

7.236. Fourth, Japan claims that the exporters were not provided with a public notice stating the findings and all relevant information regarding matters of fact and law in sufficient detail as required by Articles 12.2, 12.2.2, and 12.3 of the Anti-Dumping Agreement.⁷⁰⁰ Japan contends that it is not clear whether the KTC's final resolution, the OTI's final report, or the Ministry of Strategy and Finance's final report constituted public notice to the interested parties.⁷⁰¹ Regardless, Japan argues that none of these documents provide sufficient detail in relation to a range of the KIA's findings.⁷⁰² Korea responds that the Ministry of Strategy and Finance's final report constituted public notice and contained the KTC's final determination and the OTI's final report.⁷⁰³ Korea continues that this public notice fully complied with the disclosure obligations of Articles 12.2, 12.2.2, and 12.3 of the Anti-Dumping Agreement.⁷⁰⁴

7.237. We consider it appropriate to exercise judicial economy over these claims for the same reasons as with respect to Japan's "essential facts" claims under Article 6.9. In particular, as we have already found the KIA's likelihood-of-injury determination to be inconsistent with Article 11.3, any fresh evaluation of the facts by the KIA as a consequence of this Report would necessitate compliance with the disciplines contained in Articles 12.2, 12.2.2, and 12.3 of the Anti-Dumping Agreement. Accordingly, a finding on Japan's claims under Articles 12.2, 12.2.2, and 12.3 of the Anti-Dumping Agreement would add nothing to the manner in which Korea chooses to comply with the inconsistencies that we have already found under Article 11.3 of the Anti-Dumping Agreement.

7.238. Fifth, Japan claims that Korea acted inconsistently with Articles 6.5.1 and 11.4 of the Anti-Dumping Agreement in respect of 80 instances in the documents as identified in the annex.⁷⁰⁵ Japan argues that the KIA acted inconsistently with Articles 6.5.1 and 11.4 of the Anti-Dumping Agreement because the KIA failed to ensure the provision of non-confidential summaries without reference to exceptional circumstances justifying such failure.⁷⁰⁶ Japan further argues that, to the extent non-confidential summaries were provided, such summaries were not sufficiently detailed.⁷⁰⁷ Korea rejects Japan's argument that the KIA acted inconsistently with Articles 6.5.1 and 11.4 of the Anti-Dumping Agreement.⁷⁰⁸

7.239. We consider it appropriate to exercise judicial economy over Japan's claims with respect to Articles 6.5.1 and 11.4. We have already determined that the KIA acted inconsistently with Article 6.5 with respect to its confidential treatment of this same information.⁷⁰⁹ This finding makes it unnecessary to consider whether the KIA complied with Articles 6.5.1 and 11.4 on the provision of non-confidential summaries for that information. We thus exercise judicial economy in respect of these claims in the interest of the efficient resolution of this dispute.

8 CONCLUSIONS AND RECOMMENDATION

8.1. For the reasons set forth in this Report, the Panel concludes as follows:

- a. With respect to Korea's request for a preliminary ruling under Articles 4.4 and 6.2 of the DSU and Articles 17.3 and 17.4 of the Anti-Dumping Agreement, Korea has not demonstrated that any of Japan's claims are not properly before this Panel.
- b. With respect to Japan's claims under Article 11.3 of the Anti-Dumping Agreement:
 - i. The KIA acted inconsistently with Article 11.3 of the Anti-Dumping Agreement in its examination of the price and volume effects of the Japanese imports, by failing to

⁷⁰⁰ Japan's first written submission, para. 348.

⁷⁰¹ Japan's first written submission, para. 348 (referring to KTC's notification of final determination, (Exhibit JPN-21.b) and Ordinance No. 624 and Public Notice No. 2017-86, (Exhibit JPN-24.b)).

⁷⁰² Japan's first written submission, paras. 348-388.

⁷⁰³ Korea's first written submission, paras. 445-457.

