

KOREA – TAXES ON ALCOHOLIC BEVERAGES

Notification of an Appeal by Korea under
paragraph 4 of Article 16 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU)

The following notification, dated 20 October 1998, sent by Korea to the Dispute Settlement Body (DSB), is circulated to Members. This notification also constitutes the Notice of Appeal, filed on the same day with the Appellate Body, pursuant to the *Working Procedures for Appellate Review*.

Pursuant to Paragraph 4 of Article 16 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Rule 20 of the Working Procedures for the Appellate Review, the Government of the Republic of Korea hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report on *Korea – Taxes on Alcoholic Beverages* (WT/DS75/R and WT/DS/84/R) circulated on 17 September 1998 and certain legal interpretations developed by the Panel.

The Republic of Korea requests that the Appellate Body review the following errors of issues of law covered in the Panel Report and legal interpretations developed by the Panel:

1. The Panel erred in its application of customary rules of interpretation of international law, within the terms of Article 3.2 of the DSU, in its interpretation of Article III:2, second sentence, of GATT.
 - (a) First, it based its consideration upon an erroneous interpretation and application of the 'directly competitive or substitutable product' standard in Article III:2, second sentence.
 - (b) Second, the Panel erred in law by failing to conduct a proper product comparison under Article III:2, second sentence, of GATT. By grouping 'diluted' and distilled soju on the one hand and by grouping whiskies, brandies, cognac, rum, gin, vodka, tequila, liqueurs and ad mixtures on the other hand, and then by comparing these two groups, the Panel violated Korea's rights of defense and prejudged the outcome of the dispute.
 - (c) Third, the Panel erred in law in its interpretation and application of Article III:2, second sentence, of GATT in finding that the Korean Liquor Tax Law operates 'so as to afford protection' to a domestic industry.

2. The Panel wrongly applied evidentiary requirements.

- (a) First, the Panel acted inconsistently with fairness and due process principles by misinterpreting or ignoring relevant evidence and arguments presented by the parties, and by making plain errors of fact. For example in its findings, the Panel mischaracterised and failed to address Korea's critique of the 'Dodwell Study' presented by the European Communities (at Annex 13 to its first written submissions).
- (b) Second, the Panel acted inconsistently with fairness and due process principles when applying a double standard in assessing the evidence brought by the complainants and the defendants, flexible in accepting the complainants' evidence, strict in assessing Korea's.
- (c) Third, the Panel erred in the application of the burden of proof in this case. The Panel wrongly considered that complainants brought sufficient evidence to raise a presumption about a 'directly competitive or substitutable' relationship between the products at issue. If, *quod non*, the complainants brought sufficient evidence to raise this presumption, the Panel did not correctly apply the burden of proof by finding that Korea had not sufficiently rebutted the existence of a 'directly competitive or substitutable' relationship between the products at issue.
- (d) Fourth, the Panel did not apply the proper standard of review, in violation of Article 11 of the DSU, in particular because it did not have sufficient evidence to make an 'objective assessment'. Further, the Panel did not accord Korea due deference in assessing the matter before it.

3. The Panel erred in law by providing inadequate reasoning, using contradictory statements and unacceptably vague and open-ended concepts, thereby failing to set out a basic rationale behind its finding consistent with Article 12.7 of the DSU. The Panel's error in this regard has also frustrated Korea's right of appeal.
