

AUSTRALIA – MEASURES AFFECTING IMPORTATION OF SALMON

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

The following notification, dated 22 July 1998, sent by Australia 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 Appellate Review, Australia hereby notifies its decision to appeal to the Appellate Body certain findings and the conclusions of the Panel on *Australia – Measures Affecting Importation of Salmon* (WT/DS18/R).

Australia requests that the Appellate Body review the following errors of law made by the Panel:

1. The Panel failed to accord Australia due process and failed to properly interpret its terms of reference in relation to identification of the measure at issue.
2. The Panel exceeded its terms of reference by extending the coverage of the dispute to products and to sanitary measures for other than fresh chilled or frozen salmon.
3. The Panel exceeded its terms of reference by extending the scope of its examination of Article 5 of the SPS Agreement to include Article 6 of that Agreement.
4. The Panel erred in its allocation and application of the burden of proof under Articles 2 and 5 of the SPS Agreement.
5. The Panel failed to make an objective assessment of the matter before it and apply the appropriate standard of review under Article 11 of the DSU and the provisions of the SPS Agreement in regard to the ascertainment and application of facts and in regard to the legal characterization of the matters in dispute; in failing to accord due deference to Australia's evidence in regard to the relevant facts and circumstances in the context of the matters in dispute; and in undertaking a *de novo* examination of the matters before it.
6. The Panel failed to accord due process to Australia in regard to the right to make a formal written submission in an appropriate period of time in rebuttal to the substantial new matters raised by Canada, and in determining that written comment made by Australia on due process matters had the status of a formal written rebuttal submission.

7. The Panel failed to accord due process to Australia by not applying the appropriate procedural standards concerning submission and acceptance of evidence.
8. The Panel erred in law in finding that Australia had acted inconsistently with the requirements of Article 5.1 of the SPS Agreement and by association SPS Article 2.2, in particular, with regard to:
 - (i) application of its terms of reference;
 - (ii) failure to interpret and apply the provisions of Article 5.1 in accordance with the customary rules of interpretation of public international law as provided by Article 3.2 of the DSU;
 - (iii) application of the burden of proof for establishing a *prima facie* case; and
 - (iv) failure to make an objective assessment of the matter before it and apply the appropriate standard of review in accordance with Article 11 of the DSU and the provisions of the SPS Agreement.
9. The Panel erred in law in finding that Australia had acted inconsistently with the requirements of Article 5.5 of the SPS Agreement and by association Article 2.3, in regard to:
 - (i) application of its terms of reference;
 - (ii) the way in which the Panel applied the tests for determining the existence of arbitrary or unjustifiable distinctions in levels of protection in different situations and in determining that these distinctions resulted in discrimination or a disguised restriction on trade;
 - (iii) failure to interpret and apply the provisions of Article 5.5 in accordance with customary rules of interpretation of public international law as provided by Article 3.2 of the DSU;
 - (iv) application of the burden of proof for establishing a *prima facie* case; and
 - (v) failure to make an objective assessment of the matter before it and apply the appropriate standard of review in accordance with Article 11 of the DSU and the provisions of the SPS Agreement.
10. The Panel erred in law in finding that Australia had acted inconsistently with the requirements of Article 5.6 of the SPS Agreement in regard to:
 - (i) application of its terms of reference;
 - (ii) the way in which the Panel applied the tests for identifying the existence of less trade restrictive alternative measures;
 - (iii) failure to interpret and apply the provisions of Article 5.6 in accordance with customary rules of interpretation of public international law as provided by Article 3.2 of the DSU;
 - (iv) application of the burden of proof for establishing a *prima facie* case; and

- (v) failure to make an objective assessment of the matter before it and apply the appropriate standard of review in accordance with Article 11 of the DSU and the provisions of the SPS Agreement.
-