[2001] Australian International Law Journal

DISPUTE SETTLEMENT IN THE WTO

THE AUTOMOTIVE LEATHER DISPUTE

Natalie van der Waarden*

I. INTRODUCTION

United States – Australia Automotive Leather, sometimes known as *Howe Leather,* is a recent example of dispute settlement by the World Trade Organisation (WTO).[1] Although only five years old, the WTO dispute settlement system has been credited with legalising the relationship between the WTO and its Members[2] and recognised as the reason for the "shifting of attention and resources" away from other tools available to them.[3] In this case, the system's processes and outcomes reveal something of the organisation's youthful direction.

On 15 April 1994, Australia and the United States, *inter alia,* became foundation Members of the WTO when they signed the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (the WTO Agreements). The Agreements had resulted from trade negotiations that began in 1986. On 1 January 1995, the Final Act became operative. There are currently 138 Members of the WTO[4] and Australia and the United States are Contracting Parties.

The WTO Agreements include the Agreement Establishing the WTO (the WTO Agreement), the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and the Multilateral Agreements on Trade in Goods that include the Agreement on

* Lecturer, Murdoch University, Western Australia.

[1] Panel Report, WTO, "Australia – Subsidies provided to producers and exporters of automotive leather", WT/DS126/R, 25 May 1999 at <www.wto.org/english.tratop_e/dispu_e/distab_e.htm>; Report of the Panel, WTO, "Australia – Subsidies provided to producers and exporters of automotive leather recourse to Article 21.5 of the DSU by the US", WT/DS126/RW, 21 January 2000 at <www.docsonline.wto.org/gen_search.asp> (Final Panel Report).

[2] Wilson, "Can the WTO dispute settlement body be a judicial tribunal rather than a diplomatic club?" (2000) 31 Law and Policy in International Business 779.

[3] Stewart and anor, "The WTO panel process: An evaluation of the first three years" (1998) 32 The International Lawyer 709.

[4] WTO, "Trading into the future: Introduction to the WTO – The Agreements" at <www.wto.org/english/thewto_e/> (visited June 2001).

Subsidies and Countervailing Measures (SCM Agreement). The WTO Agreement creates the General Council to oversee the organisation's operations and carry out the responsibilities of the Dispute Settlement Body (DSB).[5] The DSU establishes the DSB and sets up the dispute resolution system including the time and enforcement procedures. It provides for mandatory Member consultations and third party involvement, establishes Panels and sets terms of reference.[6]

The SCM Agreement is a *covered* agreement within the dispute settlement system.[7] It is concerned with "specific" subsidies and the actions that Members may take to counter the effects of subsidies. In particular, Article 3 prohibits subsidies contingent on export performance and on the use of domestic goods over imported goods. Besides the legal contingencies, it determines export performance contingencies "in law or in fact" by examining whether subsidies are "in fact tied to actual or anticipated exportation or export earnings".[8]

II. BACKGROUND

This case centres round an Australian company, Howe Leather (Howe), and the Australian leather industry that has for some time been recognised as a promising export industry.[9] Australia is currently deemed to be the world's fourth largest producer of leather.[10] Today, leather for automotive seating, upholstery and trimming is considered a valuable commodity in the increasingly popular luxury car market.[11] Howe runs three factories, employs 1,000 workers and processes 1.5 million hides per year.[12] It is a producer of high quality automotive trim. In 1996, it won a five-year A$25 million contract with General Motors to supply leather upholster [13] that marked the opening of the

---

[5] Article 4.3 of the WTO Agreement.
[6] See Articles 2-4, 6-7 and 10 especially.
[7] Article 1.1 and Appendix 1 of the DSU.
[8] Article 3.1(a)
[9] Bruce, "Closer economic relations eases some trade barriers but local knowledge still vital", The Australian Financial Review, 22 October 1985 at 4.
[10] Elias, "Well, a bit of hide helped", The Age, 22 July 2000 at 1.
[11] Phelan, "Interiors slip into something leather" (1998) 178:5 Automotive Industries 49.
[12] Elias, "Well, a bit of hide helped", The Age, 22 July 2000 at 1.
[13] Roberts, "Problems in Australian Foreign Policy: July-December 1996" (1997) 43:2 Australian Journal of Politics and History 11.

