

**AUSTRALIA – SUBSIDIES PROVIDED TO PRODUCERS AND EXPORTERS OF
AUTOMOTIVE LEATHER**

Recourse by the United States to Article 21.5 of the DSU

The following communication, dated 4 October 1999, from the Permanent Mission of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

On 16 June 1999, the Dispute Settlement Body (DSB) adopted the report of the Panel in "Australia - Subsidies Provided to Producers and Exporters of Automotive Leather" (WT/DS126). The Panel report concluded that a \$A30 million grant provided by the Australian government to Howe & Co. Pty. Ltd. (Howe) was a prohibited export subsidy in violation of Article 3.1(a) of the Agreement on Subsidies and Countervailing Measures (SCM Agreement). The Panel report recommended that Australia withdraw the subsidy within 90 days.

On 15 September 1999, the Australian government announced in a media release that it had implemented the Panel report's recommendation by terminating the grant contract with Howe and that Howe had repaid \$A8.065 million of the \$A30 million grant. Australia stated that this repayment constituted the "prospective element" of the grant because it was "the proportion of grant monies found to be applied to the sales performance targets contained in the Grant Contract for the period from 14 September 1999 until the end of the Grant Contract on 30 June 2000."

Australia further stated in the same media release that it was providing a new loan of \$A13.65 million to Howe's parent company, Australian Leather Holdings Ltd. The United States understands that this loan was granted on non-commercial terms.

The United States believes that these measures taken by Australia to comply with the recommendations and rulings of the DSB are not consistent with the SCM Agreement and the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). In particular, Australia's withdrawal of only \$A8.065 million of the \$A30 million grant, and Australia's provision of a new \$A13.65 million loan on non-commercial terms to Howe's parent company, are inconsistent with the recommendations and rulings of the DSB and Article 3 of the SCM Agreement.

Accordingly, because "there is a disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings of the DSB" between the United States and Australia, within the terms of Article 21.5 of the DSU, the United States seeks recourse to Article 21.5 in this matter and requests that the DSB refer the disagreement to the original panel, if possible, pursuant to Article 21.5.

The United States and Australia have reached an agreement concerning the procedures to be applicable for proceedings in this case pursuant to Articles 21 and 22 of the DSU and Article 4 of the SCM Agreement. The agreement between the United States and Australia consists of the following points:

1. On 4 October 1999, the United States will request the convening of the members of the body which considered this dispute in the last instance (in this case, the original panel), by a request under the provisions of Article 21.5 of the DSU. The United States will also request the convening of a DSB meeting on 14 October 1999 and Australia will not object to the holding of such a meeting.
 2. At the DSB meeting convened in response to the United States request, Australia will accept the establishment of a review panel under Article 21.5 of the DSU and will not pose any procedural objection to the establishment of such a panel.
 3. Australia and the United States pledge to cooperate to ensure that the review panel convened under Article 21.5 of the DSU will be able to circulate its report within 90 days of its establishment. The United States will not request authorization to suspend concessions until after the review panel has circulated its report.
 4. Both Australia and the United States will unconditionally accept the review panel report and there will be no appeal of that report.
 5. Neither Australia nor the United States will object to a request that the DSB be convened to consider the review panel report for adoption. In the event that the review panel report finds that Australia has not complied with the recommendations or rulings of the DSB, neither party will object to DSB consideration of a United States request for authorization to suspend concessions pursuant to Article 22.2 of the DSU and/or Article 4.10 of the SCM Agreement; provided, however, that Australia may request that the matter be referred to arbitration pursuant to Article 22.6 of the DSU.
 6. Pursuant to footnote 6 to Article 4 of the SCM Agreement, Australia and the United States agree that the deadline for DSB action under the first sentence of Article 22.6 of the DSU shall be 60 days after the circulation of the review panel report under Article 21.5 of the DSU, and that the deadline specified in the third sentence of Article 22.6 of the DSU for completion of arbitration shall be 45 days after the matter is referred to arbitration.
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