24 May 1989

REPUBLIC OF KOREA - RESTRICTIONS ON IMPORTS OF BEEF - COMPLAINT BY THE UNITED STATES

Report of the Panel adopted on 7 November 1989
(L/6503 - 36S/268)

Introduction

1. In February and March 1988, the United States and the Repub((the) TjETBT1 0 0 1 20 0 0 1 334.08 640.8 Tr
not lead to a mutually satisfactory solution. The United States therefore requested the Council to establish a panel to examine the matter (L/6316).

2. At its meeting on 4 May 1988, the Council agreed to establish a panel and authorized its Chairman to designate the chairman and members of the Panel in consultation with the parties concerned. Furthermore, since

ustralia, Argentina, Canada, the European Community, New Zealand and Uruguay each reserved their right to make a submission to the Panel.

3. The following terms of reference were agreed upon:

> "To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States in document L/6316 and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings as provided for in Article XXIII:2."

4. In consultations among the parties it was agreed that both the United States/Korean Panel and the Australian/Korean Panel would have the same composition*, as follows:

Chairman: Mr. Chew Tai Soo

Members: Ms. Yvonne Choi
Mr. Piotr Freyberg

5. The Panel met with the parties on 28 November 1988 and on 20 January 1989. It received third country submissions from Australia, Canada and New Zealand. Their views are summarized below in paragraphs 102-110. The Panel submitted its report on the dispute to the parties on 25 April 1989.

Procedural Questions

6. In its first submission to the Panel, the Republic of Korea argued that the complaint had been improperly brought under Article XXIII of the GATT and that, therefore, the Panel should declare it inadmissible.

7. Korea put forward the following arguments for its request: since its accession to the GATT, Korea had applied restrictions on beef, among other products, under Article XVIII:B. Korea had regularly held consultations about these restrictions pursuant to Article XVIII:12(b), under the aegis of the GATT's Balance-of-Payments Committee. The most recent report of this Committee was issued as BOP/R/171 (1987). A new round of consultations was scheduled to take place in June 1989.

8. Korea also argued that the General Agreement made specific provision for a complaint procedure in Article XVIII:12(d) if, despite the multilateral surveillance exercised pursuant to other provisions of Section B of Article XVIII, a contracting party wanted to challenge the consistency of restrictions that had been applied under this Section.

9. Korea further noted that the complaint procedures of Article XVIII:12(d) and Article XXIII differed in several important respects. For example, under Article XVIII:12(d), the complainant had to make a *prima facie* showing that the disputed restrictions were inconsistent with the provisions of Article XVIII:B. On the other hand, Article XXIII merely required a showing of nullification or impairment of benefits of the complainant, which was not dependent on a showing of inconsistencies with the General Agreement. There were valid reasons for these differences. When countries applied restrictions under Article XVIII:B and held regular consultations concerning these measures with a

Factual Aspects

11. The case before the Panel concerned measures maintained by the Republic of Korea on imports of beef (CCCN 02.01).

(a) General

12. Since its accession in 1967, Korea has maintained balance-of-payments (BOP) measures on various products. Since that year, and to date, Korea's BOP restrictions have been subject to regular review by the BOP Committee. During this period, Korea had abandoned or relaxed restrictions on some products. By 1988, restrictions for which Korea claimed BOP cover were still maintained on 358 items, including beef. In 1979, the Korean tariff on beef was reduced from 25 per cent to 20

15. Therefore, the BOP Committee "stressed the need to establish a clear timetable for the early, progressive removal of Korea's restrictive trade measures maintained for balance-of-payments purposes. It welcomed Korea's willingness to undertake another full consultation with the Committee in the first part of 1989. However, the expectation was expressed that Korea would be able in the meantime to establish a timetable for the phasing out of balance-of-payments restrictions, and that Korea would consider alternative

(d) Korean beef import régime

(i) Import system prior to 1 July 1987

19. Prior to 1 July 1987, Korea's beef imports were governed by the Foreign Trade Transaction Act (as amended) which came into force in 1967. The Foreign Trade Transaction Act provided, *inter alia*, that the Minister of Trade and Industry was obliged to publicly notify the classification of (a) automatic approval import items; (b) restricted approval items; and (c) prohibited items. For restricted items, the Minister was required to lay down procedures controlling their import, including any restrictions on quantity. These arrangements were published in a consolidated public notice (the Export and Import Notice). Meat and edible offals were classified in 1967 as restricted items for the purposes of the Foreign Trade Transaction Act. As restricted products, beef could be imported on the recommendation of the National Livestock Cooperatives Federation (NLCF) subject to the guidelines of the Ministry of Agriculture, Forestry and Fisheries (MAFF), which controlled the quota allocation. If import levels became too high in relation to the level of consumption, imports could be adjusted or suspended.

