

X. Findings and Conclusions

444. For the reasons set out in this Report, the Appellate Body:

- (a) upholds the Panel's finding, in paragraphs 7.172 and 8.1(b) of the Panel Report, that the 16 measures at issue, both as a whole and individually, constitute SPS measures within the meaning of Annex A(1) to the *SPS Agreement*;
- (b) upholds the Panel's finding, in paragraphs 7.906 and 8.1(c) of the Panel Report, that Australia's measures regarding fire blight and ALCM, as well as the general measures relating to these pests, are inconsistent with Articles 5.1 and 5.2 of the *SPS Agreement*, and that, by implication, these measures are also inconsistent with Article 2.2 of the *SPS Agreement*;
- (c) finds that Australia has not established that the Panel acted inconsistently with its duty to conduct an objective assessment of the matter before it, within the meaning of Article 11 of the DSU;
- (d) reverses the Panel's finding, in paragraphs 7.1403 and 8.1(e) of the Panel Report, that Australia's measures at issue regarding fire blight and ALCM are inconsistent with Article 5.6 of the *SPS Agreement*; but is unable to complete the legal analysis of New Zealand's claim under that provision; and
- (e) reverses the Panel's finding, in paragraphs 7.1477 and 8.1(f) of the Panel Report, that New Zealand's claim under Annex C(1)(a) and its consequential claim under Article 8 of the *SPS Agreement* fall outside the Panel's terms of reference; but finds that New Zealand has not established that the 16 measures at issue are inconsistent with Annex C(1)(a) and Article 8 of the *SPS Agreement*.

445. The Appellate Body recommends that the DSB request Australia to bring its measures, found in this Report and in the Panel Report as modified by this Report, to be inconsistent with the *SPS Agreement*, into conformity with its obligations under that Agreement.

Signed in the original in Geneva this 12th day of November 2010 by:

Yuejiao Zhang
Presiding Member

Jennifer Hillman
Member

Shotaro Oshima
Member