United States automotive industry to Australian leather. It is estimated that Howe now holds a 5% share of the United States automotive leather market.[14]

Two United States competitors, Garden State and Ottawa Leather Company, complained to the United States Trade Representative that the Australian Export Facilitation Program (the Program), particularly the Textile, Clothing and Footwear Import Credit Scheme, had resulted in Howe's superior tender.[15] The United States alleged that the Program allowed Howe to earn extremely valuable export credits estimated to be worth A$18 million in 1992-1996. As a result, the Program was considered a prohibited subsidy under the WTO rules.[16]

In June 1996, when the Parties discussed the subsidies, Australia was aware the WTO dispute settlement mechanism might be referred to.[17] Australia defended the Program initially, questioning the allegations.[18] Its failure to respond to the United States sufficiently provoked threats of American trade sanctions despite public assertions of efforts to obtain a settlement involving minimal trade repercussions.[19]

III. THE WTO REQUESTS[20]

(a) The First Request

On 7 October 1996, the United States requested consultations under the WTO dispute settlement process following dissatisfaction with Australia's maintenance of subsidies.[21] The DSU invites consultations that require "sympathetic consideration" and "good faith".[22] The SCM

---

[14] Crabb, "Industry saved from US bans", Australasian Business Intelligence, 22 June 2000 at 27.

[15] Roberts, "Problems in Australian foreign policy: July-December 1996" (1997) 43:2 Australian Journal of Politics and History 11.

[16] Ibid.

[17] Shires and anor, "US leather protest poses threat to exports facilitation scheme", The Australian Financial Review 6 August 1996 at 5

[18] Roberts, "Problems in Australian foreign policy: July-December 1996" (1997) 43:2 Australian Journal of Politics and History 11.

[19] McKenzie, "Agreement close in leather trade dispute", The Australian, 21 November 1996 at 7.

[20] This discussion will be presented chronologically.

[21] WT/DS57/1, 9 October 1996 at <www.wto.org/search97cgi>.

[22] Articles 4.2-4.3.

Agreement confirms the invitation if a WTO Member believes another has granted or maintained a prohibited subsidy.[23] Consultations are categorised largely as preparatory talks for "enhancing and promoting resolution of disputes without recourse to Panels".[24] Since they do not particularly increase the likelihood of a quick settlement they are not often used for serious negotiations.[25] Consultations are allocated 60 days in DSU proceedings[26] but in the case of subsidies the SCM Agreement allows 30 days for settlement after which a Member may request a Panel to determine the dispute.[27]

The United States alleged the Program breached Article 3 of the SCM Agreement. It claimed that its benefits under the SCM Agreement were "nullified or impaired" when Australia failed to fulfil the terms of the Agreement.[28] By November 1996, it seemed that the Parties had concluded a negotiated settlement[29] with Australia excluding Howe from its Program.[30] But it was soon revealed that Howe would be "compensated" for the loss of participation in the Program[31] and given A$30 million as grants and A$25 million as a preferential and non-commercial loan. The United States called this a transparent restructuring of the original subsidies and approached the WTO again.

(b) The Second Request

The United States made a new request of the WTO on 10 November 1997 on the alleged prohibited subsidies to Australian automotive leather producers and exporters pursuant to Articles 1 and 4 of the DSU and Article 4.1 of the SCM Agreement. The grants and loan were

---

[23] Article 4.1.

[24] Parlin, "Operation of consultations, deterrence and mediation" (2000) 31 Law and Policy in International Business 565, 569.

[25] Wethington, "Commentary on the consultation mechanism under the WTO Dispute Settlement Understanding during its first five years" (2000) 31 Law and Policy in International Business 583.

