1 ARTICLE XVII

1.1 Text of Article XVII

Article XVII

State Trading Enterprises

1* (a) Each contracting party undertakes that if it establishes or maintains a State enterprise, wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges,* such enterprise shall, in its purchases or sales involving either imports or exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Agreement for governmental measures affecting imports and exports by private traders.

(b) The provisions of subparagraph (a) of this paragraph shall be understood to require that such enterprises shall, having due regard to the other provisions of this Agreement, make any such purchases or sales solely in accordance with commercial considerations,* including price, quality, availability, marketability, transportation and other conditions of purchase or sale, and shall afford the enterprises of the other contracting parties adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales.

(c) No contracting party shall prevent any enterprise (whether or not an enterprise described in subparagraph (a) of this paragraph) under its jurisdiction from acting in accordance with the principles of subparagraphs (a) and (b) of this paragraph.

2. The provisions of paragraph 1 of this Article shall not apply to imports of products for immediate or ultimate consumption in governmental use and not otherwise for resale or use in the production of goods* for sale. With respect to such imports, each contracting party shall accord to the trade of the other contracting parties fair and equitable treatment.

3. The contracting parties recognize that their enterprises of the kind described in paragraph 1 (a) of this article might be operated so as to create serious obstacles to trade; thus negotiations on a reciprocal and mutually advantageous basis designed to limit or reduce such obstacles are of importance to the expansion of international trade.*

4. (a) Contracting parties shall notify the CONTRACTING PARTIES of the products which are imported into or exported from their territories by enterprises of the kind described in paragraph 1 (a) of this article.

(b) A contracting party establishing, maintaining or authorizing an import monopoly of a product, which is not the subject of a concession under Article II, shall, on the request of another contracting party having a substantial trade in the product concerned, inform the CONTRACTING PARTIES of the import mark-up* on the product during a recent representative period, or when it is not possible to do so, of the price charged on the resale of the product.

(c) The CONTRACTING PARTIES may, at the request of a contracting party which has reason to believe that its interest under this Agreement are being adversely affected by the operations of an enterprise of the kind described in paragraph 1 (a), request the contracting party establishing, maintaining or authorizing such enterprise to supply information about its operations related to the carrying out of the provisions of this Agreement.

(d) The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.

1.2 Text of note *ad* Article XVII

Ad Article XVII

Paragraph 1

The operations of Marketing Boards, which are established by contracting parties and are engaged in purchasing or selling, are subject to the provisions of sub-paragraphs (a) and (b).

The activities of Marketing Boards which are established by contracting parties and which do not purchase or sell but lay down regulations covering private trade are governed by the relevant Articles of this Agreement.

The charging by a state enterprise of different prices for its sales of a product in different markets is not precluded by the provisions of this Article, provided that such different prices are charged for commercial reasons, to meet conditions of supply and demand in export markets.

Paragraph 1 (a)

Governmental measures imposed to ensure standards of quality and efficiency in the operation of external trade, or privileges granted for the exploitation of national natural resources but which do not empower the government to exercise control over the trading activities of the enterprise in question, do not constitute "exclusive or special privileges".

Paragraph 1(b)

A country receiving a "tied loan" is free to take this loan into account as a "commercial consideration" when purchasing requirements abroad.

Paragraph 2

The term "goods" is limited to products as understood in commercial practice, and is not intended to include the purchase or sale of services.

Paragraph 3

Negotiations which contracting parties agree to conduct under this paragraph may be directed towards the reduction of duties and other charges on imports and exports or towards the conclusion of any other mutually satisfactory arrangement consistent with the provisions of this Agreement. (See paragraph 4 of Article II and the note to that paragraph.)

Paragraph 4 (b)

The term "import mark-up" in this paragraph shall represent the margin by which the price charged by the import monopoly for the imported product (exclusive of internal taxes within the purview of Article III, transportation, distribution, and other expenses incident to the purchase, sale or further processing, and a reasonable margin of profit) exceeds the landed cost.

