

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

**A. REPORT OF THE APPELLATE BODY (WT/DS495/AB/R AND WT/DS495/AB/R/ADD.1) AND REPORT OF THE PANEL (WT/DS495/R AND WT/DS495/R/ADD.1)**

1. On 11 April 2019, the Appellate Body circulated its Report in the dispute *Korea – Radionuclides*. Although the Appellate Body found that Korea failed to meet the procedural requirements to publish its import bans and additional testing requirements (“measures”) with sufficient information, it reversed the Panel’s substantive findings of these measures’ WTO inconsistency based on technical faults in the Panel’s reasoning and explanation. Subsequently, the Appellate Body failed to resolve the dispute, because it did not address whether Korea’s discriminatory measures are WTO-inconsistent.
2. Japan is deeply concerned that the Appellate Body Report dismissed the Panel’s findings founded on solid scientific evidence. Japan finds it troubling that, while reversing the Panel’s findings on account of insufficiency of the Panel’s analysis, the Appellate Body Report neglects to express the long-awaited view on the WTO-consistency of the measures at issue. In essence, the Appellate Body Report is not conducive to settlement of the dispute and contradicts the principle stated in the DSU that prompt settlement of disputes is essential to the effective functioning of the WTO.
3. Japan questions the attitude of the Appellate Body which shies away from delivering judgement on the WTO-consistency of the challenged measures. This unfortunate outcome also raises a systemic issue. Japan is keen to discuss, together with other WTO Members, this systemic issue collectively. Japan is convinced that such discussions are essential in order to maintain confidence in the WTO dispute settlement system.
4. Apart from this systemic issue, Japan considers the rulings of the Appellate Body Report extremely regrettable because the Appellate Body Report could have significant repercussions for regions, and producers, devastated by the 2011 Great East Japan Earthquake. The impact could be felt especially acutely in the food export industries, such as those that export fish products. Since the disaster,

rebuilding these industries has been a key part of Japan's broader effort to rebuild the economy in the areas affected by the disaster. The Appellate Body's decision could have a negative impact on perceptions of the safety of Japanese foods and on those seeking to export their products to countries such as Korea.

5. I would like to remind all WTO Members that the factual findings made by the Panel on the safety of Japanese food products are undisputed and will be adopted by this Body today. Import restrictions on food products whose safety is assured and confirmed multilaterally in adopted findings cannot be justified. Japan will continue to call on the countries and territories which maintain import restriction measures on food products from Japan to expeditiously lift these measures. The Japanese Government will spare no efforts to secure the removal of unjustified import restrictions on Japanese food products.
6. Additionally, Japan will pursue reform of the WTO dispute settlement system. Japan will constructively engage in the ongoing discussion on the dispute settlement mechanism.