



**KOREA – IMPORT BANS, AND TESTING AND CERTIFICATION REQUIREMENTS  
FOR RADIONUCLIDES**

**NOTIFICATION OF AN OTHER APPEAL BY JAPAN UNDER ARTICLES 16.4 AND 17  
OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING  
THE SETTLEMENT OF DISPUTES (DSU), AND UNDER RULE 23(1) OF  
THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following communication, dated 16 April 2018, from the delegation of Japan, is being circulated to Members.

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Pursuant to Articles 16.4 and 17.1 of the DSU, Japan hereby notifies to the Dispute Settlement Body its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel in the dispute *Korea – Import Bans, and Testing and Certification Requirements for Radionuclides* (WT/DS495). Pursuant to Rule 23(1) of the Working Procedures for Appellate Review, Japan simultaneously files this Notice of Other Appeal with the Appellate Body Secretariat.

Pursuant to Rule 23(2)(c)(ii)(C) of the Working Procedures for Appellate Review, this Notice of Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to Japan's ability to refer to other paragraphs of the Panel Report in the context of its appeal.

For the reasons to be further elaborated in its submissions to the Appellate Body, Japan appeals, and requests the Appellate Body to reverse, modify or declare moot and of no legal effect, the findings, conclusions and recommendations of the Panel, with respect to the following errors of law and legal interpretations contained in the Panel Report:

1. The Panel erred in the interpretation and application of Articles 3.3, 3.4, 3.7 and 11 of the DSU, by disregarding timely-submitted evidence relating to the situation after the date of establishment of the Panel, when assessing whether Japan had made a *prima facie* case that Korea's additional testing requirements and import bans were being maintained inconsistently with Articles 2.3 and 5.6 of the SPS Agreement.<sup>1</sup>

2. The Panel erred in the application of Articles 2.3 and 5.6 of the SPS Agreement, by disregarding timely-submitted evidence relating to the situation after the date of establishment of the Panel, when assessing whether Japan had made a *prima facie* case that Korea's additional testing requirements and import bans were being maintained inconsistently with Articles 2.3 and 5.6 of the SPS Agreement.<sup>2</sup>

3. Should the Appellate Body, as a result of its consideration of the grounds for appeal addressed in paragraphs 1 and 2, consider that the Panel's errors in defining the temporal scope of its assessment of Japan's *prima facie* case vitiate the Panel's ultimate findings under Articles 2.3 and 5.6 of the SPS Agreement, Japan requests that the Appellate Body complete the analysis, and find that, in light of all timely-submitted evidence, including relating to the situation after the date

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<sup>1</sup> Panel Report, paras. 7.134-7.143.

<sup>2</sup> Panel Report, paras. 7.134-7.143.

of establishment of the Panel, Korea's additional testing requirements and import bans are maintained inconsistently with Articles 2.3 and 5.6 of the SPS Agreement.<sup>3</sup>

4. The Panel erred in the interpretation and application of Annex C(1)(a) of the SPS Agreement, when it articulated the conditions under which domestic and imported products may be presumed to be "like" under Annex C(1)(a);<sup>4</sup> when it found that likeness could not be presumed for purposes of Japan's claim under Annex C(1)(a);<sup>5</sup> and when it found, therefore, that Japan had failed to establish that Korea acted inconsistently with Annex C(1)(a) and, as a consequence, with Article 8 of the SPS Agreement.<sup>6</sup>

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<sup>3</sup> Panel Report, paras. 7.113-7.256, 7.257-7.360, 8.2(b), (c) and (e), and 8.3(b).

<sup>4</sup> Panel Report, paras. 7.394-7.403.

<sup>5</sup> Panel Report, paras. 7.394-7.403.

<sup>6</sup> Panel Report, paras. 7.409, 7.447, and 8.4.