20. Under the Foreign Trade Transaction Act, the Republic of Korea handled beef imports via two separate mechanisms. One mechanism was concerned with imports of beef for general domestic consumption and generally covered more than 90 per cent of beef imports. These were administered by the NLCF which was established in 1981 by the Livestock Cooperative Law. It had the following functions: (a) administration of a Livestock Development Fund (funded by import levies and direct government contributions) with a prime responsibility of providing concessional loans to livestock farmers; (b) establishment of livestock markets; (c) intervention in the domestic market to stabilize prices through the purchase or sale of stocks; (d) import operations; (e) supply of farming material; (f) marketing of livestock products; (g) general banking business; and (h) extension services. The NLCF imported beef for the general market through a tender system, according to the MAFF's guidelines. Some of the imported beef was processed by the NLCF into packed beef, and some was released to a private entity called Korea Cold Storage Co., at prices lower than those of the domestic wholesale market in order for the latter to produce packed beef. The margin between the wholesale release price and the NLCF's costs, including the purchase price of imported beef, duty and handling charges, was allocated to the Livestock Development Fund.

21. The second mechanism was concerned with imports of high-quality beef for hotels and was handled by the Korean Tourist Hotel Supply Centre (KTHSC) between 1981 and 1985. The KTHSC, an organization representing Korea's major tourist hotels, was established in 1972, under the jurisdiction of the Ministry of Transportation, to import goods solely for tourist hotels. After application from the KTHSC, the Ministry of Transportation would forward the demand for beef imports to the MAFF. The KTHSC paid a levy of 2 per cent of the c.i.f. price of the imported beef to the NLCF for the Livestock Development Fund. The import operations of the NLCF were virtually suspended in October 1984 and those of the KTHSC in May 1985.

(ii) Current import system

22. On 1 July 1987, the Foreign Trade Transaction Act was superseded by the Foreign Trade Act (Law No. 3895 of 31 December 1986). A new organization was established by the Korean Government, the Livestock Products Marketing Organization (LPMO), with effect from 1 August 1988. This organization

- stabilize

(iii) the existence of the LPMO was a GATT-inconsistent restriction on trade within the meaning of Article XI;

(iv) the Republic of Korea had failed to satisfy its notification obligations under Articles X and XIII; and

(v) the Korean restrictions constituted

31. Referring to the findings of the Japanese Agricultural Panel[1], the United States argued that the existence of the LPMO, a monopoly controlled by domestic producers, represented a serious barrier to trade. If import monopolies controlled by domestic producers were permitted, any government could destroy the value of tariff concessions by giving control over imports to organizations with an interest in restricting trade. The United States believed that the LPMO represented a separate and independent restriction on beef trade in violation of the General Agreement.

32. The United States considered that a state-trading monopoly had to be set up and implemented in a neutral and objective manner so that decisions were taken in accordance with "commercial considerations", as required by Article XVII. A government could not constitute these monopolies in such a way as to create clear disincentives to trade. In a situation involving a producer-controlled monopoly, "commercial considerations" would be presumed to be secondary to the basic self-interest of the domestic producers in limiting import competition. The United States believed that there was little prospect of increased trade as long as the LPMO remained. The LPMO operated in a manner which violated Article XI. The Panel should recommend to the CONTRACTING PARTIES that Korea eliminate it and refrain from establishing similar producer-controlled import monopolies in the future. Any other decision would create clear incentives for governments to set up such monopolies. The proliferation of such organizations would have disastrous implications for world trade.

