

February 1, 2019

H.E. Ms Paik Ji-ah  
Ambassador  
Permanent Mission of the Republic of Korea  
Avenue de l'Ariana 1  
1211 Genève

Dear Madam Ambassador,

I am writing in connection with the dispute settlement proceedings conducted pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”) concerning *United States – Anti-Dumping and Countervailing Duties on Certain Products and the Use of Facts Available* (DS539), to which Korea is a party.

On instructions from my authorities, I would like to inquire whether Korea agrees to make its statements to the Panel and Appellate Body (in the event of any appeal) open to observation by other WTO Members and the public. DSU Article 18.2 provides that every WTO Member has the right to make public statements of its own position. The United States will make its statements publicly available and will request each WTO adjudicator to make arrangements so the public may observe U.S. statements during any substantive meeting in this dispute. The opening of meetings to public observation would serve to enhance WTO Members’ and the public’s understanding of the dispute settlement system.

I would note that in the context of the Korea-US FTA, the parties have agreed that all panel meetings would be open to public observation.<sup>1</sup> In addition, Korea has agreed to participate in several other dispute settlement mechanisms that provide for open hearings, such

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<sup>1</sup> 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).

as under the EU-Korea FTA,<sup>2</sup> the Canada-Korea FTA,<sup>3</sup> the Korea-New Zealand FTA,<sup>4</sup> the International Court of Justice,<sup>5</sup> the International Criminal Court,<sup>6</sup> and the International Tribunal for the Law of the Sea.<sup>7</sup> We do not see any reason why Korea would consider the WTO dispute settlement system should be less transparent than these other systems in which Korea participates.

I also would inquire whether Korea plans to make its submissions to the Panel in this dispute available to the public. If Korea intends to make its submissions available to the public, please so advise at your earliest convenience. If any submission is not to be made public, then pursuant to Article 18.2 of the DSU, please provide us a non-confidential summary of the submission promptly upon filing the submission. As you will recall, Article 18.2 of the DSU provides that “[a] party to a dispute shall also, upon request of a Member, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.” Please consider this request to be applicable to all submissions to the Panel as well as any submission to the Appellate Body in the event of any appeal in this dispute.

I look forward to receiving your response to these inquiries and request.

Sincerely,

Dennis C. Shea  
Ambassador

cc: Ms. Marta Lemme, Chairperson of the Panel

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<sup>2</sup> 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.”).

<sup>3</sup> 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”).

<sup>4</sup> 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.”)

<sup>5</sup> Statute of the International Court of Justice, Article 46 (“The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.”).

<sup>6</sup> Rome Statute of the International Criminal Court, Article 64.7 (“The trial shall be held in public.”).

<sup>7</sup> Statute of the International Tribunal for the Law of the Sea, Article 26.2 (“The hearing shall be public, unless the Tribunal decides otherwise or unless the parties demand that the public be not admitted.”).