

Original: English

**EUROPEAN COMMUNITIES – PROTECTION OF TRADEMARKS
AND GEOGRAPHICAL INDICATIONS FOR AGRICULTURAL PRODUCTS
AND FOODSTUFFS**

Request for Consultations by Australia

The following communication, dated 17 April 2003, from the Permanent Mission of Australia to the Permanent Delegation of the European Commission and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the European Communities (EC) pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Article XXII of the *General Agreement on Tariffs and Trade 1994* (GATT 1994), Article 64 of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS Agreement) and Article 14 of the *Agreement on Technical Barriers to Trade* (TBT Agreement) relating to the protection of trademarks and to the registration and protection of geographical indications for foodstuffs and agricultural products in the EC.

The measures at issue include Council Regulation (EEC) No 2081/92 of 14 July 1992 *on the protection of geographical indications and designations of origin for agricultural products and foodstuffs* and measures taken thereunder as well as any amendments thereto, and any related measures, and their implementation ("the EC measure").

The EC measure seems not to accord immediately and unconditionally to the nationals and/or products of each WTO Member any advantage, favour, privilege of immunity granted to the nationals and/or like products of any other WTO Member.

The EC measure seems not to accord to the nationals and/or products of each WTO Member treatment no less favourable than that it accords to its own nationals and/or like products of national origin.

The EC measure may diminish the legal protection for trademarks.

The EC measure may not be consistent with the EC's obligation to provide the legal means for interested parties to prevent misleading use of a geographical indication or any use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention (1967).

The EC may not have met its transparency obligations in respect of the measure.

The EC measure may be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create.

In light of the above, the EC measure appears to be inconsistent with the EC's obligations pursuant to the TRIPS Agreement, including but not necessarily limited to Articles 1, 2, 3, 4, 16, 20, 22, 24, 41, 42 and 63, and pursuant to Articles I and III of GATT 1994 and Article 2 of the TBT Agreement. The EC may also be in breach of its obligation under Article 65 of the TRIPS Agreement to apply the provisions of the TRIPS Agreement before the expiry of a general period of one year following the date of entry into force of the WTO Agreement. The EC may also be in breach of its obligations under Article XVI:4 of the *Marrakesh Agreement Establishing the World Trade Organization* to ensure the conformity of its laws, regulations and administrative procedures with its obligations under the annexed Agreements.

I look forward to receiving your reply and fixing a mutually acceptable date for consultations.
