

**JAPAN – IMPORT QUOTAS ON DRIED LAYER AND
SEASONED LAYER**

Report of the Panel

1. On 1 December 2004, Korea requested consultations with Japan pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), Article 19 of the Agreement on Agriculture, and Article 6 of the Agreement on Import Licensing Procedures (Licensing Agreement) regarding Japan's import quotas on dried laver (1212.20-1-(1)) and seasoned laver (2106.90-2-(2)-E-(b)). The request was circulated to Members on 3 December 2004.¹

2. Consultations were held on 23 December 2004 and 21 January 2005, but these did not lead to a mutually satisfactory resolution of the matter.

3. On 4 February 2005, Korea requested the Dispute Settlement Body (DSB) to establish a panel pursuant to Article 6 of the DSU, Article XXIII:2 of the GATT 1994, Article 19 of the Agreement on Agriculture, and Article 6 of the Licensing Agreement.²

4. At issue were the import quotas imposed by Japan on dried laver (classified in Japan's customs tariff schedule under line 1212.20-1-(1)) and seasoned laver (classified in Japan's customs tariff schedule under line 2106.90-2-(2)-E-(b)) and the administration of these quotas by Japan. Korea claimed that the import quotas on dried and seasoned laver are inconsistent with Japan's obligations under Article XI of the GATT 1994 and Article 4.2 of the Agreement on Agriculture and that the administration of these quotas is inconsistent with Article X:3(a) of the GATT 1994.³

5. On 21 March 2005, the DSB established the Panel with the following terms of reference:

"To examine, in the light of the relevant provisions of the covered agreements cited by Korea in document WT/DS323/2, the matter referred to the DSB by Korea in that document, and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements."⁴

6. On 18 May 2005, Korea requested the Director-General to determine the composition of the Panel, pursuant to paragraph 7 of Article 8 of the DSU. On 30 May 2005, the Director-General composed the Panel as follows:

Chairman: Mr Manzoor Ahmad

Members: Mr José Alfredo Graça Lima

Mr Helge Seland⁵

7. China, the European Communities, New Zealand and the United States reserved their rights to participate in the Panel proceedings as third parties.⁶

8. The Panel met with the parties on 30 and 31 August 2005. The Panel met again with the parties on 11 and 12 October 2005.

¹ "Japan – Import Quotas on Dried Laver and Seasoned Laver. Request for Consultations by Korea". WT/DS323/1, 3 December 2004.

² "Japan – Import Quotas on Dried Laver and Seasoned Laver. Request for the Establishment of a Panel by Korea". WT/DS323/2, 7 February 2005.

³ Ibid.

⁴ "Japan – Import Quotas on Dried Laver and Seasoned Laver. Constitution of the Panel Established at the Request of Korea". WT/DS323/3, 31 May 2005, para. 2.

⁵ Ibid., para. 4.

⁶ Ibid., para. 5.

9. China, the European Communities and New Zealand made third-party submissions to the Panel. These countries, as well as the United States, made oral statements during the first substantive meeting of the Panel.

10. During the Panel proceedings, Korea requested the Panel to find that Japan's import quotas on dried laver and seasoned laver were inconsistent with Japan's obligations under Article XI:1 of the GATT 1994, Article 4.2 of the Agreement on Agriculture and that the administration of these quotas was inconsistent with Article X:3(a) of the GATT 1994 and to recommend that Japan bring its measures into conformity with its obligations under these agreements. Japan responded that its Laver Import Quotas Regime was outside the scope of the Agreement on Agriculture, that it was justified by Article XI:2(c)(i) of the GATT 1994 and that it was fully consistent with Article X:3(a) of the GATT 1994.

11. The Panel issued the Descriptive Part of its report on 18 November 2005. Comments on the Descriptive Part of the report were received from Korea and Japan (on 5 December 2005) and from New Zealand (on 2 December 2005). China and the United States expressed that they had no comments.

12. On 30 November 2005, the Chairman of the Panel informed the DSB, under Article 12.9 of the DSU, that the Panel would not be able to issue its report within six months of the agreement on the composition and terms of reference of the Panel (Article 12.8 of the DSU). The Panel informed the DSB that it expected to complete its work by March 2006.⁷

13. According to the timetable adopted by the Panel after consultations with the parties, the Interim Report was scheduled to be issued by the Panel on 27 January 2006.

14. On 23 January 2006, pursuant to Article 3.6 of the DSU, the parties notified the DSB and the relevant Councils and Committees that they had reached a mutually agreed solution, which was circulated as document WT/DS323/5 on 27 January 2006.

15. The Panel takes note of the mutually agreed solution between the parties to the dispute and of Article 3.7 of the DSU, which provides that:

"...The aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred..."

16. The Panel likewise takes note of Article 12.7 of the DSU:

"Where the parties to the dispute have failed to develop a mutually satisfactory solution, the panel shall submit its findings in the form of a written report to the DSB. In such cases, the report of a panel shall set out the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations that it makes. Where a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached." (Emphasis added.)

⁷ "Japan – Import Quotas on Dried Laver and Seasoned Laver. Communication from the Chairman of the Panel ". WT/DS323/4, 8 December 2005.

17. In view of the above, and keeping in mind its functions as set out in Article 11 of the DSU, the Panel concludes its work by reporting that a mutually agreed solution to this dispute has been reached between the parties.
