

AUSTRALIA – MEASURES AFFECTING IMPORTATION OF SALMON

Request by Australia for Arbitration under Article 22.6 of the DSU.

The following communication, dated 27 July 1999, from the Permanent Mission of Australia to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 22.6 of the DSU.

Australia understands that, at the specially convened meeting of the Dispute Settlement Body (DSB) on 27 July 1999 (that has now been adjourned until 28 July) Canada will proceed to a request for authorization to suspend concessions on the basis identified in a request dated 15 July 1999 (WT/DS18/12).

Australia wishes to advise that, as the measure identified in Canada's request is an import ban that ceased to be in existence on 19 July 1999 and, given that Canada has not identified any other relevant measure from which nullification or impairment might arise, Canada has no legal basis for proceeding with its request.

The DSB meeting on 27 July (now 28 July) will be the first opportunity for Australia to contest Canada's right to seek authorization on the basis of WT/DS18/12.

As Australia wishes to proceed with an abundance of legal caution in regard to safeguarding its WTO right to arbitration accorded by Article 22.6 of the Dispute Settlement Understanding (DSU), Australia, hereby objects to the level of suspension proposed by Canada in document WT/DS18/12, and requests that, in the event the DSB accepts that Canada can proceed with its request for authorization, the matter of whether the level proposed, in accordance with the provisions of Article 22.7 of the DSU, is equivalent to the level of nullification or impairment of benefits suffered by Canada, be submitted to arbitration.

Given that the quarantine prohibition the subject of the dispute has been replaced with a measure that permits entry of salmon subject to specified quarantine conditions, and given also that there has not been any WTO legal finding that Canada has suffered nullification or impairment as a result of that measure, the level proposed by Canada is not in accordance with the provisions of Article 22.4 of the DSU.

Further, Australia maintains that the principles and procedures set out in Article 22.3 have not been followed.

This request is without prejudice to Australia's position that Arbitration under Article 22.7 cannot proceed in the absence of a WTO legal finding of nullification and impairment in regard to the measure applied as at the date of request.