[26] Article 4.7.

[27] Article 4.4.

[28] WT/DS57/1, 9 October 1996.

[29] Greenlees, "Peace near in leather trade row", The Australian, 23 November 1996 at 8.

[30] Greenlees, "Leather trade row deal ends sanctions risk", The Australian, 25 November 1996 at 4.

[31] Kitney, "Trade row not quite stitched up", The Sydney Morning Herald, 28 December 1996 at 4.

alleged to be prohibited subsidies amounting to government benefits that violated Article 3 of the SCM Agreement. The subsidies were prohibited because "in light of their terms and the circumstances under which they have been provided" they constituted subsidies linked to sales performance targets that could only be reached by increasing exports; namely, they were contingent on export performance.[32]

(c) The First Panel

On 9 January 1998, the United States requested a Panel be established to hear allegations[33] based on Article 6 of the DSU and Article 4.4 of the SCM Agreement. Although a Panel was established on 22 January 1998 it was never composed and the United States withdrew its request on 11 June 1998. Australia objected, stating that any effective withdrawal should require both Parties' agreement under the DSU.[34]

(d) The Third Request[35]

On 4 May 1998, the United States made a third request of the DSB in relation to the Australian subsidies. Essentially, the request was in the same form and on the same basis as the previous one. It differed by limiting the request to the Howe subsidies only, excluding all other Australian automotive leather producers. The terms of reference were widened to include particular evidence that established export performance contingency, in contrast to previously asserted general evidence of "terms" and previous "circumstances". This new effort to involve the WTO sought to specify types of evidence that would establish the prohibited nature of the Howe subsidies.

(e) The Second Panel

On 4 June 1998, the Parties met but did not settle their dispute. On 11 June 1998, the United States asked the DSB to establish another

---

[32] WT/DS106/1, 17 November 1997.

[33] WT/DS106/2, 9 January 1998.

[34] WT/DS126/R para 6.18-6.19. It was argued that the DSU did not provide for unilateral termination of an established Panel.

[35] See generally WT/DS106/1, 25 May 1999; WT/DS126/1; SICE Foreign Trade Information System, "WTO: Subsidies provided to producers and exporters of automotive leather" at <www.sice.oas.org/DISPUTE/wto/1343d2.asp> (visited November 2001).

Panel,[36] which occurred on 22 June 1998.[37] In their submissions, the United States claimed that the 'replacement' grant and loan subsidies were export-contingent (violating Article 3 of the SCM) while Australia called for the immediate termination of this Panel and denied any applicable prohibition on its subsidies.

The Panel was composed of Carmen Luz Guarda (Chair), Jean-Francois Bellis and Wieslaw Karsz[38] and it operated within the 90-day timeframe provided in Article 4.6 of the SCM Agreement.

(i) Preliminary Issues

The Panel began by considering the preliminary issues raised by both Parties. Australia had called for the immediate termination of the Panel because it was constituted improperly, *inter alia.* It argued that this Panel was the second established and its terms of reference were substantially similar to those of the first Panel. The first Panel had been established pursuant to a previous request of the United States.[39] The Panel rejected this preliminary objection by Australia because the DSU did not implicitly prohibit another Panel from being established. Further, the first Panel had not been composed to hear the complaint and consequently did no work.[40]

(ii) The Evidence

Australia argued that Article 4.2 of the SCM Agreement required the United States to reveal all its evidence at the same time it requested consultations, namely, it had to 'show its hand' at an early stage.[41] Further, Australia claimed that Article 4.2 of the SCM Agreement required the United States to argue only the evidence it explicitly set out in its request for consultations.[42] The Panel disagreed and found that the evidence need not be comprehensive at that stage.[43]

---

[36] WT/DS126/2, 11 June 1998.
[37] See Report of the Panel, WT/DS126/R para 1.4.
[38] Ibid para 1.5.
[39] Ibid para 6.15.
[40] Ibid para 9.14.
[41] Ibid para 6.47.
[42] Ibid para 6.49.
[43] Ibid paras 9.20 and 9.27.

