

## **WTO Panel Report on Korea–Japan Dispute over Anti–Dumping Duties on Stainless Steel Bars**

- ▶ The Panel rejected Japan’s key complaints but ruled that Korea partially violated the anti–dumping rules based on issues not included in Japan’s complaint.
- ▶ The government plans to appeal the ruling due to legal errors contained therein and will discuss a fair alternative appeals process with the Japanese side given the dysfunctional state of the Appellate Body.

□ The World Trade Organization (WTO) released a Panel Report that claims parts of Korea’s anti-dumping measures\* on Japanese stainless steel bars (SSBs) are inconsistent with the WTO Anti-Dumping (AD) agreement on November 30.

\* Korea has imposed a 15.39% tariff on Japanese SSB imports as a result of anti-dumping measures since 2017, after the third sunset review of measures on SSBs imported from Japan, India, and Spain.

□ The government has imposed anti-dumping duties\* on imported SSBs, including those from Japan since 2004. Japan filed a complaint on June 18, 2018, claiming that Japanese SSB products are better quality and more reliable than domestic like products. On the basis of such an assertion, Japan further claimed that their SSBs do not directly compete with Korean SSBs because the two are substantially different.

\* The value of imported Japanese products subject to anti-dumping duties totaled KRW 4.6 billion in 2019.

□ The Panel ruled in favor of Korea with respect to many of the key complaints\* from Japan’s request to establish a dispute settlement panel, but ruled against Korea in some issues that Japan had not raised.

\* Regarding the allegation that there exists a substantial difference between

Japanese and Korean SSBs and that the Korea Trade Commission (KTC) passed on the damage, which is caused by unrelated factors other than Japanese SSBs, to the Japanese SSBs.

- In particular, with respect to the key claim from the Japanese side that the use of a cumulative assessment of the effects of imports from Japan and India despite the difference among Japanese, Indian, and Korean SSBs is unfair,
  - the Panel, while rejecting Japan's claim about the substantial difference between Japanese SSBs and domestic like products, artificially separated it from the consistency of cumulative assessment, which is a related issue,
  - and avoided judgment on the legality of the effects of the cumulative assessment of Japanese and Indian imports (e.g., price) for the reasons of judicial economy\*.

\* The Panel's authority to refuse to rule on claims not directly related to settling the dispute in question for the sake of efficiency

- Subsequently, the Panel ruled that Korea violated the rules, taking issue with the Korea Trade Commission(KTC)'s failure to consider that the prices of Japanese SSBs, not measured cumulatively, are higher than those of domestic SSBs (not included in Japan's complaints).
  - However, the prices for Japanese and Indian SSBs, measured cumulatively, are lower than those of domestic like products, and if cumulative analyses are appropriate, this should not be an issue.

In addition, as the Panel is believed to have committed a number of legal errors\*, the government will file an appeal in

accordance with the WTO dispute settlement procedures.

\* Exceeding its authority by ruling on issues outside the complaint, assuming that a price difference should be considered with the application of price effects in the original investigation even though the anti-dumping measures were the results of sunset review determinations.

○ However, the government plans to seek a reasonable appeal process through discussion with the Japanese side, given that it is currently impossible for the Appellate Body Division to hear appeals.

□ Further, until a final decision is made under the dispute settlement procedure at the WTO, Korea will maintain anti-dumping measures on Japanese SSBs.

**【Attachment】** 1. Major Findings in the Panel Report

Issue		Claim	Panel Decision
Substantive issues	Continuation or recurrence of dumping and injury (Article 11.3 of the AD Agreement)	Whether it was appropriate for the KTC not to consider the price difference between the Japanese dumped imports and domestic like products	Inconsistent
		Whether the method used by the KTC to analyze Japanese exporters' production capacities was appropriate	Inconsistent
		Whether it was appropriate for the KTC not to consider the difference between Japanese and domestic producers with respect to SSB products	Consistent (7.109 of Report)
		Whether it was appropriate for the KTC not to consider other factors (production costs, demand, etc.)	Consistent
	Recourse to "facts available" (Article 6.8 of the AD Agreement)	Whether it was appropriate for the KTC to use data by the International Stainless Steel Forum (ISSF) when examining production capacity, ignoring data from Japanese exporters	Inconsistent
Procedural issues	Confidentiality (Article 6.5 of the AD Agreement)	Whether the KTC has obligations to show a "good cause" for granting confidential treatment	Consistent (7.210 of Report)
		Whether it was appropriate for the KTC not to show a specific "good cause" when treating 102 specific instances with confidence	Inconsistent

※ On the key issue of whether the KTC's cumulative measurement of Japanese, Indian, and Spanish imports for its likelihood-of-injury assessment is consistent with Article 11.3 of the AD Agreement, the Panel avoided making a decision and exercised judicial economy. (8.1.b.v of Report)