

KOREA – ALCOHOLIC BEVERAGES¹

(DS75, 84)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	<i>European Communities, United States</i>	<i>GATT Art. III:2, second sentence</i>	Establishment of Panel	<i>16 October 1997</i>
			Circulation of Panel Report	<i>17 September 1998</i>
Respondent	<i>Korea</i>		Circulation of AB Report	<i>18 January 1999</i>
			Adoption	<i>17 February 1999</i>

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Korea's tax regime for alcoholic beverages, which imposed different tax rates for various categories of distilled spirits.
- **Product at issue:** Imported distilled liquors and Soju (traditional Korean alcoholic beverage).

2. SUMMARY OF KEY PANEL/AB FINDINGS²

- **GATT Art. III:2 (national treatment – taxes and charges), second sentence (directly competitive or substitutable products):** The Appellate Body upheld the Panel's conclusion that the Korean tax measures at issue were inconsistent with Art. III:2, second sentence: More specifically, the Appellate Body upheld the Panel's findings that the products at issue were "directly competitive or substitutable" within the meaning of Art. III:2, second sentence and that Korea's tax measures on alcoholic beverages were applied "so as to afford protection" to domestic production within the meaning of Art. III:2, second sentence.

On the question of the interpretation and application of the term "directly competitive or substitutable product", the Appellate Body upheld the Panel's approach: (i) the Panel correctly considered evidence of "*present* direct competition", not the future evolution of the market, by referring to the potential for the products to compete in a market free of protection because in a protected market consumer preferences may have been influenced by that protection; (ii) the Panel was not wrong in looking to the Japanese market for an indication of how the Korean market may develop without the distortions caused by protection; and (iii) the Panel's approach of grouping the products, which was based in part on a collective assessment of the products and in part on individual assessment, was not flawed.

In addressing the issue of "so as to afford protection" under Art. III:2, second sentence, both the Panel and the Appellate Body once again emphasized the importance of examining the "design, structure, and architecture" of the measures, as previously clarified by the Appellate Body in *Japan – Alcoholic Beverages II*.

¹ *Korea – Taxes on Alcoholic Beverages*

² Other issues addressed: burden of proof; objective assessment (DSU Art. 11); panel's obligation (DSU Art. 12.7); requirements of panel request (DSU Art. 6.2); adequacy of consultations (DSU Art. 3.3, 3.7 and 4.5); confidentiality of consultations (DSU Art. 4.6); late submission of evidence; private counsel; GATT Art. III:2 (general); GATT Art. III.2, first sentence.