1.3 Understanding on the Interpretation of Article XVII of the GATT 1994

Members,

Noting that Article XVII provides for obligations on Members in respect of the activities of the state trading enterprises referred to in paragraph 1 of Article XVII, which are required to be consistent with the general principles of non-discriminatory treatment prescribed in GATT 1994 for governmental measures affecting imports or exports by private traders;

Noting further that Members are subject to their GATT 1994 obligations in respect of those governmental measures affecting state trading enterprises;

Recognizing that this Understanding is without prejudice to the substantive disciplines prescribed in Article XVII;

Hereby *agree* as follows:

1. In order to ensure the transparency of the activities of state trading enterprises, Members shall notify such enterprises to the Council for Trade in Goods, for review by the working party to be set up under paragraph 5, in accordance with the following working definition:

"Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports."

This notification requirement does not apply to imports of products for immediate or ultimate consumption in governmental use or in use by an enterprise as specified above and not otherwise for resale or use in the production of goods for sale.

2. Each Member shall conduct a review of its policy with regard to the submission of notifications on state trading enterprises to the Council for Trade in Goods, taking account of the provisions of this Understanding. In carrying out such a review, each Member should have regard to the need to ensure the maximum transparency possible in its notifications so as to permit a clear appreciation of the manner of operation of the enterprises notified and the effect of their operations on international trade.

> 3. Notifications shall be made in accordance with the questionnaire on state trading adopted on 24 May 1960 (BISD 9S/184-185), it being understood that Members shall notify the enterprises referred to in paragraph 1 whether or not imports or exports have in fact taken place.
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> 4. Any Member which has reason to believe that another Member has not adequately met its notification obligation may raise the matter with the Member concerned. If the matter is not satisfactorily resolved it may make a counter-notification to the Council for Trade in Goods, for consideration by the working party set up under paragraph 5, simultaneously informing the Member concerned.
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> 5. A working party shall be set up, on behalf of the Council for Trade in Goods, to review notifications and counter-notifications. In the light of this review and without prejudice to paragraph 4(c) of Article XVII, the Council for Trade in Goods may make recommendations with regard to the adequacy of notifications and the need for further information. The working party shall also review, in the light of the notifications received, the adequacy of the above-mentioned questionnaire on state trading and the coverage of state trading enterprises notified under paragraph 1. It shall also develop an illustrative list showing the kinds of relationships between governments and enterprises, and the kinds of activities, engaged in by these enterprises, which may be relevant for the purposes of Article XVII. It is understood that the Secretariat will provide a general background paper for the working party on the operations of state trading enterprises as they relate to international trade. Membership of the working party shall be open to all Members indicating their wish to serve on it. It shall meet within a year of the date of entry into force of the WTO Agreement and thereafter at least once a year. It shall report annually to the Council for Trade in Goods.
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> (*footnote original*) [1] The activities of this working party shall be coordinated with those of the working group provided for in Section III of the Ministerial Decision on Notification Procedures adopted on 15 April 1994.

1.4 General

1.4.1 State trading enterprises

1. Noting that the Livestock Products Marketing Organization (LPMO), Korea's state trading agency for meat, had exclusive rights of import for its 30 per cent share of Korea's beef import quotas, the Panel in *Korea – Various Measures on Beef*, in a statement not reviewed by the Appellate Body, stated:

> "Based on the panel findings in the *Canada – Marketing Agencies (1988)* case, the Panel considers that to the extent that LPMO fully controls both the importation and distribution of its 30 per cent share of Korean beef quota, the distinction normally made in the GATT between restrictions affecting the *importation* of products (i.e. border measures) and restrictions affecting *imported* products (i.e. internal measures) loses much of its significance."[1]

2. The Panel in *Canada – Wheat Exports and Grain Imports* found generally regarding Article XVII:

> "[S]ubparagraph (a) of Article XVII:1 imposes an obligation on Members establishing or maintaining STEs. … In Article XVII:1(a), Members therefore formally guarantee, pledge, or promise that their STEs shall act in the prescribed manner. That subparagraph (a) should be understood as imposing a legal obligation on Members using STEs is also supported by another consideration. If subparagraph (a) did not impose a legal obligation on Members, Members could create and use STEs to evade disciplines imposed by the GATT 1994 on governmental measures affecting imports or

[1] Panel Report, *Korea – Various Measures on Beef*, para. 766.

