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Customs, Trade and Transport Law e-alert

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

In 2007 the New Zealand Government requested a review by the World Trade Organisation (“WTO”) concerning measures imposed by Australia on the importation of apples from New Zealand. The New Zealand Government contended that Australia breached the *WTO Agreement on the Application of Sanitary and Phytosanitary Measures* insofar as the trade measures imposed constituted discrimination between Members and were not scientifically justifiable.

Both the New Zealand and Australian Governments have confirmed the release of a confidential interim report into the findings of the WTO Panel. Whilst the Australian government has not confirmed the content of the report, it has been leaked in a New Zealand political newsletter, the *Trans-Tasman*, that it rejected the Australian defence to the ban. If the suggested outcome is accurate it would mean Australia is currently in breach of its free trade obligations. As a result it is likely Australia would be forced to significantly reduce the trade restrictions currently placed on New Zealand apples, or alternatively face WTO imposed sanctions.

Import Restrictions on New Zealand Apples

The import of apples from New Zealand into Australia was banned in 1921 amongst concern that the fruit would introduce the disease fire blight into Australia, however in more recent years imports have been allowed under strict quarantine conditions.

In March 2007 Biosecurity Australia, in response to applications from the New Zealand Government, determined that apples from New Zealand should be permitted entry into Australia subject to the Quarantine Act 1908 and the application of phytosanitary measures.

Interim Report – What Next?

The WTO dispute resolution process provides, after the release of the confidential interim report, both parties have the ability to request a review of the report. After the review is completed the final report is released first to the parties involved, and then three weeks later to all WTO members. If the report finds the disputed trade measure does breach a WTO agreement or obligation, it will make recommendations as to measures that can be undertaken to allow conformity with the rules.

Both sides can appeal the final report ruling, but only on matters of law. The WTO panel has indicated the final report is expected to be released sometime in May 2010.

Consequences of Finding

Aside from the potential consequences to the Australian domestic apple industry, should a ruling against the trade measures be made it could set a precedent that may be used to challenge the legality of bans and restrictions, on quarantine grounds, that Australia places on a wide range of goods.

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