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Without further ado, Ambassador Lee for even broader instances of lawfare.

Hye-min LEE

Thank you Chair. I wish to speak this afternoon on the serious threat to the rule-based international order from the international trade perspective based on the insight I have gained from my more than 35 years working experience as a trade diplomat.

I would like to highlight two elements which are currently threatening the rule-based international trade order. First, unilateralism by abuse of national and security exception, and second, paralysing the dispute settlement mechanism of the WTO by abuse of this consensus rule.

The crown jewel of the Uruguay Round agreements was the establishment of an effective dispute settlement mechanism in international trade prohibiting unilateral sanctions by its members. When the Uruguay Round of multilateral trade negotiations were finalised after nearly eight years of difficult negotiations, signed here in Marrakech, setting up the WTO in 1995, all members undertook not to resort to unilateral action and all the sanctions therefore must go through the WTO's dispute settlement mechanism.

In recent years however, the unilateral actions of the most important members of the WTO have reappeared with these members insisting that they base their action on the international trade rules. For example, the United States has imposed additional tariffs on imported steel and aluminium in March 2017, and is currently exploring the possibility of imposing one on the auto and auto parts whose importance and impact on the world economy are far behind in comparison with steel and aluminium.

The US defend this action based on Section 232 of the Trade Expansion Act of 1962, which authorises the president to take action when his national security is in danger by the import. It justifies its action, citing the national security exception of the WTO.

As it is not logical nor reasonable to claim that imported steel and aluminium, or eventually imported cars from allies, including the European Union, Korea or Japan, it is regarded as an abuse of the national security exception of the WTO. The European Union and other members have brought this case to the WTO, which established a panel to examine its consistency with the relevant WTO rules.

What is more serious and worrisome is that some members have begun to use the national security exception provision of the WTO while they are criticising the United States. Invoking national security to justify the retaliation against a dispute not related to trade is a good example. In this sense, it is very encouraging to see that in a ruling over a Ukrainian transit dispute with Russia, a WTO panel, in April, confirmed the WTO's right to review national security claims, rejecting the traditional argument by the powerful countries that national security was not subject to review but "self-judging".

Ladies and gentlemen, in the international trading system, the dispute settlement mechanism of the WTO serves as an independent institution tasked with upholding the rule of law and deterring unilateralism. It is critical therefore for our international community to work together to guarantee the proper function of the WTO dispute settlement mechanism.



Therefore, it is with a sense of disappointment to witness its collapse due to one member's veto of the appointment for new members of WTO appellate body. The coming September, just one member out of seven will remain on the body. Since the WTO appellate body needs at least three members to deliberate, the WTO dispute settlement system will come to a grinding halt by that time. The WTO dispute settlement system, with this appellate body, has been key to the security and predictability of the multilateral trading system. Without a proper system of enforcement, the multilateral rules can no longer work effectively.

The US complains that there is no effective check on appellate body decisions. The impact of "overreaching" Appellate Body decisions is exacerbated by a tradition of *stare decisis*, which has emerged from WTO case law. As a result, panels depart from previous decisions of the appellate body only in rare instances. The appellate body is also criticised for issuing advisory opinions on matters not raised by the parties, or not related to the dispute at hand.

International trade experts, including myself, sympathise with these US concerns, particularly because the decisions of the panels or appellate body should not result in de facto amendment of the agreement without the consent of its members. In this sense I can see the broad support for the reform proposal made by the European Union at the end of last year together with the other members to address the concerns expressed by the United States, and at the same time to preserve the overall successful dispute resolution system of the WTO. However, it is not certain if a way out of current deadline can be found.

I think the reappearance of unilateralism wherein the members are abusing the national security exception and paralysing the WTO dispute system are two important examples of the weaponization of the law in international trade.

In order to overcome this serious threat to the rule-based international trading system, like-minded countries need to more actively cooperate and unite to uphold the principle of rule of law, abiding by the already-reached agreements.

Before I conclude, I would like to state that though I have highlighted US trade policy in my presentation, I understand and agree with the current US trade policies on many points, if not all. I highly appreciate the US contribution in spreading the value of rule of law all over the world, and am convinced that they will continue to do so in the future, thank you.

Laurent COHEN-TANUGI

Thank you.