> exports by private traders, since Members could not be brought to task in the event that their STEs did not abide by the disciplines imposed by Article XVII:1."[2]

3. The Appellate Body in *Canada – Wheat Exports and Grain Imports* also related Article XVII to other complementary WTO obligations:

> "[E]ven in 1947, the negotiators of the GATT created a number of complementary requirements to address the different ways in which STEs could be used by a contracting party to seek to circumvent its obligations under the GATT. The existence of these other provisions of the GATT 1994 also supports the view that Article XVII was never intended to be the sole source of the disciplines imposed on STEs under that Agreement. This is also consistent with the view that Article XVII:1 was intended to impose disciplines on one particular type of STE behaviour, namely discriminatory behaviour, rather than to constitute a comprehensive code of conduct for STEs. Moreover, as the Panel observed, since the conclusion of the Uruguay Round, a number of additional obligations, under different covered agreements, operate to further constrain the behaviour of STEs."[3]

4. The Panel in *Colombia – Ports of Entry* examined the ports of entry measure. The measure had been implemented for a period of six months, extended twice, and a similar measure had been in place earlier for 18 months.[4] The Panel concluded that "all of these uncertainties, including access to one seaport for extended periods of time and the likely increased costs that would arise for importers operating under the constraints of the port restrictions, limit competitive opportunities for imports arriving from Panama"[5] and that "the ports of entry measure has a limiting effect on imports arriving from Panama … the restriction to two ports of entry for subject goods arriving from Panama imposed under the ports of entry measure constitutes a restriction on importation within the meaning of Article XI:1 of the *GATT 1994*."[6]

1.4.2 "restrictions made effective through state-trading operations"

5. The Panel in *India – Quantitative Restrictions*, in examining the contested Indian measures, addressed the phrase "restrictions made effective through state-trading operations". In its findings on this issue, which were not appealed, the Panel emphasized that the fact that imports were effected through state-trading operations did not *per se* mean that imports were being restricted:

> "In analyzing the US claim, we note that violations of Article XI:1 can result from restrictions made effective through state trading operations. This is made very clear in the Note Ad Articles XI, XII, XIII, XIV and XVIII, which provides that 'Throughout Article XI, XII; XIII; XIV; and XVIII, the terms 'import restrictions' or 'export restrictions' include restrictions made effective through state-trading operations.' It should be noted however, that the mere fact that imports are effected through state trading enterprises would not in itself constitute a restriction. Rather, for a restriction to be found to exist, it should be shown that the operation of this state trading entity is such as to result in a restriction.[7]"[8]

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[2] Panel Report, *Canada – Wheat Exports and Grain Imports*, para. 6.39.
[3] Appellate Body Report, *Canada – Wheat Exports and Grain Imports*, para. 98.
[4] Panel Report, *Colombia – Ports of Entry*, paras. 7.219-7.223 and 7.273.
[5] *(footnote original)* The Panel is of the view that a finding whereby Colombia were allowed to restrict access to two ports of entry for goods arriving from a particular Member or Members, would open the door for other WTO Members to do the same. For example, one GATT Contracting Party required all VCRs to enter its territory at a small inland customs office in the town of Poitiers.
[6] Panel Report, *Colombia – Ports of Entry*, paras. 7.274-7.275.
[7] *(footnote original)* Panel Report on *Korea – Various Measures on Beef*, para 115: "The mere existence of producer-controlled import monopolies could not be considered as a separate import restriction inconsistent with the General Agreement. The Panel noted, however, that the activities of such enterprises had to conform to a number of rules contained in the General Agreement, including those of Article XVII and Article XI:1".
[8] Panel Report, *India – Quantitative Restrictions*, para. 5.134.

1.5 Article XVII:1(a)

1.5.1 General: State trading enterprises

6. The Appellate Body Report on *Canada – Wheat Exports and Grain Imports* found regarding Article XVII:1(a):

> "Subparagraph (a) of Article XVII:1 … recognizes that Members may establish or maintain State enterprises or grant exclusive or special privileges to private enterprises, but requires that, if they do so, such enterprises must, when they are involved in certain types of transactions ('purchases or sales involving either imports or exports'), comply with a specific requirement. That requirement is to act consistently with certain principles contained in the GATT 1994 ('general principles of nondiscriminatory treatment … for governmental measures affecting imports or exports by private traders'). Subparagraph (a) seeks to ensure that a Member cannot, through the creation or maintenance of a State enterprise or the grant of exclusive or special privileges to any enterprise, engage in or facilitate conduct that would be condemned as discriminatory under the GATT 1994 if such conduct were undertaken directly by the Member itself. In other words, subparagraph (a) is an 'anti-circumvention' provision."[9]

1.5.2 "general principles of non-discriminatory treatment"

