

Before the World Trade Organization
Panel Proceedings

**EUROPEAN UNION — ANTI-DUMPING MEASURES ON
IMPORTS OF FATTY ACID FROM INDONESIA**
(DS622)

AUSTRALIA'S EXECUTIVE SUMMARY

10 November 2025

TABLE OF CASES

Short Title	Full Case Title and Citation
<i>Argentina – Import Measures</i>	Appellate Body Reports, <i>Argentina – Measures Affecting the Importation of Goods</i> , WT/DS438/AB/R / WT/DS444/AB/R / WT/DS445/AB/R , adopted 26 January 2015, DSR 2015:II, p. 579
<i>Argentina – Import Measures</i>	Panel Reports, <i>Argentina – Measures Affecting the Importation of Goods</i> , WT/DS438/R and Add.1 / WT/DS444/R and Add.1 / and Add.1, adopted 26 January 2015, as modified (WT/DS438/R) and upheld (WT/DS444/R / WT/DS445/R) by Appellate Body Reports WT/DS438/AB/R / WT/DS444/AB/R / WT/DS445/AB/R, DSR 2015:II, p. 783
<i>Argentina – Hides and Leather</i>	Panel Report, <i>Argentina – Measures Affecting the Export of Bovine Hides and the Import of Finished Leather</i> , WT/DS155/R and Corr.1, adopted 16 February 2001, DSR 2001:V, p. 1779
<i>China – IPRs Enforcement (EU)</i>	Award of the Arbitrators, <i>China – Enforcement of Intellectual Property Rights – Arbitration under Article 25 of the DSU</i> , WT/DS611/ARB25 and Add.1, 21 July 2025
<i>EC – Selected Customs Matters</i>	Appellate Body Report, <i>European Communities – Selected Customs Matters</i> , WT/DS315/AB/R , adopted 11 December 2006, DSR 2006:IX, p. 3791
<i>Mexico – Steel Pipes and Tubes</i>	Panel Report, <i>Mexico – Anti-Dumping Duties on Steel Pipes and Tubes from Guatemala</i> , WT/DS331/R , adopted 24 July 2007, DSR 2007:IV, p. 1207
<i>Thailand – Cigarettes (Philippines)</i>	Panel Report, <i>Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines</i> , WT/DS371/R , adopted 15 July 2011, as modified by Appellate Body Report WT/DS371/AB/R, DSR 2011:IV, p. 2299
<i>US – Anti-Dumping Methodologies (China)</i>	Appellate Body Report, <i>United States – Certain Methodologies and Their Application to Anti-Dumping Proceedings Involving China</i> , WT/DS471/AB/R and Add.1, adopted 22 May 2017, DSR 2017:III, p. 1423
<i>US – Anti-Dumping Methodologies (China)</i>	Panel Report, <i>United States – Certain Methodologies and Their Application to Anti-Dumping Proceedings Involving China</i> , WT/DS471/R and Add.1, adopted 22 May 2017, as modified by Appellate Body Report WT/DS471/AB/R, DSR 2017:IV, p. 1589
<i>US – COOL</i>	Panel Reports, <i>United States – Certain Country of Origin Labelling (COOL) Requirements</i> , WT/DS384/R / WT/DS386/R , adopted 23 July 2012, as modified by Appellate Body Reports WT/DS384/AB/R / WT/DS386/AB/R, DSR 2012:VI, p. 2745