⁷⁰⁴ Korea's first written submission, paras. 445-457.

⁷⁰⁵ Japan's first written submission, paras. 328 and 340, and annex, pp. 145-165.

⁷⁰⁶ Japan's first written submission, paras. 328 and 340, and annex, pp. 145-165.

⁷⁰⁷ Japan's first written submission, paras. 342 and 346.

⁷⁰⁸ Korea's first written submission, para. 344; second written submission, paras. 560-561.

⁷⁰⁹ See section 7.6.3 above.

undertake an unbiased and objective evaluation of the facts on the consequences of the drop in Japanese prices.

- ii. The KIA acted inconsistently with Article 11.3 of the Anti-Dumping Agreement in its findings on the exporters' production capacity and capacity utilization by rejecting data submitted by the Japanese exporters on the basis of their failure to comply with certain parameters of which they were not properly informed, and thereby failing to undertake an unbiased and objective evaluation of the facts on Japan's production capacity and capacity utilization.
 - iii. Japan has not demonstrated that the KIA acted inconsistently with Article 11.3 of the Anti-Dumping Agreement by failing to consider, as other potential injury factors, the cost of raw materials, and the weak demand in the domestic and export markets.
 - iv. Given our findings at paragraph 8.1.b.i, we exercise judicial economy with respect to Japan's claim under Article 11.3 of the Anti-Dumping Agreement in relation to the assessment of KIA's alleged failure to examine third-country imports as an other potential injury factor.
 - v. Given our findings at paragraphs 8.1.b.i and ii, we exercise judicial economy with respect to Japan's claim under Article 11.3 of the Anti-Dumping Agreement in relation to the KIA's cumulation of Japanese imports with Indian imports for the purposes of its likelihood-of-injury assessment.
- c. With respect to Japan's claims under Articles 6.8 and 11.4 and paragraphs 3 and 7 of Annex II to the Anti-Dumping Agreement:
- i. The KIA acted inconsistently with Articles 6.8 and 11.4 by having recourse to the "facts available" in respect of Japan's production capacity.
 - ii. Given our finding at paragraph 8.1.c.i, we exercise judicial economy with regard to Japan's claims under paragraphs 3 and 7 of Annex II to the Anti-Dumping Agreement.
- d. With respect to Japan's claims under Articles 6.5, 6.5.1, and 11.4 of the Anti-Dumping Agreement:
- i. The KIA acted inconsistently with Articles 6.5 and 11.4 of the Anti-Dumping Agreement regarding its treatment of information provided by the applicants as confidential information.
 - ii. Given our finding at paragraph 8.1.d.i, we exercise judicial economy with respect to Japan's claims under Articles 6.5.1 and 11.4 of the Anti-Dumping Agreement.
- e. Given our findings at paragraphs 8.1.b.i and ii, we exercise judicial economy with respect to Japan's claim under Article VI:6(a) of the GATT 1994 and Korea's corresponding objection under Article 6.2 of the DSU that Japan's claim in this regard was not properly before us.
- f. Given our findings at paragraphs 8.1.b.i and ii, we exercise judicial economy with respect to Japan's claim under Articles 11.4 and 6.9 of the Anti-Dumping Agreement in relation to the KIA's disclosure of "essential facts".
- g. Given our findings at paragraphs 8.1.b.i and ii, we exercise judicial economy with respect to Japan's claim that the KIA acted inconsistently with Articles 12.2, 12.2.2, and 12.3 of the Anti-Dumping Agreement in relation to the provisions of the findings and conclusions reached on all issues of fact and law.

8.2. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered Agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. We conclude that, to the extent that the measures at issue are

inconsistent with certain provisions of the Anti-Dumping Agreement, they have nullified or impaired benefits accruing to Japan under that Agreement.

8.3. Pursuant to Article 19.1 of the DSU, we recommend that Korea bring its measure into conformity with its obligations under the Anti-Dumping Agreement.