(iii) The Grant

The grant of up to A$30 million was comprised of three payments, two of them conditional on sales performance. Australia argued that the grant contract and the payments were separate measures under the SCM Agreement.[44] The Panel examined the evidence, in particular the 'replacement' timing of the grant following Howe's exclusion from the original Program, public reports declaring Howe's inability to remain afloat without assistance and the extent of aid being more than necessary for domestic demand. Deeming this to be significant legal and factual evidence surrounding the provision of the grant, the Panel found that the contract and grant payments, even those not yet made, were contingent on export performance.[45] As such, they were prohibited subsidies under Article 3.1(a) of the SCM Agreement.[46] In addition, the Panel found that the measures, although made up of different items, were to be considered together.[47]

(iv) The Loan

The Panel held that the A$25 million lent to Howe was a 15-year loan that benefited Howe because there was no repayment for the first five years.[48] On the viability of the evidence, however, the Panel found the loan was not an export-contingent subsidy within the meaning of Article 3.1(a).[49] Arguments that the loan could only be repayable if Howe engaged in export sales were considered irrelevant.[50]

IV. THE FIRST PANEL REPORT

The first Report and its recommendations were circulated to WTO Members on 25 May 1999. It recommended that Australia "withdraw the subsidies...without delay"[51] within 90 days.[52] The DSB adopted the

---

[44] Ibid para 7.9.
[45] Ibid para 9.71.
[46] Ibid.
[47] Ibid para 9.38.
[48] Ibid para 9.75.
[49] Ibid.
[50] Ibid.
[51] Ibid para10.3.
[52] Ibid para 10.7.

Panel Report on 8 July 1999 after Australia indicated it would not appeal.[53] Australia agreed to waive its right to appeal the Report findings stating that it could and would implement the withdrawal in spite of reservations on the findings.[54]

As seen above, Australia had to comply within 90 days. It claimed that the compliance occurred when it retrieved A$8.065 million from the grant of A$30 million.[55] The United States rejected this as inadequate alleging Australia had again breached the SCM Agreement. It asked the matter be returned to the Panel under Article 21.5 of the Agreement that allowed disputes on implementation of recommended measures to be sent back within a specified period.[56]

Moreover, the United States identified Australia's subsequent attempts to restructure or replace the offending grant with other forms of 'prohibited subsidy', including a A$13.065 million loan on a non-commercial basis to Australian Leather Holdings Ltd (Howe's parent company) in 1999 (the 1999 loan). It claimed that this loan was not consistent with the SCM Agreement and the Panel's recommendations. Therefore, it requested the Panel to determine whether Australia had withdrawn its subsidy and complied with the recommendations as required under Article 4.7 of the SCM Agreement.[57]

In particular, the United States asked the Panel to review the 1999 loan and the calculation of the withdrawn subsidy.[58] It argued that the loan enabled Howe to repay A$8.065 million to Australia on 14 September 1999. Australia argued that the 1999 loan was unconditional and in the nature of a concessional loan to Howe's parent company, a separate entity. As such, it was not inconsistent with the SCM Agreement.[59] Australia relied on the Panel's ruling on the earlier loan where it was

---

[53] WT/DS126/6.

[54] There is an automatic right to appeal the Recommendation within 60 days of its issuance to Members under Articles 16.4 and 17.1 of the DSU. It is noteworthy that the European Community was apparently also concerned with aspects of the findings: WTO, "Automotive Leather Report adopted" (May-June 1999) 40 WTO Focus 4.

[55] See generally Final Panel Report Part IV para 39 et seq.

[56] Ibid.

[57] Ibid para 6.

[58] Ibid para 6.13.

