

10 August 2010

Customs, Trade and Transport Law e-alert

WTO Final Report released: The Panel on Australia–Measures Affecting the Importation of Apples from New Zealand

In our E-alert of 14 April 2010 we referred to press reports which suggested that an interim WTO Panel Report had been released to each of Australia and New Zealand to the effect that measures affecting the importation of apples from New Zealand which had been imposed by Australia were contrary to the *WTO Agreement on the Application of Sanitary and Phytosanitary Measures* (“**SPS Agreement**”) as having created discrimination between members and were not scientifically justifiable.

On 9 August 2010, the WTO released the Report of the Panel that had examined the complaint by New Zealand. The conclusions and recommendation of the Panel were to the effect that Australia’s measures regarding fire blight, European canker and ALCM as well as the requirements identified by New Zealand as “general” measures linked to all three pests at issue in the dispute were inconsistent to Articles 5.1 and 5.2 of the SPS Agreement and by implication were also inconsistent with Article 2.2 of the SPS Agreement.

The Panel also found that the measures regarding fire blight, European canker and ALCM were inconsistent to Article 5.6 of the SPS Agreement although the general measures were not inconsistent with Article 5.6 of the SPS Agreement.

On that basis, the Panel concluded that to the extent that Australia’s measures were inconsistent to the SPS Agreement, they had nullified or impaired benefits accruing to New Zealand under the WTO Agreements.

Accordingly, the Panel recommended that the Dispute Settlement Body request Australia to bring the inconsistent measures into conformity with Australia’s obligations under the SPS Agreement. As a result, Australia will be obliged to review its quarantine measures which are imposed in relation to the importation of apples. The ruling may also have a broader impact in opening up other challenges to the legality of bans and restrictions which, on quarantine grounds, Australia places on a wide range of goods and which many other countries believe to be anti-competitive rather than being justified on scientific grounds.

For further information, please contact Andrew Hudson.

Contacts

Andrew Hudson, Melbourne

+61 3 8602 9231

ahudson@hunthunt.com.au