze and worsening financial losses. Nothing under the Safeguards Agreement dictates that increased imports may only injure a domestic industry by capturing market share, as Korea suggests.[44] In this case, the Commission explained that domestic producers defended their market share against increasing volumes of subject imports that were pervasively priced lower than comparable

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

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

[42] Korea Resp., para. 159.

[43] *See* U.S. second written submission, paras. 112-15.

[44] *See* Korea's second written submission, paras. 228-29.

domestic LRWs by reducing their prices.[45] It was the significant increase in subject import volume and market share in combination with the pervasively lower prices of the subject imports that seriously injured the domestic industry. Thus, contrary to Korea's arguments, the Commission provided a 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.

20. As the United States has explained, the Commission based its finding that subject imports depressed and suppressed domestic prices on a wide range of objective evidence,[46] not on "a mere price decrease" as Korea contends.[47] First, the Commission provided a reasoned and adequate explanation of its finding that there was a moderate to high degree of substitutability between subject imports and the domestic like product, in a detailed analysis spanning five pages of its report.[48] Contrary to Korea's argument that the Commission overlooked non-price factors, the Commission considered each and every non-price factor argued by respondents, from innovation to mold, and explained that the evidence did not support respondents' argument that non-price differences favored subject imports over domestic LRWs.[49] To the contrary, as the Commission observed, all responding purchasers reported that imported and domestic LRWs

[45] USITC Report, pp. 40-44 (Exhibit KOR-1).

[46] *See* U.S. first written submission, paras. 286-97; U.S. second written submission, paras. 97-104.

[47] Korea's second written submission, para. 240.

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

[49] USITC Report, pp. 30-32 (Exhibit KOR-1).

were always or usually interchangeable and most reported that domestic LRWs were comparable or superior to subject imports with respect to 23 non-price factors.[50]

21. The Commission based its finding that imported LRWs were pervasively priced lower than domestic LRWs on pricing data collected from importers and domestic producers on sales of six strictly defined pricing products that were representative of competition in the U.S. market. As the Commission explained, respondents themselves recommended five of the six pricing products, and the pricing data collected on sales of the products covered an appreciable percentage of domestic producer and importer U.S. shipments, well within the range that the Commission had found reliable in previous investigations.[51] Furthermore, these types of LRW products, specifically impeller-based top load LRWs and front load LRWs, accounted for "virtually all" subject imports and around half of domestic industry shipments in 2016,[52] and were the very types of LRWs in which the domestic industry had invested so heavily during the period of investigation.[53] Against this background, the Commission reasonably found that the pricing data provided a reliable basis for apples-to-apples price comparisons.

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

[51] USITC Report, p. 41 & n.255 (Exhibit KOR-1).

[52] USITC Report, pp. 24-25, 32, 50 (Exhibit KOR-1).

[53] USITC Report, pp. 32, 50 (Exhibit KOR-1).

22. The absence of a pricing product corresponding to agitator-based top load LRWs did not render the Commission's pricing data any less representative,[54] as the United States has explained.[55] Given the Commission's finding that "agitator-based [top load] LRWs accounted for . . . few import shipments . . . ,"[56] the definition of a pricing product corresponding to agitator-based LRWs would have increased the reporting burden on domestic producers without yielding either applies-to-apples price comparisons or increased coverage of importer shipments.

23. Nor did the Commission need pricing data on agitator-based top load LRWs to provide a reasoned and adequate explanation for its finding that "imported LRWs competed with domestically produced LRWs in all segments of the U.S. market."[57] In particular, the Commission found that consumers cross-shopped different types of LRWs; that subject imports competed at nearly all price points, including those of agitator-based TL LRWs; and that subject imports of impeller-based top load LRWs pervasively undersold comparable domestically produced agitator-based LRWs in the recent antidumping duty investigation of *LRWs from China*.[58] Given that *LRWs from China* had the same scope as the safeguard investigation and a period of investigation that overlapped with the period examined in the safeguard investigation,

[54] Korea responses, para. 190.

[55] USITC Report, p. 41 n.255 (Exhibit KOR-1); *see* U.S. responses, paras. 64-67; U.S. second written submission, para. 101.

[56] USITC Report, p. 32 (Exhibit KOR-1).

[57] USITC Report, p. 32 (Exhibit KOR-1); *see also* U.S. responses, paras. 51-56; U.S. second written submission, paras. 102-03.

[58] USITC Report, p.32 (Exhibit KOR-1).

these price comparisons from *LRWs from China* were highly relevant to the Commission's analysis of subject import price effects in the safeguard investigation.[59]

24. Korea's new argument that respondents advocated a completely different pricing methodology, and only endorsed the Commission's pricing product definitions "in the alternative," is unpersuasive.[60] The Safeguards Agreement does not require competent authorities to analyze subject import price effects, much less prescribe a particular price comparison methodology. Competent authorities therefore have the discretion to adopt reasonable methodologies to analyze the impact of subject imports on a domestic industry's prices.[61] As the United States has pointed out, the Commission's price comparison methodology, based upon pricing data collected on the basis of strictly-defined pricing products, was considered by the panel in *US – Tyres* as "a proper basis for comparing prices."[62] Moreover, the Commission has used the same price comparison methodology in antidumping, countervailing duty, and safeguard investigations for decades. Having participated as respondents in two antidumping/countervailing duty investigations involving LRWs before the Commission, LG and Samsung were aware that the Commission would be utilizing its normal price comparison methodology, as it had in previous investigations of LRWs, when they

[59] *See* USITC Report, p. 20 n.98, I-9 (Exhibit KOR-1).