<i>US – Corrosion-Resistant Steel Sunset Review</i>	Panel Report, <i>United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan</i> , WT/DS244/R , adopted 9 January 2004, as modified by Appellate Body Report WT/DS244/AB/R, DSR 2004:I, p. 85
<i>US – Offset Act (Byrd Amendment)</i>	Panel Report, <i>United States – Continued Dumping and Subsidy Offset Act of 2000</i> , WT/DS217/R , WT/DS234/R , adopted 27 January 2003, as modified by Appellate Body Report WT/DS217/AB/R, WT/DS234/AB/R, DSR 2003:II, p. 489
<i>US – Shrimp II (Viet Nam)</i>	Panel Report, <i>United States – Anti-Dumping Measures on Certain Shrimp from Viet Nam</i> , WT/DS429/R and Add.1, adopted 22 April 2015, upheld by Appellate Body Report WT/DS429/AB/R, DSR 2015:III, p. 1341
<i>US – Softwood Lumber V</i>	Panel Report, <i>United States – Final Dumping Determination on Softwood Lumber from Canada</i> , WT/DS264/R , adopted 31 August 2004, as modified by Appellate Body Report WT/DS264/AB/R, DSR 2004:V, p. 1937
<i>US – Stainless Steel (Korea)</i>	Panel Report, <i>United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea</i> , WT/DS179/R , adopted 1 February 2001, DSR 2001:IV, p. 1295
<i>US – Zeroing (EC)</i>	Appellate Body Report, <i>United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")</i> , WT/DS294/AB/R , adopted 9 May 2006, and Corr.1, DSR 2006:II, p. 417

LIST OF ACRONYMS, ABBREVIATIONS AND SHORT FORMS

Abbreviation	Full Form or Description
Anti-Dumping Agreement	Agreement on Implementation of Article VI of GATT 1994
Commission	European Commission
GATT	General Agreement on Tariffs and Trade 1994
Member	Member of the World Trade Organization
WTO	World Trade Organization

I. EXECUTIVE SUMMARY OF AUSTRALIA'S WRITTEN SUBMISSION

A. "AS SUCH" CHALLENGES OF UNWRITTEN MEASURES

1. "As such" challenges against an unwritten measure are serious.¹ In satisfying a Panel as to whether an unwritten measure can be subject to an "as such" challenge, "a complaining party must clearly establish, through arguments and supporting evidence, at least that the alleged "rule or norm" is attributable to the responding Member; its precise content; and indeed, that it does have general and prospective application."² This is a "high threshold"³ in that each element must be sufficiently demonstrated by the evidence.

2. Previous Panels have found that an unwritten measure can be determined from secondary sources of evidence.⁴ It is open to a panel to consider the collective weight of a complainant's evidence in establishing the existence and content of the unwritten measure.

3. Turning to whether an alleged unwritten measure has "general and prospective application", this may be found if the measure reflects a deliberate policy, going beyond the mere repetition of the application of the measure in specific instances.⁵ Relevant evidence may include proof of the measure's "systematic application".⁶

4. As the Appellate Body has identified, "the extent to which a particular rule or norm provides administrative guidance for future conduct and the expectations it creates among economic operators that it will be applied in the future, are also relevant in establishing the prospective nature of that rule or norm."⁷

5. The Panel could consider whether the instances identified by Indonesia have the required frequency, consistency and extended repetition.⁸

¹ European Union's first written submission, para. 36; Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para. 172.

² Appellate Body Report, *US – Zeroing (EC)*, para. 198.

³ Appellate Body Report, *US – Zeroing (EC)*, para. 198.

⁴ Panel Report, *Argentina – Import Measures*, para. 6.43 ; see also Appellate Body Report, *Argentina – Import Measures*, paras. 5.51-5.52; Appellate Body Report, *US – Zeroing (EC)*, para. 202; Panel Report, *US – Anti-Dumping Methodologies (China)*, paras. 7.309-7.311.

⁵ Panel Report, *US – Shrimp II (Viet Nam)*, para. 7.34.

⁶ Appellate Body Report, *US – Anti-Dumping Methodologies (China)*, para. 5.132 citing Appellate Body Report, *US – Zeroing (EC)*, para. 198.

⁷ Appellate Body Report, *US – Anti-Dumping Methodologies (China)*, para. 5.132 citing Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para. 187.

⁸ See Appellate Body Report, *US – Anti-Dumping Methodologies (China)*, para. 5.132.