33. *Korea* replied that the LPMO was not a state-trading monopoly; it did not decide independently on the quantities of beef which would be imported into Korea. The restriction levels were determined by the Korean Government. Furthermore, the United States reference to the Interpretative Note ad Articles XI, XII, XIII, XIV and XVIII was mistaken. At first glance, it was difficult to see what the Note added to the understanding of a BOP restriction under Article XVIII by including "restrictions made effective through state-trading operations". The Note merely said, according to Korea, that countries with state-trading enterprises could apply import restrictions just as well as market economy countries for, e.g., balance-of-payments reasons, which seemed irrelevant to Korea because of its market economy status. Korea believed that it was important to stress that the LPMO mechanism did not represent a separate import restriction. The LPMO simply had no authority to set or modify quantitative limitations on beef imports. Nor was the LPMO charged with making recommendations to the Korean Government on the appropriate level of imports. Rather, the LPMO administered the importation of beef within the framework of quantitative restrictions set by the Korean Government. Since the LPMO was just an implementing mechanism, the LPMO's objectives did not affect the justification of the Government's restrictions on beef imports.

Article II

34. The *United States* claimed that the LPMO was levying surcharges on imported beef, which averaged 36 per cent, for the purpose of equalizing import prices with high domestic prices. After negotiations with the United States, Korea bound its tariff on meat during the Tokyo Round of Multilateral Trade Negotiations. The concession was set out in Schedule LX. By agreement with the United States, Korea reduced its tariff on meat of bovine animals (0201.01) from 25 per cent to 20 per cent *ad valorem* and bound it at that rate. The imposition of surcharges on imported meat was plainly inconsistent with Article II:1(b).

35. The United States also argued that the LPMO appeared to have as its purpose, and had taken concrete steps to afford, protection for Korean beef farmers. As such, it was fundamentally inconsistent with Article II:4. Article II:4 barred a contracting party from using import monopolies to restrict trade or afford protection in excess of a bound tariff concession. As shown by the Canadian Liquor Boards Panel report, a government-sponsored import monopoly was not permitted to charge differential mark-ups on imported goods, much less generalized import surcharges. The imposition of such mark-ups

[1]Japan - Restrictions on Imports of Certain Agricultural Products, L/6253.

constituted additional protection in violation of Article II:4.[1] A state-trading organization was limited by Article II:4 to charging the landed costs, plus transportation, distribution, and other expenses incident to the purchase, sale or further processing, plus a reasonable margin of profit. In particular, the margin of profit charged was limited to a margin that would prevail under normal conditions of competition and

40. Consequently, assuming that Korea was entitled to maintain quantitative restrictions

44. Referring to the above-mentioned case in which the panel considered that "the practice, so far followed by the CONTRACTING PARTIES never to use the procedures of Article XXIII:2 to make recommendations or rulings on the GATT compatibility of measures subject to special review procedures, was sound"[1], thus ruling out the consideration of the United States complaint under paragraph 1(a) of Article XXIII, Korea argued that if Article XXIV:7 was deemed a special review procedure as in the above-mentioned case, Article XVIII paragraph 12 *a fortiori* set forward such procedures. This principle was self-evident, according to Korea. If measures were subject to GATT review, pursuant to special procedures, it made no sense to allow them to be challenged under Article XXIII as well. Such duplication wasted the resources of all concerned, in particular those of the GATT bodies charged with the special review, and of the country whose measures were being examined. Moreover, to the extent the standards of review under Article XXIII were different from or less stringent than the standards applied to the special review procedures, review under Article XXIII negated the latter.

45. The *United States* replied that the 1950 GATT Report on "The Use of Quantitative Restrictions for Protective and Other Purposes" published in July 1950 showed unambiguously that the "misuse" of BOP restrictions could be challenged under the dispute settlement provisions of Article XXIII. While the consultation provisions of Article XVIII:12(d) duplicated to an extent the consultation and dispute settlement provisions of Article XXIII:2, this was not unusual,

49. The *United States* argued that despite citing BOP as the ostensible GATT justification for its beef ban, quotas, and surcharges, Korea appeared surprisingly reluctant to discuss the merits of the BOP issue and had put forward a number of procedural obstacles to prevent the Panel from examining the BOP issue and the GATT consistency of the trade restrictions. This reluctance appeared to rest on a (not unfounded) concern about the credibility of claiming BOP cover in Korea's current situation and the fact that these measures were taken for protectionist reasons wholly unrelated to Korea's strong BOP position. Notwithstanding Korea's current contention that the provisions of Articles XII and XVIII could not be challenged in Article XXIII proceedings, the United States believed that the Panel was required under the agreed terms of reference and GATT precedent to decide this issue. Korea had taken the position that the Panel could not examine the BOP issue. It contended that such matters were the exclusive business of the BOP Committee and that the "BOP Committee had continued to authorize Korea