[59] Ibid para 5.8.

considered the loan was outside the Panel's terms of reference since it was not part of the original recommendations.[60]

V. THE RECONVENED PANEL REPORT

The Reconvened Panel, in its second Report, agreed with the United States that Australia had not implemented the DSB recommendations. This was reported to the WTO Members on 21 January 2000[61] and adopted on 11 February 2000.[62]

(a) The 1999 Loan

The Reconvened Panel determined that the 1999 loan was within its terms of reference because it was "inextricably linked to the steps Australia took in response to the DSB's ruling in this dispute" both in terms of timing and nature. The Reconvened Panel stated:[63]

> In the absence of any compelling reason to do so, we decline to conclude that a measure specifically identified in the request for establishment is not within our terms of reference.

The Reconvened Panel seemed swayed by *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Article 21.5 by Ecuador* where the Panel determined its review by reference to all measures presented in the request.[64] In brief, the Reconvened Panel found that although the original Report's recommendations contemplated withdrawal of the earlier grants to Howe, it related to measures taken to comply with the ruling also.

(b) Subsidy Retrospectivity

The Reconvened Panel found that both the Parties' arguments were wrong on this issue.[65] Australia argued it could have complied with the

---

[60] Ibid para 6.1.
[61] See generally Final Panel Report.
[62] WTO News, "DSB Adopts Automotive Leather Report" at <www.wto.org/English /news_e>.
[63] Final Panel Report para 6.5.
[64] Ibid para 6.6.
[65] Ibid para 6.39.

recommendations by simply withdrawing the grant without payment of money.[66] The Reconvened Panel stated that the recommendation referred to the subsidy's prospective effect including any part of the subsidy provided previously.[67] It was irrelevant the result would interfere with private rights leading to domestic legal claims.[68] According to the Reconvened Panel, under Article 4.7 of the SCM Agreement[69] any Panel could recommend a subsidy's retrospective withdrawal. To interpret otherwise would:[70]

> give rise to serious questions regarding the efficacy of the remedy in prohibited subsidy cases involving one-time subsidies paid in the past whose retention is not contingent upon future export performance.

It is noteworthy that the United States wanted a re-calculation, not retrospectivity. It argued that Australia had to comply from the date of recommendation in June 1999, and not adoption by the DSB.[71] As a result, Australia's calculation dating from September 1999, the date of required compliance, was a miscalculation.[72]

The Reconvened Panel stated that their original recommendation required the full repayment of A$30 million subsidy.[73] Since Australia did not implement the withdrawal and Howe's repayment was negated by the 1999 loan,[74] this Panel held that its recommendations had not been implemented and ordered a full retrospective repayment of subsidies, a first under the WTO dispute settlement mechanism.

VI. THE FINAL OUTCOME

Following the Reconvened Panel's Report, both Parties' representatives met to agree on a solution pursuant to Article 22.2 of the DSU, which becomes operative when a Member fails to implement a Panel

[66] Ibid para 6.16.
[67] Ibid para 6.22.
[68] Ibid para 6.23.
[69] Ibid para 6.24.
[70] Ibid para 6.35.
[71] Ibid para 6.9.
[72] Ibid para 6.16.
[73] Ibid paras 6.44 and 6.48.
[74] Ibid para 6.50.

recommendation. It provides a period of grace before requests for the authorisation of suspension of concessions or imposition of other WTO obligations may be sought against the guilty Party. In this case, it allowed the United States to require Australia to negotiate "with a view to developing mutually acceptable compensation",[75] which was achieved successfully later.

In the settlement agreement the Parties agreed as follows:[76]

1. Howe had to repay A$7.2 million to the Australian government.
2. The eligibility for any assistance was suspended for 12 years.
3. Certain custom duties on a most-favoured nation basis were suspended from 1 July 2000.
4. If a dispute resulted from how the settlement was implemented, it would be submitted to arbitration.
5. There would be temporary tariff reductions that would include aircraft tyres, glassware, knives, rubber sheath contraceptives, electrical domestic appliances and microwaves.[77]

From the above, it seemed that the Reconvened Panel's determination was significant although no full repayment of the subsidy eventuated. The Second Report established the United States' negotiation position for any settlement and allowed the Parties to seek an acceptable outcome. Instead of a literal implementation of the determination, the Parties' use of Article 22.2 had facilitated an agreed adaptation.

