

AUSTRALIA – AUTOMOTIVE LEATHER II (ARTICLE 21.5 – US)¹ (DS126)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	United States	ASCM Art. 4.7	Referred to the Original Panel	14 October 1999
			Circulation of Panel Report	21 January 2000
Respondent	Australia		Circulation of AB Report	NA
			Adoption	11 February 2000

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- Australia (i) required Howe to repay \$A 8.065 million, an amount which Australia argued covered “any remaining inconsistent portion of the grants made under the grant contract”; and (ii) terminated all subsisting obligations under the grant contract. Australia also provided a new \$A 13.65 million loan to Australian Leather Holdings Ltd (ALH), Howe's parent company.

2. SUMMARY OF KEY PANEL FINDINGS

- ASCM Art. 4.7 (recommendation to withdraw a prohibited subsidy):** Having concluded that the phrase “withdraw the subsidy” under Art. 4.7 encompasses “repayment”, the Panel found that repayment in full of the prohibited subsidy was necessary in this case, as it considered that in the case of a one-time subsidy, there was no way other than repayment in full in which withdrawal of the subsidy could be achieved. The Panel found that Australia failed to comply with the DSB's recommendation to withdraw the subsidy within 90 days, as the provision by the Australian government of a loan of \$A 13.65 million to ALH nullified the repayment by Howe of \$A 8.065 million.

3. OTHER ISSUES²

- Terms of reference (DSU Art. 21.5 panels):** The Panel concluded that the new loan of \$A 13.65 million to ALH was within the Panel's terms of reference because: (i) the panel request, which defined the Panel's terms of reference, identified the loan; and, furthermore, (ii) the loan was “inextricably linked to the steps taken by Australia in response to the DSB's ruling in this dispute, in view of both its timing and its nature”.

¹ Australia – Subsidies Provided to Producers and Exporters of Automotive Leather – Recourse to Article 21.5 of the DSU by the United States

² Other issues addressed: business confidential information; third parties' rights to rebuttal submissions in Art. 21.5 proceedings.

AUSTRALIA – AUTOMOTIVE LEATHER II¹

(DS126)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	United States	ASCM Arts. 1, 3.1(a) and 4.7	Establishment of Panel	22 June 1998
			Circulation of Panel Report	26 May 1999
Respondent	Australia		Circulation of AB Report	NA
			Adoption	16 June 1999

1. MEASURE AND INDUSTRY AT ISSUE

- **Measure at issue:** Australian government's assistance ("grant contract" (\$A 30 million) and "loan contract" (\$A 25 million)) to Howe, a wholly-owned subsidiary of Australian Leather Upholstery Pty. Ltd., owned by Australian Leather Holdings, Limited (ALH).
- **Industry at issue:** Automotive leather production industry.

2. SUMMARY OF KEY PANEL FINDINGS

- **ASCM Art. 3.1(a) (prohibited subsidies – export subsidies):** As for the grant contract, the Panel found that the payments under the grant contract were subsidies prohibited under Art. 3.1(a), on the ground that the payments concerned were in fact "tied to" export performance.

In respect of the loan contract, the Panel concluded that the payments under the loan contract did not violate Art. 3.1(a) because there was nothing in the terms of the loan contract itself that suggested a "specific link" to actual or anticipated exportation or export earnings.

- **ASCM Art. 4.7 (recommendation to withdraw a prohibited subsidy):** The Panel recommended, in accordance with Art. 4.7, that Australia withdraw the prohibited subsidies within a 90-day period, which would run from the date of adoption of the report by the DSB.

3. OTHER ISSUES²

- **Existence of multiple panels regarding the same matter:** The Panel rejected, through a preliminary ruling, Australia's request for the Panel to terminate its work on the grounds that the DSU does not permit the establishment of a panel when another panel exists in respect of the same matter and between the same parties.³ In this regard, the Panel noted, *inter alia*, that the DSU does not expressly prohibit the establishment of multiple panels for the same matter.

¹ *Australia – Subsidies Provided to Producers and Exporters of Automotive Leather*

² Other issues addressed: procedures governing business confidential information; information acquired during consultations: ASCM Art. 4.2 (statement of available evidence in the consultation request); terms of reference (scope of the measures at issue); ASCM Art. 1 (definition of a subsidy).

³ A panel was established in January 1998 on the same matter and involving the same parties, but was never composed.