53. The *United States* argued that the CONTRACTING PARTIES had stated unambiguously that the misuse of BOP measures was actionable under Article XXIII. In 1950, shortly after GATT entered into force, the CONTRACTING PARTIES had occasion to examine carefully the application of the BOP provisions of the General Agreement to Article XXIII. At that time, there was serious concern about the misuse of quotas and other trade-restrictive measures. These concerns were equally relevant today. The conclusions of the CONTRACTING PARTIES were set out in the 1950 Report "The Use of Quantitative Restrictions for Protective and Other

59. The *United States* asserted that Korea distinguished the 1950 Report by arguing that it related to "residual" restrictions involving countries which had disinvoked Article XII. Accordingly, Korea contended that the report did not apply to Korea which still claimed BOP cover. However, this argument rested on a major factual error. It was true that the "residuals" issue involved European countries wOP

62. Referring to the above-mentioned language in the 1955 report, *Korea* argued that, at first glance, this language might seem supportive of the United States position. Korea maintained, however, that on closer analysis, it was damaging. First of all, when read in full, the paragraph was quite ambiguous, if not self-contradictory.[1] It could just as well be read to say that Article XXIII could only be invoked against Section C measures in which the CONTRACTING PARTIES had not concurred. Following that reading, Korea's beef restrictions could not be challenged under Article XXIII, because the BOP Committee did recently review Korea's beef restrictions, among others, and stated, according to Korea, that it did not expect Korea to disinvoke Article XVIII:B.[2]

63. Secondly, Korea argued, assuming nevertheless that this language in the 1955 Working Party report did envisage the application of Article XXIII to measures in which the CONTRACTING PARTIES had concurred, the Working Party still restricted the use of Article XXIII. It held that Article XXIII could not be used simply to challenge the consistency of the measures in question. Rather, the complaining party could only prevail in an Article XXIII proceeding (and be entitled to compensatory concessions) if the effects of the measure in which the CONTRACTING PARTIES concurred proved to be "substantially different" from what could have reasonably been foreseen at the time the measure was considered by the CONTRACTING PARTIES.[3] Following this reasoning in the present case, the United States complaints under Article XXIII that Korea's beef restrictions were GATT incompatible were irrelevant. It would be incumbent on the United States to show that the effects of the restrictions on beef were "substantially different" than what could have been foreseen when the GATT's BOP Committee last reviewed them. Korea submitted that it was obvious that the United States would never be able to make such a showing, if only because the United States had never challenged the beef restrictions before the BOP Committee.

64. Korea also argued that the statement in the 1955 Report on the relationship between Article XXIII and Section C of Article XVIII could not be transposed to Section B of Article XVIII. The reason was that Section C did not contain a complaint procedure similar to Article XVIII:12(d) in Section B. With respect to the 1955 Report, Korea argued finally that this Report actually supported its position. While not explicitly saying so, the Report made quite clear that Article XVIII:12(d), rather than Article XXIII, was the proper remedy to complain about the GATT-compatibility of BOP restrictions. Korea referred to the following statement in the Report:

> "The Working Party agreed that it would not be desirable to write into Article XI a procedure for dealing with cases of deviations from the provisions of that Article as the remedy for such cases was already contained in the provisions of Article XXII and XXIII of the Agreement" (BISD 3S/160, 191, paragraph 74).

The Working Party decided not to include a multilateral review mechanism to supervise the justification of quantitative restrictions imposed pursuant to paragraph 2 of Article XI. Accordingly, it felt comfortable with a challenge of these restrictions under the general procedure of Article XXIII. On the other hand, the same Working Party incorporated a multilateral review mechanism (Article XVIII:12(b)) to supervise the justification of quantitative restrictions imposed pursuant to Article XVIII:B. And while consciously avoiding duplication of dispute settlement procedures, the Working Party established a separate complaint procedure to challenge these restrictions, with more difficult standards, in Article XVIII:12(d). Obviously, the Working Party did not envisage that the restrictions rey

