

JAPAN – FILM¹

(DS44)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	<i>United States</i>	<i>GATT Arts. XXIII:1(b), III:4 and X:1</i>	Establishment of Panel	<i>16 October 1996</i>
			Circulation of Panel Report	<i>31 March 1998</i>
Respondent	<i>Japan</i>		Circulation of AB Report	<i>NA</i>
			Adoption	<i>22 April 1998</i>

1. MEASURES AND PRODUCTS AT ISSUE

- Measures at issue: Actions by the Japanese Government affecting the distribution, offering for sale, and internal sale of imported consumer photographic film and paper, in particular, (i) distribution measures; (ii) restrictions on large retail stores; and (iii) promotion measures.
- Products at issue: Imported consumer photographic film and paper.

2. SUMMARY OF KEY PANEL FINDINGS

- GATT Art. XXIII:1(b) (non-violation claim): The Panel found that the United States failed to demonstrate that the measures at issue nullified or impaired benefits accruing to the United States within the meaning of Art. XXIII:1(b). In this regard, the Panel considered that a complaining party must demonstrate three elements under Art. XXIII:1(b): (i) application of a measure by a WTO Member; (ii) a benefit accruing under the relevant agreement; and (iii) nullification or impairment of the benefit as the result of the application of the measure.
- GATT Art. III:4 (national treatment, violation claim): Having found that the distribution measures were generally origin-neutral and did not have a disparate impact on imported film or paper, the Panel found that the United States had not proved that the distribution measures were inconsistent with Art III:4.
- GATT Art. X:1 (publication requirement): The Panel considered that the publication requirement in Art. X:1 extends to two types of administrative rulings: (i) administrative rulings of "general application"; and (ii) "administrative rulings addressed to specific individuals or entities" that establish or revise principles or criteria applicable in future cases. Based on this legal standard, the Panel found that Japan was not in violation of Art. X:1 because the United States failed to demonstrate that Japan's administrative rulings at issue in this case amounted to either of these administrative rulings in respect of which the publication requirement under Art. X:1 should be applied.

3. OTHER ISSUES²

- DSU 6.2 (identification of measures): The Panel found that, for a "measure" not explicitly described in a panel request to be included for its consideration as part of the specific measure in the request, such an unidentified measure must be subsidiary or have a clear relationship to a specifically identified measure. According to the Panel, "only if a measure is subsidiary or closely related to a specifically identified measure will notice be adequate" so as not to cause prejudice to Japan or third parties.

¹ *Japan – Measures Affecting Consumer Photographic Film and Paper*

² Other issues addressed: order of examination of claims; burden of proof; procedures for translation.