



NEW ZEALAND PERMANENT MISSION

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GENEVA

16 April 2008

Mr Attie Swart
Chairman
Australia – Measures Affecting the Importation of Apples from New Zealand
c/o Ms Christiane Wolff, Secretary to the Panel
World Trade Organisation
Centre William Rappard
154 rue de Lausanne
1211 Geneva 21

*Australia – Measures Affecting the Importation of Apples from New Zealand:
(WT/DS367)*

Dear Mr Chairman,

I refer to Australia's submission of 14 April 2008 concerning *DSU* Article 6.2 matters.

In that submission, Australia makes the claim that New Zealand was attempting in its submission of 7 April 2008 to introduce a new "measure at issue" into this dispute. Australia makes this allegation by quoting a sentence from paragraph 2.9 of New Zealand's submission and ignoring the sentence that follows, to which it related. This new allegation by Australia, which has no basis, is an allegation to which New Zealand has not had the opportunity to respond. New Zealand also notes that Australia's submission of 14 April discusses cases on zeroing which Australia had not raised before, although the essence of its arguments remains the same.

If the Panel considers that it would be useful for New Zealand to provide a submission addressing Australia's claim of a "new measure" or the new case law adduced by Australia, New Zealand would be ready to do so. However, in the circumstances, New Zealand considers that the Panel should be in a position to reach a decision on Australia's request for a preliminary ruling on the basis of New Zealand's Request for the Establishment of a Panel and the submissions lodged by the parties to date.

Yours sincerely,

Crawford Falconer
Permanent Representative

cc:

HE Mr Bruce Gosper, Permanent Representative of Australia to the WTO

HE Mr Mario Matus, Permanent Representative of Chile to the WTO

HE Mr Eckart Guth, Permanent Representative of the European Commission to the WTO

HE Mr Ichiro Fujisaki, Permanent Representative of Japan to the WTO

HE Dr Manzoor Ahmad, Permanent Representative of Pakistan to the WTO

Mr Yi-fu Lin, Permanent Representative of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu to the WTO

HE Mr Peter Allgeier, Permanent Representative of the United States to the WTO