65. Korea further argued that none of the GATT precedents addressed the fundamental issue in this case. If the complaint of the United States were to be reviewed under Article XXIII, no country would ever consider invoking Article XVIII:12(d). Korea had pointed out that Article XVIII:12(d) made it rather difficult for a country to complain about a BOP measure that had been reviewed by the BOP Committee. In fact, the requirements of this provision were rather more difficult to satisfy for a complaining country than the requirements of Article XXIII. There were good reasons for these differences. When countries applied restrictions under Article XVIII:B and held regular consultations concerning these measures with a qualified GATT committee that took into account the relevant findings of the International Monetary Fund, they had a legitimate expectation that these measures could not simply be challenged under the relatively loose requirements of Article XXIII regarding nullification or impairment. Otherwise, the exercise of multilateral surveillance became meaningless. Moreover, if the Panel reviewed the United States complaint under Article XXIII, it agreed that the United States and any country that wanted to challenge a BOP measure could choose to ignore Article XVIII:12(d). This would negate the procedure of Article XVIII:12(d), and amount to an improper amendment of the GATT, in violation of Article XXX.

66. Korea could conceive of only one approach that would not necessarily put the relationship between Article XXIII and Article XVIII:12(d) at issue in this case. For that, the Panel would have to distinguish the 1984/1985 intensification measures (which were not imposed for BOP reasons but for beef industry protection reasons) from the original BOP restrictions on beef imports. Korea did not favour this approach, because it believed that BOP concerns continued to underlie and characterize the restrictions as a whole. Yet, Korea was of the view that an alternative approach was possible, which emphasized that the 1984/1985 intensification measures themselves were not motivated by BOP concerns.

67. The *United States* disagreed with Korea's claim that

BOP Committee provided broad review of the overall justification for the restrictions and ensured that appropriate trade and macroeconomic policies were adhered to. Dispute settlement allowed a country, whose trade was damaged by the misuse of alleged BOP measures, to establish its GATT rights.

69. The United States also did not agree with Korea's argument that Article XVIII:12(d) was the only means for challenging the misuse of BOP rights. First, as the 1955 Working Party which drafted the provision emphasized, paragraph 12(d) "takes the form of a request for consultations, rather than

Article XVIII:B. The justification of its restrictions had never been called into question, until the last round of full consultations in December 1987.[1] According to the "prevailing" view expressed therein, import restrictions "could" no longer be justified under Article XVIII:B.[2] It was clear that, for the first time, the BOP Committee thereby expressed doubts about the future justification of Korea's BOP restrictions. Yet, it was equally clear that the GATT's BOP Committee did not make a finding that the present or past application of Korea's BOP restrictions was inconsistent with Article XVIII:B.

72. The *United States* replied that, in December 1987, the members of the BOP Committee "emphasized that, in their view, the present situation and outlook did not justify the maintenance of balance-of-payments restrictions".[3] The Committee stated that Korea's external debt was not a justification for continued restrictions: "The debt burden, while still large had been substantially reduced, and was not high in per capita terms. Moreover, it could be expected that the goals for reduction of the debt burden mentioned in the IMF statement could be achieved ahead of time". Accordingly, the Committee reported that "[t]347.28 732.72 Tm/F8 1r,

78. *Korea* argued that when the CONTRACTING PARTIES agreed to establish this Panel, they limited its terms of reference to examining Korea's import restrictions on beef. Yet, these restrictions were part of a series of restrictions that remained to protect Korea's balance of payments. Accordingly, findings on the justification of Korea's restrictions on beef imports under Article XVIII:B were likely to reflect on the justification of these other restrictions as well. These, however, fell outside this Panel's terms of reference. And Korea could not agree to the challenge of all its BOP restrictions on the basis of the present United States complaint. Korea submitted that its remaining BOP restrictions, taken as a whole, served to protect the Korean economy, consistent with Article XVIII:B. A proper evaluation of the justification of the beef restrictions would involve a review of all of Korea's BOP restrictions. Yet, the United States did not request such a broad-scale review from the Council, and this Panel could not engage in such a review now. Assuming, nevertheless, that the Panel were to feel it could distinguish the restrictions on beef imports and thus limit its own analysis, Korea submitted that it was inconceivable that the International Monetary Fund could do likewise.

79. Korea submitted that without further advice from the IMF pursuant to Article XV:2, the Panel could not make any recommendations on the justification of Korea's restrictions on imports of beef under Article XVIII:B. Yet, it was open to question whether the Panel would be competent, without specific authorization from the Council, to consult with the IMF. To Korea's knowledge, panels had received no such authorization to date.