7. The Panel in *Korea – Various Measures on Beef*, in a finding not reviewed by the Appellate Body, described the legal status of Article XVII:1(a) in the GATT framework in the following terms:

> "Article XVII.1(a) establishes the general obligation on state trading enterprises to undertake their activities in accordance with the GATT principles of non-discrimination. The Panel considers that this general principle of non-discrimination includes at least the provisions of Articles I and III of GATT."[10]

8. In *Canada – Wheat Exports and Grain Imports,* the Appellate Body held that Article XVII:1(a) sets out an obligation of non-discrimination, and Article XVII:1(b) clarifies the scope of that obligation: as discussed in paragraph 10 below, "panels must identify the differential treatment alleged to be discriminatory under subparagraph (a) in order to ensure that they are undertaking a proper inquiry under subparagraph (b)".[11]

9. Regarding the non-discrimination requirement in Article XVII:1(a), the Appellate Body found that "[t]his requirement, which lies at the core of subparagraph (a), is a requirement that STEs not engage in certain types of discriminatory conduct"[12] and that "through its reference to the 'general principles of non-discriminatory treatment prescribed in this Agreement for governmental measures affecting imports or exports by private traders', Article XVII:1 imposes an obligation on Members not to use STEs in order to discriminate in ways that would be prohibited if undertaken directly by Members."[13] Consequently, "determining the consistency or inconsistency of an STE's conduct with Article XVII:1 will involve an examination of *both* differential treatment and of commercial considerations."[14]

1.6 Article XVII:1(b)

1.6.1 "the provisions of subparagraph (a) … shall be understood to require"

10. The Appellate Body Report on *Canada – Wheat Exports and Grain Imports* interpreted this phrase, and Article XVII:1(b), as follows:

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[9] Appellate Body Report, *Canada – Wheat Exports and Grain Imports*, para. 85.
[10] Panel Report, *Korea – Various Measures on Beef*, para. 753. In support of its proposition, the Panel went on to refer to the following two GATT Panel Reports: (i) Panel Report, *Canada – Provincial Liquor Board (EC)*, para. 4.26; and Panel Report, *Canada – Provincial Liquor Board (US)*, para. 5.15.
[11] Appellate Body Report, *Canada – Wheat Exports and Grain Imports*, para. 111.
[12] Appellate Body Report, *Canada – Wheat Exports and Grain Imports*, para. 87.
[13] Appellate Body Report, *Canada – Wheat Exports and Grain Imports*, para. 97.
[14] Appellate Body Report, *Canada – Wheat Exports and Grain Imports*, para. 94.

> "This phrase makes it abundantly clear that the remainder of subparagraph (b) is dependent upon the content of subparagraph (a), and operates to clarify the scope of the requirement not to discriminate in subparagraph (a). …
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> Subparagraph (b) also refers to '*such* enterprises', which can mean only the STEs defined in subparagraph (a). In addition, subparagraph (b) twice refers to "*such* purchases or sales". It is clear that the word 'such' in this phrase must refer to the purchases and sales identified in subparagraph (a), namely the 'purchases or sales [of STEs] involving either imports or exports'. …
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> …
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> … Subparagraph (b) sets forth two specific conditions with which an STE must comply if allegedly discriminatory conduct falling, *prima facie*, within the scope of subparagraph (a) is to be found consistent with Article XVII:1. Yet, in order to know whether the conditions in (b) are satisfied, a panel must know *what* constitutes the conduct alleged to be inconsistent with the principles of non-discriminatory treatment in the GATT 1994. A panel will need to identify at least the differential treatment at issue. The outcome of an assessment under subparagraph (b) of whether the differential treatment is consistent with commercial considerations may depend, in part, upon whether the alleged discrimination relates to pricing, quality, or conditions of sale, and whether it is discrimination between export markets or some other form of discrimination.
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> … we are *not* suggesting that panels are always obliged to make specific factual and legal findings with respect to each element of a claim of discrimination under subparagraph (a) before undertaking *any* analysis under subparagraph (b). Rather, because a panel's analysis and application of subparagraph (b) to the facts of the case is, like subparagraph (b) itself, dependent on the obligation set forth in subparagraph (a), panels must identify the differential treatment alleged to be discriminatory under subparagraph (a) in order to ensure that they are undertaking a proper inquiry under subparagraph (b)."[15]

