

AUSTRALIA - MEASURES AFFECTING IMPORTATION OF SALMON

Request by Canada for Determination of
Consistency of Implementation Measures

The following communication, dated 28 July 1999, from the Permanent Mission of Canada to the Permanent Mission of Australia and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 21.5 of the DSU.

On 6 November 1998, the Dispute Settlement Body adopted the Appellate Body report on "Australia - Measures Affecting Importation of Salmon" (WT/DS18/AB/R) and the panel report (WT/DS18/R), as modified by the Appellate Body report. Those reports found Australia's measure prohibiting the importation of fresh, chilled or frozen Canadian salmon to be inconsistent with the Agreement on the Application of Sanitary and Phytosanitary Measures (the "SPS Agreement").

On 23 February 1999, in an award pursuant to Article 21.3(c) of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU"), an arbitrator granted Australia until 6 July 1999 to implement the recommendations and rulings of the DSB (WT/DS18/9) to bring its measures into conformity with the SPS Agreement.

Australia did not comply with the recommendations and rulings of the DSB by 6 July 1999.

On 19 July 1999, in Animal Quarantine Policy Memorandum 1999/51 (AQPM 1999/51), Australia announced new "policies" for the importation of non-viable salmonid products, non-viable marine finfish products other than salmonids and live ornamental finfish.

As a result of the policies announced in AQPM 1999/51, there is a disagreement between Canada and Australia as to whether Australia has taken measures to comply with the 6 November 1999 recommendations and rulings of the DSB and if so, whether the alleged measures are consistent with the SPS Agreement.

In view of the above, Canada hereby requests that this matter be referred to the original panel pursuant to Article 21.5 of the DSU.

Canada requests that the panel find that Australia has not taken measures to comply with the 6 November 1999 recommendations and rulings of the DSB.

Canada further requests that the panel find that even if Australia has taken or does take measures to comply with the recommendations and rulings of the DSB by implementing the policies for non-viable salmonids products outlined in AQPM 1999/51, those measures are not, or would not be, consistent with the SPS Agreement for the following reasons:

- (i) they are not based on a risk assessment, contrary to Article 5.1 of the SPS Agreement;

- (ii) they are not applied only to the extent necessary to protect animal life or health, are not based on scientific principles and are maintained without sufficient scientific evidence, contrary to Article 2.2 of the SPS Agreement;
- (iii) they arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between New Zealand and Canada and between Australia and Canada, and are applied in a manner that constitutes a disguised restriction on international trade, contrary to Article 2.3 of the SPS Agreement;
- (iv) when considered against the measures outlined in AQPM 1999/51 for non-viable marine finfish products other than salmonids and live ornamental finfish, they reflect arbitrary or unjustifiable distinctions in Australia's appropriate level of protection in different situations, resulting in discrimination or a disguised restriction on international trade, contrary to Article 5.5 of the SPS Agreement;
- (v) they are more trade restrictive than required to achieve Australia's appropriate level of sanitary protection, contrary to Article 5.6 of the SPS Agreement;
- (vi) they are not adapted to the sanitary characteristics of either all or part of Canada or Australia contrary to Articles 6.1 and 6.2 of the SPS Agreement; and
- (vii) they entail information requirements that are not limited to what is necessary for appropriate control, inspection and approval procedures, contrary to Article 8 and Annex C.1(c) of the SPS Agreement.

Canada requests that the panel have the standard terms of reference as set out in Article 7 of the DSU.