6. A limited number of specific applications may not have sufficient probative value to demonstrate either the precise content of a measure, or that it has general and prospective application.⁹

B. STANDING

7. Once an investigating authority is satisfied of the adequacy and accuracy¹⁰ of the information forming the basis for the standing determination, the investigation should proceed without reconsideration of the determination – even if the support justifying the initiation subsequently falls below the requisite numerical benchmark.

8. Article 5.4 of the Anti-Dumping Agreement pertains exclusively to initiation – there is no on-going obligation to monitor domestic industry support once an investigation has been initiated under the Anti-Dumping Agreement.¹¹ To impose an obligation on the investigating authority to revisit standing after initiation of the investigation would undermine its ability to focus on completing a proper investigation without unnecessary delay.

II. EXECUTIVE SUMMARY OF AUSTRALIA'S ORAL STATEMENT

A. ARTICLE X:3(A) OF THE GATT

9. Article X:3(a) of the GATT requires the Panel to exercise a balanced judgment between the fundamental right of traders to procedural fairness and the sovereign right afforded to Members to manage how they administer their laws and regulations.¹² Non-uniformity or differences in administrative processes do not, by themselves, constitute a violation of Article X:3(a) of the GATT.¹³

10. The requirement of uniform administration of laws and regulations has been understood to mean "uniformity of treatment in respect of persons similarly situated".¹⁴ "Uniform" administration under Article X:3(a) requires that laws be applied in a consistent and predictable manner.¹⁵ "Reasonable" has been interpreted to mean "not irrational or absurd",

⁹ See Award of the Arbitrators, *China – IPRs Enforcement (EU)*, para. 4.41.

¹⁰ See Article 5.3 of the Anti-Dumping Agreement.

¹¹ Panel Report, *Mexico – Steel Pipes and Tubes*, para. 7.347.

¹² Panel Report, *Thailand – Cigarettes (Philippines)* para. 7.874.

¹³ Appellate Body Report, *EC – Selected Customs Matters*, para. 224.

¹⁴ Panel Report, *US – Stainless Steel (Korea)*, para. 6.51.

¹⁵ Panel Reports, *US – COOL*, para. 7.876; *Argentina – Hides and Leather*, para. 11.83.

"proportionate", and "within the limits of reason, not greatly less or more than might be thought likely or appropriate".¹⁶

11. Whether an act of administration can be considered reasonable within the meaning of Article X:3(a) entails "a consideration of factual circumstances specific to each case".¹⁷ However, uniform and reasonable administration does not require an investigating authority to reach identical results where the circumstances are different.¹⁸

B. WITHDRAWAL OF A COMPLAINT

12. Article 5.6 of the Anti-Dumping Agreement gives no indication that its evidentiary standards apply to anything but self-initiation of investigations.¹⁹

13. Once an investigation has been initiated based on sufficient evidence, the application has served its purpose. While there is a continuing obligation to terminate an investigation under Article 5.8 where an investigating authority is satisfied that there is not sufficient evidence of dumping and injury to justify proceeding, that must be based on an assessment of the overall state of the evidence.²⁰

14. In Australia's view, the mere withdrawal of the complaint – in and of itself – did not affect the state of evidence before the investigating authority and therefore did not require the Commission to terminate the investigation under Article 5.8.

15. There is no obligation on an investigating authority to satisfy the requirements of Article 5.6 of the Anti-Dumping Agreement after it has already satisfied the requirements to initiate the investigation based on an application by or on behalf of domestic industry under Articles 5.2, 5.3 and 5.4. That remains the case even if the application is withdrawn.

¹⁶ Panel Report, *US – COOL*, para. 7.850.

¹⁷ Panel Report, *US – COOL*, para. 7.851.

¹⁸ Panel Report, *US – Stainless Steel (Korea)*, para. 6.51.

¹⁹ Panel Report, *US – Corrosion-Resistant Steel Sunset Review*, para. 7.36.

²⁰ Panel Report, *US – Softwood Lumber V*, para. 7.137.