1.6.2 "solely in accordance with commercial considerations"

11. In *Korea – Various Measures on Beef*, the Panel discussed the general character of Article XVII:1(b).

12. In *Canada – Wheat Exports and Grain Imports,* the Appellate Body clarified the Panel's approach to "commercial considerations":

> "[T]he Panel's interpretation of the term 'commercial considerations' necessarily implies that the determination of whether or not a particular STE's conduct is consistent with the requirements of the first clause of subparagraph (b) of Article XVII:1 must be undertaken on a case-by-case basis, and must involve a careful analysis of the relevant market(s). We see no error in the Panel's approach; only such an analysis will reveal the type and range of considerations properly considered 'commercial' as regards purchases and sales made in those markets, as well as how those considerations influence the actions of participants in the market(s).
>
> At the same time, our interpretation of the relationship between subparagraphs (a) and (b) of Article XVII:1 necessarily implies that the scope of the inquiry to be undertaken under subparagraph (b) must be governed by the principles of subparagraph (a). In other words, a panel inquiring whether an STE has acted solely in accordance with commercial considerations must undertake this inquiry with respect to the market(s) in which the STE is alleged to be engaging in discriminatory conduct. Subparagraph (b) does not give panels a mandate to engage in a broader inquiry into whether, in the abstract, STEs are acting 'commercially'. The disciplines of Article XVII:1 are aimed at preventing certain types of discriminatory behaviour. We

[15] Appellate Body Report, *Canada – Wheat Exports and Grain Imports*, paras. 89-90 and 110-111.

> see no basis for interpreting that provision as imposing comprehensive competition-law-type obligations on STEs, as the United States would have us do.'[16]

> '…we cannot accept that the first clause of subparagraph (b) would, as a general rule, require STEs to refrain from using the privileges and advantages that they enjoy because such use might 'disadvantage' private enterprises. STEs, like private enterprises, are entitled to exploit the advantages they may enjoy to their economic benefit. Article XVII:1(b) merely prohibits STEs from making purchases or sales on the basis of noncommercial considerations."[17]

1.6.3 "adequate opportunity … to compete for participation in such purchases or sales"

13. In *Canada – Wheat Exports and Grain Imports*, the Appellate Body also clarified the meaning of this phrase:

> "[T]he second clause of subparagraph (b) refers to purchases and sales transactions where: (i) one of the parties involved in the transaction is an STE; and (ii) the transaction involves imports to or exports from the Member maintaining the STE. Thus, the requirement to afford an adequate opportunity to compete for participation (*i.e.*, taking part with others) in 'such' purchases and sales (import or export transactions involving an STE) must refer to the opportunity to become the STE's counterpart in the transaction, *not* to an opportunity to replace the STE as a participant in the transaction. … Thus, in transactions involving two parties, one of whom is an STE seller, the word 'enterprises' in the second clause of Article XVII:1(b) can refer *only* to buyers.[18]

1.7 Relationship between Article XVII:1(a) and XVII:1(b)

14. The Panel in *Korea – Various Measures on Beef*, examining the conduct of the Korean state trading agency for beef imports, examined the relationship between these two paragraphs and held that a violation of either paragraph would suffice to show a violation of the other:

> "[T]he terms 'general principle of non-discrimination treatment prescribed in this Agreement' (Art. XVII:1(a)) should be equated with 'make any such purchases or sales solely in accordance with commercial considerations' (Art. XVII:1(b)). The list of variables that can be used to assess whether a state-trading action is based on commercial consideration (prices, availability etc…) are to be used to facilitate the assessment whether the state-trading enterprise has acted in respect of the general principles of non-discrimination. A conclusion that the principle of non-discrimination was violated would suffice to prove a violation of Article XVII; similarly, a conclusion that a decision to purchase or buy was not based on 'commercial considerations', would also suffice to show a violation of Article XVII."[19]

15. However, in *Canada – Wheat Exports and Grain Imports,* the Appellate Body found that Article XVII:1(a) "sets out an obligation of non-discrimination, and [Article XVII:1(b)] clarifies the scope of that obligation." 20 The Appellate Body thus reversed the Panel findings of independent breach of Article XVII:1(b), because the Panel's failure to first identify discriminatory conduct prior to examining conformity with Article XVII:1(b) was an error of law. The Appellate Body held:

