VIII.

(ii) with respect to the application procedures; or

(iii) with respect to the objection procedures;

(i) the Regulation is inconsistent with Article III:4 of GATT 1994:

(i) with respect to the equivalence and reciprocity conditions, as applicable to the availability of protection; and

(ii) with respect to the application procedures, insofar as they require examination and transmission of applications by governments, and these requirements are not justified by Article XX(d) of GATT 1994;

(j) Australia has not made a prima facie case in support of its claims that the Regulation is inconsistent with Article III:4 of GATT 1994 with respect to the regulatory committee;

(k) Australia has not made a prima facie case in support of its claim that the Regulation is inconsistent with Article 2.1 of the TBT Agreement with respect to the labelling requirement;

From Section C of the findings:

(l) Article 2.2 of the TBT Agreement is inapplicable to the inspection structures requirements, read together with Article 4 of the Regulation, and the Panel rejects Australia's claim;

From Section D of the findings:

(m) the Regulation is inconsistent with Article 16.1 of the TRIPS Agreement with respect to the coexistence of GIs with prior trademarks but this is justified by Article 17 of the TRIPS Agreement. In this respect:

(i) Article 24.3 of the TRIPS Agreement is inapplicable; and

(ii) Article 24.5 of the TRIPS Agreement is inapplicable;

(n) Australia has not made a prima facie case in support of its claims that the Regulation is inconsistent with Article 16.1 of the TRIPS Agreement with respect to the right of objection of trademark owners;

From Section E of the findings:

(o) the Panel rejects Australia's claim under Article 22.2 of the TRIPS Agreement;

(p) Australia has not made a prima facie case in support of its claims that the Regulation is inconsistent with Article 10bis and 10ter of the Paris Convention (1967) "as incorporated in the TRIPS Agreement";

(q) the Panel rejects Australia's claims under 41.1, 41.2, 41.3 and 42 of the TRIPS Agreement (except as noted at paragraph 8.1(d));

(r) Australia has not made a prima facie case in support of its claims with respect

(s) Australia has not made a prima facie case in support of its claims with respect to individual registrations.

8.2 The Panel exercises judicial economy with respect to Australia's claims under:

(a) Article 2(1) of the Paris Convention (1967), as incorporated by Article 2.1 of the TRIPS Agreement (except as noted at paragraph 8.1(g))

(b) Article 16.1 of the TRIPS Agreement (with respect to the presumption of confusion);

(c) Articles 1.1 and Article 65.1 of the TRIPS Agreement;

(d) Article III:4 of GATT 1994 (except as noted in paragraph 8.1); and

(e) Article XVI:4 of the WTO Agreement.

8.3 Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered prima facie to constitute a case of nullification or impairment. The Panel concludes that, to the extent that the Regulation as such is inconsistent with the covered agreements, it has nullified or impaired benefits accruing to Australia under these agreements.

8.4 In light of these conclusions, the Panel recommends pursuant to Article 19.1 of the DSU that the European Communities bring the Regulation into conformity with the TRIPS Agreement and GATT 1994.

8.5 The Panel suggests, pursuant to Article 19.1 of the DSU, that one way in which the European Communities could implement the above recommendation with respect to the equivalence and reciprocity conditions, would be to amend the Regulation so as for those conditions not to apply to the procedures for registration of GIs located in other WTO Members which, it submitted to the Panel, is already the case. This suggestion is not intended to diminish the importance of the above recommendation with respect to any of the Panel's other conclusions.