80. The *United States* replied that panels were clearly authorized to consult with the IMF since the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance[1] provided that "each panel should have the right to seek information and technical advice from any individual or body which it deems appropriate". The United States considered that, if there was any remaining doubt on whether Korea could impose BOP restrictions under the criteria of Articles XII:2(a) or XVIII:9, the Panel should request IMF advice as soon as possible in order to resolve it. The United States did not agree with Korea's contention that the Panel should refrain from ruling on the justification under Article XVIII:B for Korea's beef quotas because any ruling could have broader implications for other Korean trade restrictions that were allegedly justified on BOP grounds. The United States noted that it was Korea, not the United States, which had introduced BOP to the case by choosing to rely on BOP as its GATT defence. Having done so, Korea could not object to consideration of the BOP issue or the necessary implications of the resolution of certain BOP issues for other Korean trade restrictions. The United States did not agree with Korea's claim that the Panel could not rule on an issue if the implications of its ruling could be interpreted to go beyond beef, since GATT panel decisions frequently had broader implications. Indeed, one of the primary benefits of the GATT dispute settlement process had been to create a series of precedents as to permissible and impermissible actions under GATT. Preventing a panel from making 0 0 1 464.16 434.4 Tm/F8 11 T/F8 11 Tf(h) TjET(the) TjETBT1 0 0 1 73.7 11 T

82. If, despite the foregoing, the Panel were to evaluate its balance-of-payments position, Korea argued, referring to Article XVIII:9, that the question of whether the disputed restrictions were justified under Article XVIII:B essentially turned on whether Korea had cause to be

86. The *United States* strongly disagreed with the Korean claim that Korean beef import restrictions were justified under Article XVIII:B. The United States considered, on the contrary, that the Republic of Korea was in the strong position of running large trade and current account surpluses, a competitively undervalued currency, growing foreign exchange reserves, and had substantially reduced its external debt. Korea did not, in the United States view, qualify under Articles XII or XVIII:B since it did not have a balance-of-payments problem as defined by GATT. Under Article XII, a contracting party could impose quantitative restrictions for BOP purposes only "in order to safeguard its external financial position and its balance of payments". The requirements of Article XVIII:B were similar, but covered also restrictions "to ensure a level of reserves adequate for the implementation of its programme of economic development". Under either Article, these restrictions could not exceed those necessary: "(i) to forestall the threat of, or to stop, a serious decline in its monetary reserves", or "(ii) in the case of a contracting party with inadequate monetary reserves, to achieve a reasonable rate of increase in

94. Korea explained further that, faced with an unprecedented situation in 1984-85, it nevertheless sought to stay close to the letter of the GATT. It did not pretend that the intensification of its BOP restrictions was motivated by a worsening of its BOP situation, and hence did not notify this measure pursuant to Article XVIII:12(a). Moreover, Korea made an attempt to act within the spirit of Article XVIII:10, in that it sought to avoid unnecessary damage to the interests of its trading partners. Now that the domestic market situation had stabilized, Korea was retracting the intensification of its BOP restrictions.

95. Korea further argued that it was certainly true that Korea's BOP position had improved since 1984/1985. Yet, without involving all the other remaining BOP restrictions, this Panel could not decide whether and to what extent such improvement ought to translate into a further relaxation of the BOP restrictions on beef beyond the 51,500-ton level existing in 1983. Thus, it would make no sense to find that Korea's restrictions on beef imports were no longer justified under Article XVIII:B, while maintaining that the other 357 restrictions continued to be justified as they were. Obviously, improvements in Korea's BOP position did not affect the restrictions on beef imports exclusively. Prescriptions for change required a global assessment. Yet, an across-the-board review of all of Korea's remaining BOP restrictions clearly fell outside this Panel's terms of reference.

