

**AUSTRALIA – MEASURES AFFECTING THE IMPORTATION
OF APPLES FROM NEW ZEALAND**

Notification of an Appeal by Australia
under Article 16.4 and Article 17 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU),
and under Rule 20(1) of the Working Procedures for Appellate Review

The following notification, dated 31 August 2010, from the Delegation of Australia, is being circulated to Members.

1. Pursuant to Article 16.4 and Article 17 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 issues of law covered in the report of the Panel entitled *Australia – Measures Affecting the Importation of Apples from New Zealand* (WT/DS367/R) (Panel Report) and certain legal interpretations developed by the Panel.

2. Australia seeks review by the Appellate Body of the following errors of law and legal interpretation contained in the Panel Report:

- (a) In ultimately finding in the Panel Report at [8.1](b) that the 16 measures at issue, both as a whole and individually, constitute SPS measures, the Panel erred in its interpretation and application of the definition of "sanitary or phytosanitary measure" in Annex A(1) to the *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement). The error appears at [7.113]-[7.187] of the Panel Report.
- (b) In ultimately finding in the Panel Report at [8.1](c) that the measures imposed by Australia for fire blight and apple leafcurling midge (ALCM), as well as the general measures, are inconsistent with the requirements of Arts 5.1 and 5.2 (and consequently Art 2.2) of the SPS Agreement, the Panel erred in its interpretation and application of what constitutes a proper "risk assessment". The errors appear at [7.240-7.472], [7.473-7.510], [7.782-7.887] and [7.898-7.906] of the Panel Report.
- (c) In ultimately finding in the Panel Report at [8.1](c) that the measures imposed by Australia for fire blight and ALCM, as well as the general measures, are inconsistent with the requirements of Arts 5.1 and 5.2 (and consequently Art 2.2) of the SPS Agreement, the Panel failed in the performance of its duty under Art 11 of the DSU to make an "objective assessment of the matter". The errors appear at [7.240-7.472], [7.473-7.510], [7.782-7.887] and [7.898-7.906] of the Panel Report.

- (d) In ultimately finding in the Panel Report at [8.1](d) that the measures imposed by Australia for fire blight and ALCM are inconsistent with the requirements of Art 5.6 of the SPS Agreement, the Panel relied upon its erroneous findings against the risk assessments for fire blight and ALCM under Arts 5.1 and 5.2 (and consequently Art 2.2) of the SPS Agreement in concluding that New Zealand's alternative measures would achieve Australia's appropriate level of protection (ALOP). In addition to or in the alternative, the Panel erred in its interpretation and application of Art 5.6, and failed to make an "objective assessment of the matter" as required by Art 11 of the DSU, in concluding that New Zealand's alternative measures would achieve Australia's ALOP. The errors appear at [7.1133-7.1197] and [7.1286-7.1331] of the Panel Report.
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