The final outcome in this case received a mixed reaction in Australia. If protection for parallel imports were to result, some Australian industries complained about this planned reduction of their protection. For example, the Australian Record Industry Association labelled this intention as an unsuitable response.[78] As a consequence, Australia intimated that it would consider granting a tax 'break' to industry but would need to design it carefully to avoid breaching WTO rules.[79]

---

[75] Article 22.2 of the DSU.
[76] WT/DS126/11, 31 July 2000.
[77] Ibid.
[78] Eliezer, "Oz retail group disputes government on parallel imports" (1997) 109:44 Billboard 6(2).
[79] Taylor, "Canberra to cut crude oil excise", The Australian Financial Review, 27 June 2000 at 3.

To some, the *Howe Leather* decision contained harsh aspects including the encouragement given to the complainant Party to seek a proper implementation of the Panel's determination. Nevertheless, at the very least, the outcome of this case showed that there could be effective reductions in industrial subsidies through the use of WTO mechanisms.

VII. SOME OBSERVATIONS ON THE FINDINGS

The WTO dispute settlement system has been described as successful in placing a 'brighter spotlight' on Members breaching WTO rules.[80] To this extent, the system may operate to a complainant Member's greater satisfaction. If hesitancy in using this system exists, it is due most likely to a recall of the weaknesses in the GATT dispute settlement processes developed in 1947 and the anticipation that similar problems may cause the WTO system to flounder.[81]

However, there is a distinctly new feature that exists in the WTO dispute settlement system today. This is the negative consensus rule that activates an automatic process following the lodgment of a complaint that results in the establishment of a Panel, adoption of Panel reports and even authorisation to retaliate unless there is a consensus against it.[82] This rule has been applauded as "allowing politically sensitive cases to be pursued"[83] and this is an obviously attractive feature to complainants.

Proponents of the WTO system have remarked on the effective disposition of cases and high compliance rates.[84] In contrast, critics

---

[80] Rosenthal and anor, "The WTO antidumping and subsidies agreements: Did the United States achieve its objectives during the Uruguay Round?" (2000) 31 Law and Policy in International Business 871.

[81] Tkacik, "Post-Uruguay Round GATT/WTO dispute settlement: Substance, strengths, weaknesses, and causes for concern" (1997) 9 International Legal Perspectives 169.

[82] See Pauwelyn, "Enforcement and countermeasures in the WTO: Rules are rules – Toward a more collective approach" (2000) 94 American Journal of International Law 335-336.

[83] Ibid 336.

[84] Shirzad, "The WTO dispute settlement system: Prospects for reform" (2000) 31 Law and Policy in International Business 769.

have suggested a lack of transparency and consistency[85] and one writer has visually described the system as "built on sand".[86] Other shortcomings identified for future attention include a lack of security and predictability.[87] Perhaps the major criticism is a perceived increase in WTO intrusion on Member sovereignty. For example, a Member may be ordered to take positive reparatory action, hence disturbing domestic relationships, or be subjected to harsh retaliation. In the present case, it was admitted publicly that Australia's willingness to settle with the United States represented a game play of least resistance where the retaliation cost was anticipated to be excessive.[88] On the other hand, the United States admitted that the WTO processes had provided it with 'improved leverage'.[89]

Generally speaking, time delays result easily from a system that is ambiguous and contains drafting oversights but when delays happen, ineffectiveness results. In respect of the WTO processes, the reasonable periods set for implementation, compliance review and suspension of concession procedures seem especially uncertain.[90] *Howe Leather* is no exception and shows the effect of the lack of predictability. Although the Panel must stipulate a compliance period in the recommendations[91] the period may be of variable length and determined arbitrarily in the absence of a statistical model for its calculation. The 90 days given to Australia fits this description.