> "It follows that, logically, a panel cannot assess whether particular practices of an allegedly discriminatory nature accord with commercial considerations without first identifying the key elements of the alleged discrimination. We emphasize that we are *not* suggesting that panels are always obliged to make specific factual and legal findings with respect to each element of a claim of discrimination under subparagraph (a) before undertaking *any* analysis under subparagraph (b). Rather, because a panel's analysis and application of subparagraph (b) to the facts of the case is, like

[16] Appellate Body Report, *Canada – Wheat Exports and Grain Imports*, paras. 144-145.
[17] Appellate Body Report, *Canada – Wheat Exports and Grain Imports*, para. 149.
[18] Appellate Body Report, *Canada – Wheat Exports and Grain Imports*, para. 157.
[19] Panel Report, *Korea – Various Measures on Beef*, para. 757.
[20] Appellate Body Report, *Canada – Wheat Exports and Grain Imports*, para. 100.

> subparagraph (b) itself, dependent on the obligation set forth in subparagraph (a), panels must identify the differential treatment alleged to be discriminatory under subparagraph (a) in order to ensure that they are undertaking a proper inquiry under subparagraph (b).
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> For these reasons, we are of the view that a failure to identify *any* conduct alleged to constitute discrimination contrary to the general principles of the GATT 1994 for governmental measures affecting imports or exports by private traders *before* undertaking an analysis of the consistency of an STE's conduct with subparagraph (b) of Article XVII:1 would constitute an error of law. Had the Panel in this case simply *ignored* the issue of possible discrimination within the meaning of Article XVII:1(a) and passed immediately to its analysis under subparagraph (b), we would have no difficulty—based on our analysis above of the relationship between the two provisions—concluding that the Panel erred in its interpretative approach. Yet this does not appear to us to be what the Panel did."[21]

1.8 Relationship with other GATT provisions

1.8.1 Article I

16. The Panel in *Korea – Various Measures on Beef* touched on the relationship between Articles I and XVII. See paragraph 7 above.

1.8.2 Article II

17. In *Korea – Various Measures on Beef*, after finding that the practice of the Korean state trading agency for beef of according different treatment to grass-fed beef and grain-fed beef was inconsistent with *GATT* Articles II:1(a) and XI, the Panel exercised judicial economy with respect to claims concerning the consistency of that practice with Articles III:4 and XVII.[22]

1.8.3 Article III

18. The Panel in *Korea – Various Measures on Beef* discussed the relationship between Articles III and XVII. See paragraph 7 above.

1.8.4 Article XI

19. Exercising judicial economy, the Panel in *Korea – Various Measures on Beef* did not examine claims regarding certain practices of the Korean state trading agency for beef under Articles III:4 and XVII, after it had found a violation of Articles XI and II:1(a) with respect to that practice.

20. In *Korea – Various Measures on Beef*, the Panel addressed the practice of the Korean state trading agency which controlled a 30 per cent share of Korea's import quotas for certain products.

1.9 Relationship with other WTO Agreements

1.9.1 Agreement on Agriculture

21. Footnote 1 to Article 4.2 of the *Agreement on Agriculture* sets forth that "any measures of the kind which have been required to be converted into ordinary customary duties" under that Agreement, include "quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state-trading enterprises … [.]". In *Korea – Various Measures on Beef*, the Panel found, and the Appellate Body agreed, that Korea was in violation of Article 4.2 of the Agreement of Agriculture and Article XI of the GATT in that despite the demand for imported beef, the Korean state trading agency for beef

[21] Appellate Body Report, *Canada – Wheat Exports and Grain Imports*, paras. 110-112. In this case, the Appellate Body found that the Panel had not ignored subparagraph (a) of Article XVII and therefore had not erred.

[22] Panel Report, *Korea – Various Measures on Beef*, para. 7.80.

imports suspended its tenders for beef of foreign origin, and refused to sell imported beef from its stock, during a certain period of time. See the Section on Article 4.2 of the Agreement on Agriculture. In this context, the Appellate Body stated:

> "Since the Panel has already reached the conclusion that the above measures are inconsistent with Article XI and the Ad Note to Articles XI, XII, XIII, XIV and XVIII relating to state-trading enterprises, the same measures are necessarily inconsistent with Article 4.2 of *the Agreement on Agriculture* and its footnote referring to non-tariff measures maintained through state-trading enterprises."[23]

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[23] Panel Report, *Korea – Various Measures on Beef*, para. 768.