

KOREA – VARIOUS MEASURES ON BEEF¹

(DS161, 169)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainants	Australia United States	GATT Arts. III:4, XX, XI:I and XVII:I	Establishment of Panel	26 May and 26 July 1999
			Circulation of Panel Report	31 July 2000
Respondent	Korea	AA Arts. 3, 4, 6 and 7	Circulation of AB Report	11 December 2000
			Adoption	10 January 2001

1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: (i) Korea's measures affecting the importation, distribution and sale of beef, (ii) Korea's "dual retail system" for sale of domestic imported beef, and (iii) Korea's agricultural domestic support programmes.
- Products at issue: Beef imports from Australia and the United States.

2. SUMMARY OF KEY PANEL/AB FINDINGS²

- AA Art. 3.2 (domestic support): While upholding the Panel's conclusion that Korea miscalculated its domestic support (AMS) for beef, the Appellate Body reversed the Panel's ultimate finding that Korea acted inconsistently with AA Art. 3.2 by exceeding its commitment levels for total support for 1997 and 1998 since the Panel had also relied on an improper methodology for its own calculations.
- GATT Art. III:4 (dual retail system): The Appellate Body agreed with the Panel's ultimate conclusion that Korea's dual retail system (requiring imported beef to be sold in separate stores) accorded "less favourable" treatment to imported beef than to like domestic beef. According to the Appellate Body, the dual retail system virtually cut off imported beef from access to the "normal" distribution outlets for beef, which modified the conditions of competition for imported beef. In this connection, the Appellate Body said that formally different treatment of imported and domestic products is not necessarily "less favourable" for imports within the meaning of Art. III:4.

(GATT Art. XX) Further, the Appellate Body upheld the Panel's finding that the dual retail system was not justified as a measure necessary to secure compliance with Korea's Unfair Competition Act because the dual retail system was not "necessary" within the meaning of Art. XX(d). "Necessary" requires the weighing and balancing of regulations of factors such as the contribution made by the measure to the enforcement of the law or regulation at issue, the relative importance of the common interests or values protected and the impact of the law on trade. The Appellate Body agreed with the Panel that Korea failed to demonstrate that it could not achieve its desired level of enforcement using alternative measures.

- GATT Arts. XI:1 and XVII:1(a) and AA Art. 4.2 (tender-related practices by a state-trading enterprise (LPMO) for beef imports): The Panel concluded that the LPMO's failure to call, and delays in calling for, tenders, as well as its discharge practices (i.e. the LPMO's increase in its stocks of foreign beef, while failing to meet requests for that beef) led to import restrictions on beef contrary to Art. XI. This also led to the conclusion that the measures were inconsistent with AA Art. 4.2, which prohibits Members from maintaining, resorting to, or reverting to any quantitative import restrictions, including non-tariff measures maintained through state-trading enterprises, which have been required to be converted into ordinary customs duties. The Panel also found that should the LPMO be viewed as a state-trading enterprise without full control over the distribution of its import quota share, the measures violated GATT Art. XVII:1(a) (a provision governing state-trading enterprises) as well, because they were inconsistent with the general principles of non-discriminatory treatment. (*Korea did not appeal this finding.*)

¹ Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef

² Other issues addressed in this case: AA Art. 6.4, 7.2(a) (*de minimis* levels, current AMS for beef and current *total* AMS); GATT Art. II and XI (grass-fed, grain fed beef distinction); certain aspects of distribution and sales system for imported beef (GATT Art. III:4); state-trading entities (GATT Art. XI and the *Ad Note*; AA Art. 4.2 and footnote 1 to Art. 4.2); and panel's terms of reference (panel request) (DSU, Art. 6.2)