[60] *See* Korea's second written submission, para. 257.

[61] *See US – Lamb (AB)*, para. 52.

[62] *See* U.S. first written submission, para. 304; *US – Tyres (Panel)*, para. 7.255.

endorsed four of the six pricing products in their comments on the draft questionnaires.[63] Respondents and petitioners recommended a fifth product in *LRWs from China* that the Commission adopted for the safeguard investigation.[64] The Commission reasonably considered respondents' recommendation of five of the six pricing products, as well as the appreciable coverage afforded by pricing product data, as evidence that the products were representative of competition in the U.S. market.[65]

25. Based on these pricing data and other evidence, the Commission provided a reasoned and adequate explanation for how the significant and increasing volumes of low-priced subject imports depressed and suppressed prices for the domestic like product. Based on the moderately high degree of substitutability between domestically produced LRWs and subject imports and the importance of price to purchasers, the Commission found that increasing volumes of low-priced subject imports forced domestic producers to defend their market share by reducing their prices, thereby depressing and suppressing domestic like product prices.[66] The record showed that the domestic industry's sales prices declined on all six pricing products during the period of investigation, despite increasing demand and production costs.[67] As further evidence that increased imports caused these price declines, the Commission relied on evidence that low-

[63] USITC Report, p. 41 & n.255 (Exhibit KOR-1).

[64] USITC Report, p. 41 n.255 (Exhibit KOR-1).

[65] USITC Report, p. 41 (Exhibit KOR-1).

[66] USITC Report, p. 40, 42-43 (Exhibit KOR-1).

[67] USITC Report, pp. 43, V-28 (Exhibit KOR-1).

priced subject import competition forced Whirlpool to cut prices to a purchaser in 2014 and to retract announced price increases in 2012 and 2014, after retailers used low-priced subject imports in negotiations with Whirlpool.[68]

26. The Commission found that the domestic industry's declining prices and increasing COGS to net sales ratio directly resulted in the industry's worsening operating and net losses during the period of investigation.[69] Given strong demand growth, rising costs, and the competitiveness of the domestic industry's LRWs, the Commission reasonably concluded that the significant increase in low-priced subject imports was the only explanation for the industry's declining prices, increasing COGS to net sales ratio, and increasing financial losses.[70]

27. The Commission was not required to render a separate serious injury determination with respect to covered parts, as Korea argues.[71] Having defined a single domestic industry, the Commission was only required to make a single serious injury determination as provided in Article 2.1 of the Safeguards Agreement. Indeed, the Commission found that that there was no separate domestic industry producing covered parts, but rather a single domestic industry producing covered parts primarily for assembly into LRWs in vertically integrated production

[68] USITC Report, pp. 43-44 (Exhibit KOR-1).

[69] USITC Report, pp. 33-34, 38 (Exhibit KOR-1).

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

[71] Korea's second written submission, para. 262.

facilities.[72] Given the vertically integrated nature of covered parts and LRW production by a single domestic industry, the Commission's finding that increased imports seriously injured the domestic industry producing LRWs also extended to domestic production of covered parts for assembly into the same LRWs.[73] Furthermore, the Commission found that the inclusion of covered parts in the safeguard measure was necessary to both remedy the serious injury and facilitate adjustment.[74] Thus, the Commission's treatment of covered parts in its determination was fully consistent with its obligations under the Safeguards Agreement.

28. Next, the United States has demonstrated that 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). None of Korea's challenges to the Commission's causal link analysis has merit. Contrary to Korea's argument, the Commission found a clear coincidence between the significant increase in low-priced imports of LRWs and the domestic industry's worsening financial losses, cuts to capital investment and research and development expenditures, and other negative trends.[75] The Commission found that subject import volume

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

[73] *See* U.S. second written submission, para. 55.

[74] *See* U.S. second written submission, para. 57.

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

and market share peaked in 2016, when the domestic industry's losses peaked and the industry's capital investment and research and development expenditures were slashed.[76]

29. Finally, as the United States has explained, the Commission thoroughly analyzed respondents' arguments that the domestic industry's injury resulted from the joint pricing of LRWs and matching dryers and the deterioration of U.S. brands and found the arguments unsupported by the record.[77] Korea's challenge to the Commission's non-attribution analysis is largely based on a fundamental mischaracterization of the Commission's findings. The Commission did not find that the alternative causes of injury argued by respondents might have caused some injury, as Korea claims, but that they could not have caused any injury at all.[78] As the United States explained in its second written submission, Korea's argument is based on the Commission's use of statutory language that in no way altered its finding that neither alternative cause of injury argued by respondents was supported by the record.[79] Having found that increased imports were the "only explanation" for the domestic industry's serious injury, the Commission fully complied with the non-attribution language in Article 4.2(b) of the Safeguards Agreement.[80]

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[76] *See* USITC Report, pp. 33, 36, 38-39 (Exhibit KOR-1).

[77] USITC Report, pp. 45-51 (Exhibit KOR-1); U.S. first written submission, paras. 311-37; U.S. responses, paras. 75-80; U.S. second written submission, paras. 105-16.

[78] Korea's second written submission, paras. 268-69.

[79] U.S. second written submission, paras. 106-08.

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

## III. CONCLUSION

30. Based on the evidence and the relevant provisions of the covered agreements, 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. Thank you.