

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

Request for the Establishment of a Panel by Australia

The following communication, dated 18 August 2003, from the Permanent Mission of Australia to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

My authorities have instructed me to request the establishment of a panel on behalf of Australia.

On 17 April 2003, Australia requested 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) concerning the protection of trademarks and the registration and protection of geographical indications for foodstuffs and agricultural products in the EC. The request was circulated to Members on 23 April 2003 in document WT/DS290/1. Consultations were held on 27 May 2003 but did not lead to a resolution of the dispute.

Consequently, Australia requests that a panel be established pursuant to Articles 4.7 and 6 of the DSU, Article XXIII:2 of GATT 1994, Article 64 of the TRIPS Agreement and Article 14 of the TBT Agreement.

The measure at issue is 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*, any amendments thereto (including Council Regulation (EC) No. 692/2003 of 8 April 2003, published in the *Official Journal of the European Union* No. L99 of 17 April 2003), and related implementing and enforcement measures ("the EC measure"). The EC measure lays down and implements rules on the protection of designations of origin and geographical indications for agricultural products and foodstuffs, excluding wines and spirits.

Australia is of the view that the EC measure:

- diminishes the legal protection for trademarks under the TRIPS Agreement, contrary to Articles 1, 2 (incorporating by reference Articles 6*quinques*(B), 10, 10*bis* and 10*ter* of the Paris Convention (1967)), 16, 20, 24.5, 41 and/or 42 of the TRIPS Agreement;

- does not accord immediately and unconditionally to the nationals and/or products of each WTO Member any advantage, favour privilege or immunity granted to the nationals of any other WTO Member, contrary to Articles 1 and 4 of the TRIPS Agreement and/or Article I:1 of GATT 1994;
- does not accord to 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, contrary to Articles 1, 2 (incorporating by reference Article 2 of the Paris Convention (1967)) and 3.1 of the TRIPS Agreement and/or Article III:4 of GATT 1994;
- does not provide the legal means for interested parties to prevent misleading use of a geographical indication and/or to prevent any use of a geographical indication which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention (1967), contrary to Articles 1 and 22.2 of the TRIPS Agreement;
- is not applied in a transparent manner, contrary to Articles 1, and 63.1 and 63.3 of the TRIPS Agreement;
- is a technical regulation within the meaning of Annex 1 to the TBT Agreement, does not accord to products imported from the territory of any WTO Member treatment no less favourable than that accorded to like products of national origin and/or to like products originating in any other country, and/or has been prepared, adopted and/or applied with the effect of creating unnecessary obstacles to trade, being more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create, contrary to Articles 2.1 and 2.2 of the TBT Agreement;

and that, as a consequence of the EC measure's inconsistency with the abovementioned provisions of the TRIPS Agreement, GATT 1994 and/or the TBT Agreement, the EC is not in conformity with its obligations:

- under Article 65.1 of the TRIPS Agreement to apply the provisions of that Agreement, as the period of one year following the date of entry into force of the WTO Agreement has expired; and/or
- 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 obligation as provided in the annexed Agreements.

Australia requests the establishment of a panel with terms of reference in accordance with Article 7.1 of the DSU.

I would be grateful if you would place this item on the agenda for the next DSB meeting scheduled for 29 August 2003.
