

VIII. CONCLUSIONS AND RECOMMENDATION

8.1 In light of the findings set out in this report, the Panel concludes as follows:

From Section A of the findings:

- (a) the measures and claims in Australia's request for establishment of a panel did not fail to meet the requirements of Article 6.2 of the DSU that it identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly;
- (b) the claims under Article 2(2) of the Paris Convention (1967) are within the Panel's terms of reference;
- (c) the claim under Article 4 of the Paris Convention (1967), as incorporated by Article 2.1 of the TRIPS Agreement and, consequently, under Article 24.5 of the TRIPS Agreement, is outside the Panel's terms of reference;
- (d) the claim under Article 41 in conjunction with Articles 43, 44, 45, 46, 48 and 49 of the TRIPS Agreement is outside the Panel's terms of reference;

From Section B of the findings:

- (e) Australia has made a prima facie case that the equivalence and reciprocity conditions in Article 12(1) of the Regulation apply to the availability of protection for GIs that refer to geographical areas located in third countries outside the European Communities, including WTO Members and the European Communities has not succeeded in rebutting that case;
- (f) the Regulation is inconsistent with Article 3.1 of the TRIPS Agreement:
 - (i) with respect to the equivalence and reciprocity conditions, as applicable to the availability of protection;
 - (ii) with respect to the application procedures, insofar as they require examination and transmission of applications by governments; and
 - (iii) with respect to the objection procedures, insofar as they require verification and transmission of objections by governments;
- (g) Australia has not made a prima facie case in support of its claims that the Regulation is inconsistent with Article 3.1 of the TRIPS Agreement and with Article 2(1) of the Paris Convention (1967) as incorporated by Article 2.1 of the TRIPS Agreement:
 - (i) with respect to the equivalence and reciprocity conditions, as allegedly applicable to objections; or
 - (ii) with respect to the regulatory committee;
- (h) the Regulation does not impose a requirement of domicile or establishment inconsistently with Article 2(2) of the Paris Convention (1967) as incorporated by Article 2.1 of the TRIPS Agreement:
 - (i) with respect to the availability of protection for GIs;

- (ii) with respect to the application procedures; or
- (iii) with respect to the objection procedures;
- (i) the Regulation is inconsistent with Article III:4 of GATT 1994:
 - (i) with respect to the equivalence and reciprocity conditions, as applicable to the availability of protection; and
 - (ii) with respect to the application procedures, insofar as they require examination and transmission of applications by governments, and these requirements are not justified by Article XX(d) of GATT 1994;
- (j) Australia has not made a prima facie case in support of its claims that the Regulation is inconsistent with Article III:4 of GATT 1994 with respect to the regulatory committee;
- (k) Australia has not made a prima facie case in support of its claim that the Regulation is inconsistent with Article 2.1 of the TBT Agreement with respect to the labelling requirement;

From Section C of the findings:

- (l) Article 2.2 of the TBT Agreement is inapplicable to the inspection structures requirements, read together with Article 4 of the Regulation, and the Panel rejects Australia's claim;

From Section D of the findings:

- (m) the Regulation is inconsistent with Article 16.1 of the TRIPS Agreement with respect to the coexistence of GIs with prior trademarks but this is justified by Article 17 of the TRIPS Agreement. In this respect:
 - (i) Article 24.3 of the TRIPS Agreement is inapplicable; and
 - (ii) Article 24.5 of the TRIPS Agreement is inapplicable;
- (n) Australia has not made a prima facie case in support of its claims that the Regulation is inconsistent with Article 16.1 of the TRIPS Agreement with respect to the right of objection of trademark owners;

From Section E of the findings:

- (o) the Panel rejects Australia's claim under Article 22.2 of the TRIPS Agreement;
- (p) Australia has not made a prima facie case in support of its claims that the Regulation is inconsistent with Article 10bis and 10ter of the Paris Convention (1967) "as incorporated in the TRIPS Agreement";
- (q) the Panel rejects Australia's claims under 41.1, 41.2, 41.3 and 42 of the TRIPS Agreement (except as noted at paragraph 8.1(d));
- (r) Australia has not made a prima facie case in support of its claims with respect to transitional national protection; and

(s) Australia has not made a prima facie case in support of its claims with respect to individual registrations.

8.2 The Panel exercises judicial economy with respect to Australia's claims under:

(a) Article 2(1) of the Paris Convention (1967), as incorporated by Article 2.1 of the TRIPS Agreement (except as noted at paragraph 8.1(g))

(b) Article 16.1 of the TRIPS Agreement (with respect to the presumption of confusion);

(c) Articles 1.1 and Article 65.1 of the TRIPS Agreement;

(d) Article III:4 of GATT 1994 (except as noted in paragraph 8.1); and

(e) Article XVI:4 of the WTO Agreement.

8.3 Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered prima facie to constitute a case of nullification or impairment. The Panel concludes that, to the extent that the Regulation as such is inconsistent with the covered agreements, it has nullified or impaired benefits accruing to Australia under these agreements.

8.4 In light of these conclusions, the Panel recommends pursuant to Article 19.1 of the DSU that the European Communities bring the Regulation into conformity with the TRIPS Agreement and GATT 1994.

8.5 The Panel suggests, pursuant to Article 19.1 of the DSU, that one way in which the European Communities could implement the above recommendation with respect to the equivalence and reciprocity conditions, would be to amend the Regulation so as for those conditions not to apply to the procedures for registration of GIs located in other WTO Members which, it submitted to the Panel, is already the case. This suggestion is not intended to diminish the importance of the above recommendation with respect to any of the Panel's other conclusions.