96. The *United States* submitted that Korea's financial position had strengthened dramatically since 1984. It saw no justification for reimposing balance-of-payments restrictions in Korea's present situation. It was essential to keep in mind that BOP was not a permanent entitlement to restrict imports to protect sensitive domestic industries. While BOP measures could have "incidental" protective effects, the only legitimate purpose of BOP was financial. Under Articles XII:2(b) and XVIII:B(11), the measures had to be temporary and had to be eliminated as soon as a country's financial position improved. Accordingly, in the United States view, it followed that Korea did not have a right to reimpose quotas as it pleased after a

98. In the event the Panel were to find that Korea's beef restrictions were not consistent with the

101. In response, *Korea* argued, *inter alia*, that it was inappropriate for the United States to challenge the restrictions on beef imports retroactively, as far back as 1967. Furthermore, Korea argued that the complaint of the United States was not reviewable under the

-

Article XI

111. The Panel considered that there were essentially two sets of restrictions on beef imports maintained by Korea:

(a) measures amounting to a virtual suspension of imports introduced in November 1984 and May 1985 and subsequently amended in August 1988. These measures were neither notified to, nor reviewed by, the Balance-of-Payments Committee;

Agreement. 12. Korea

(b) restrictions on beef existing since Korea's accession to the General Agreement in 1967, which were notified to, and reviewed by, the Balance-of-Payments Committee.

112. Article XI:1 did not permit the use of ei Tm/F8 11 Tf(e) Tj 0 1 240.72 590.16 T TjE Tf(Tm/F8 11 Tf(e)8719

in (b)

Article XVIII

(a) Procedur ts

116. The Pa
paragraph 111
view that the
challenged und
and 12(d) of A
the paragraph
whether the c
framework of

117. The Pa
deliberations
the General
in the GAT
to examin
agreed by
to exami ef import restriction light of the relevan f provisions", v ded
Article X

118. T examined the drafti y of Article XXIIIa dBT XVIII 0 1 37 Tm/F8 11 Tf(ac
was sa priority or exclus f procedures of ei icle. The Pan that
Articl 2(b) pr vided fo lar review of ba f-payments rest the
CON NG PA TIES. XVIII:12(d) spec provided for of
balan ment estrictions request of a contra rty where that p
prin e restrict e inconsistent with visions of Article
of A Article 2(d) provision had h not been resorted
the XXIII w mbracing; it provide spute settlement p
to es of the Agreement, inclu icle XVIII:B in t
to ocedure had by all cont iesBT1 0 0 1 14 e) TjETE

light

(b) Justification for restrictions

120. The Panel proceeded to examine Korea's Article XVIII:B justification for its import restrictions referred to in paragraph 111(b) above. The United States contended that the import restrictions

Article II

124. The Panel noted that the LPMO was a beef import monopoly established in July 1988, with exclusive privileges for the administration of both the beef import quota set by the Korean Government and the resale of the imported beef to wholesalers or in certain cases directly to end users such as hotels. The Panel examined whether the mark-ups imposed on imported beef, in combination with the import duties collected at the bound rate, afforded "protection on the average in excess of the amount of protection provided

129. The Panel then examined the United States contention that Korea imposed surcharges on imported beef in violation of the provisions of paragraph 1(b) of Article II and noted that Korea claimed that it did not impose any surcharges in violation of Article II:1(b). The Panel was of the view that, in the absence of quantitative restrictions, any charges imposed by an import monopoly would normally be examined under Article II:4 since it was the more specific provision applicable to the restriction at issue. In this regard, the Panel recalled its findings in paragraph 127 above. It concluded, therefore, that it was not necessary to examine this issue under Article II:1(b).

Articles X and XIII

130. The Panel noted that the United States had, as a subsidiary matter, claimed that Korea had not met its obligations under Articles X and XIII by not providing proper public notice of the import restrictions. It also noted that Korea had stated that the withdrawal of the measures imposed in 1984/85 and the import levels in 1988 had been widely publicized. In view of the Panel's determinations as concerned the consistency of the Korean measures with Articles II and XI, the Panel did not find it necessary to address these subsidiary issues. The Panel noted, however, the requirement in Article X:1 that "laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to … rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports …, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them". It also noted the provision in Article XIII:3(b) that "[i]n the case of import restrictions involving the fixing of quotas, the contracting party applying the restrictions shall give public notice of the total quantity or value of the product or products which will be permitted to be imported during a specified future period and of any change in such quantity or value".