Uncertainty continued when the United States chose to pursue a determination on compliance. Although the determination process was

---

[85] Hecht, "Operation of WTO dispute settlement Panels: Assessing proposals for reform" (2000) 31 Law and Policy in International Business 657.

[86] Ragosta, "Unmasking the WTO – Access to the DSB system: Can the WTO DSB live up to the moniker "World Trade Court"?" (2000) 31 Law and Policy in International Business 739, 760.

[87] Kessie, "Enhancing security and predictability for private business operators under the dispute settlement system of the WTO" (2000) 34 Journal of World Trade 1.

[88] Vaile, "How the WTO can work for Australia", The Australian Financial Review, 4 July 2000 at 49.

[89] United States Statement of Administrative Action to US Congress, Uruguay Round Trade Agreements, HR Document No 103-3 (1994), cited in Gleason and anor, "The WTO dispute settlement implementation procedures: A system in need of reform" (2000) 31 Law and Policy in International Business 709.

[90] Ibid.

[91] Article 4.7 of the SCM Agreement.

clearly found in Article 21.5 of the DSU, there was no obvious relationship between the Reconvened Panel's determination and the settlement process agreed upon by the Parties to end their dispute. The Second Panel Report did not attempt to provide a time constraint for Australia's corrected implementation.

Furthermore, Article 22.2 required that Australia meet the United States to negotiate a settlement but there was no specific timeframe for this. Indeed, this provision referred to negotiations within a "reasonable period of time" but this was not defined or identified by the Reconvened Panel. Thus, in more than one way, the implementation of a conclusive outcome had followed an unpredictable time line (albeit 'fast-tracked' by the SCM Agreement[92]) with the Reconvened Panel process extending it in spite of "prompt compliance" being stated as "essential" for Panel recommendations.[93]

Interestingly, *Howe Leather* is noted as the first to involve a voluntary agreement on compliance with a WTO ruling prior to initiating procedures to suspend concessions.[94] Predictability and certainty in the WTO system will no doubt increase with growth and maturity. Meanwhile, it is anticipated the Members will design their trade rules carefully so as to avoid breaches of the WTO Agreements. Alternatively, they may simply engage in behaviour that violates the spirit of the WTO Agreements in a less obvious manner.[95]

VIII. CONCLUSION

Renato Ruggiero, then Director-General of the WTO, recognised that DSB operations have been the subject of "scepticism" and formed "test(s) of credibility".[96] On the other hand, DSB decisions may surely be seen as setting foundation standards, subject to further refinement. In fact, the decisions that interpret the SCM agreement are considered

---

[92] See discussion above.
[93] Article 21 of the DSU.
[94] Gleason and anor, "The WTO dispute settlement implementation procedures: A system in need of reform" (2000) 31 Law and Policy in International Business 709.
[95] Tkacik, "Post-Uruguay Round dispute settlement: Substance, strengths, weaknesses, and causes for concern" (1997) 9 International Legal Perspectives 169, 191.
[96] WTO, "Ruggiero cites WTO's record of achievement" (May-June 1999) 40 WTO Focus 1, 2.

youthful even today[97] and *Howe Leather* should be seen in this light. This case has been characterised as a "non-conformity case" involving disputation subsequent to a DSB Panel recommendation.[98] Moreover, it illustrates well the implementation procedures established post-Uruguay Round. In this respect, *Howe Leather* has highlighted interesting aspects of DSB processes.

---

[97] Rosenthal and anor, "The WTO antidumping and subsidies agreements: Did the United States achieve its objectives during the Uruguay Round?" (2000) 31 Law and Policy in International Business 871.

[98] Gleason and anor, "The WTO dispute settlement implementation procedures: A system in need of reform" (2000) 31 Law and Policy in International Business 709, 710.