Recommendations

131. In the light of the findings above, the Panel suggests that the CONTRACTING PARTIES recommend that:

(a) Korea eliminate or otherwise bring into conformity with the provisions of the General Agreement the import measures on beef introduced in 1984/85 and amended in 1988; and,

(b) Korea hold consultations with the United States and other interested contracting parties to work out a timetable for the removal of import restrictions on beef justified since 1967 by Korea for balance-of-payments reasons and report on the result of such consultations within a period of three months following the adoption of the Panel report by the Council.

* * *
* *
*

ANNEX II

KOREA: SUMMARY OF ECONOMIC INDICATORS

	1985	1986	1987	Jan-Sept 1988	1985/84	1986/85	1987/86	Jan-Sept 1988/87
	(Billion won)				(Per cent changes)			
GNP (1980 constant prices)	52,705.4	59,187.8	66,319.6	51,369.6	5.4%	12.3%	12.0%	12.0%
Real Domestic Demand	54,960.7	59,540.6	65,590.3	50,184.9	4.0%	8.3%	10.2%	11.0%
Consumption	37,191.6	39,888.6	42,976.2	33,654.5	5.1%	7.3%	7.7%	8.1%
Gross capital formation	17,769.1	19,652.0	22,614.1	16,530.4	1.6%	10.6%	15.1%	17.4%
Export of goods and non factor services	20,279.5	25,648.1	31,809.0	26,117.3	2.1%	26.5%	24.0%	12.3%
Import of goods and non factor services	20,124.1	23,852.7	28,899.6	24,140.9	- 1.7%	18.5%	21.2%	14.9%
					(Average, twelve month per cent change)			
Prices, Wages and Employment								
Consumer prices	100.0	102.8	105.9	112.7	2.5%	2.8%	3.0%	7.1%
Terms of Trade	100.0	108.8	111.5	114.3	0.5%	8.8%	2.5%	2.5%
Nominal earnings in manufacturing[1]	269.7	294.5	328.7	364.8	9.9%	9.2%	11.6%	21.1%
Unemployment rate	4.0	3.8	3.1	2.6	4.0%	- 5.0%	- 18.4%	- 23.5%
	(Billion won)				(Per cent of GNP)			
Public Sector								
Revenue	14,223.5	16,278.6	19,270.5	18,007.6	27.0%	27.5%	29.1%	35.1%
Expenditure	13,585.0	15,310.5	18,364.6	14,375.9	25.8%	25.9%	27.7%	28.0%
	(Billion won)				(Twelve month per cent change)			
Money and Credit								
Money and quasi-money	28,565.2	33,833.1	40,279.5	42,714.6	16.8%	18.4%	19.1%	18.3%

Source: Monthly Statistical Bulletin, November 1988, The Bank of Korea.
International Financial Statistics, December 1988, IMF.

[1]In '000 won. 1988: January - July.

KOREA: SUMMARY OF ECONOMIC INDICATORS (cont'd)

	1985	1986	1987	Jan-Sept. 1988
		(Billion US$)		
Current account	(0.9)	4.6	9.9	14.1
Trade balance (f.o.b.)	-	4.2	7.7	11.1
Exports	26.4	33.9	46.2	59.7
Imports	(26.5)	(29.7)	(38.6)	(48.6)
Services and transfers (net)	(0.9)	0.4	2.2	3.0
Capital account (net)	(0.7)	(1.5)	(4.3)	(0.5)
Errors and omissions	(0.8)	(0.5)	1.2	-
Overall balance[1]	(2.5)	2.6	6.8	13.6
		(Billion US$)		
Gross Official Reserves (end of period)	2.9	3.3	3.6	12.3 (actual)
In months of imports	1.3	1.3	1.1	3.0*
		(Billion US$)		
Outstanding external debt (end of period)	46.8	44.5	35.6	31.9
Medium- and long-term	36.0	35.3	26.3	22.0
Short term	10.7	9.2	9.3	9.9
Various				
Ratio of current account to GNP	(1.1)	4.9	8.3	9.0
Ratio of external debt to GNP	55.8	46.8	30.0	20.4
Won per US$ (average)	870.0	881.5	822.5	731.5

*At end December 1988.
[1]Reflects changes in the net foreign assets of the banking system.

Source: Monthly Statistical Bulletin, November 1988, The Bank of Korea.
International Financial Statistics, December 1988, IMF.

ANNEX III

Article 31 of the Havana Charter

Expansion of Trade

1. If a Member establishes, maintains or authorizes, formally or in effect, a monopoly of the importation or exportation of