

Before the World Trade Organization
Panel Proceedings

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

**AUSTRALIA'S RESPONSES TO QUESTIONS FROM THE PANEL FOLLOWING
THE THIRD PARTY SESSION**

3 November 2025

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Short Title	Full Case Title and Citation
<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>Dominican Republic – Import and Sale of Cigarettes</i>	Panel Report, <i>Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes</i> , WT/DS302/R, adopted 19 May 2005, as modified by Appellate Body Report WT/DS302/AB/R , DSR 2005:XV, p. 7425
<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>EC – Selected Customs Matters</i>	Panel Report, <i>European Communities – Selected Customs Matters</i> , WT/DS315/R , adopted 11 December 2006, as modified by Appellate Body Report WT/DS315/AB/R, DSR 2006:IX, p. 3915
<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 – DRAMS</i>	Panel Report, <i>United States – Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above from Korea</i> , WT/DS99/R , adopted 19 March 1999, DSR 1999:II, p. 521
<i>US – 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

LIST OF ACRONYMS, ABBREVIATIONS AND SHORT FORMS

Abbreviation	Full Form or Description
Anti-Dumping Agreement	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
GATT	General Agreement on Tariffs and Trade 1994

QUESTION 1

Indonesia attaches significance to the introductory wording of Article 5.1 of the Anti-Dumping Agreement which reads "[e]xcept as provided for in paragraph 6".

- a) Indonesia submits that upon withdrawal of the application, the initial basis for initiation based on a written application comes to an end. Do you agree?
- b) Does the reference to Article 5.6 in Article 5.1 suggest that when the application is withdrawn and the initial basis of initiation comes to an end, an investigating authority must comply with the requirements under Article 5.6 to continue with the investigation?

RESPONSE

1. The mere withdrawal of support for the application – in and of itself – does not affect the state of evidence before the investigating authority and therefore does not require an investigating authority to terminate the investigation.
2. Previous panels have noted there is a temporal element to initiation decisions and applications. For example, the panel in *Mexico — Steel Pipes and Tubes* noted there is no on-going obligation to monitor domestic industry support once an investigation has been initiated under the Anti-Dumping Agreement.¹ The panel in *US – Lumber V* outlined that "once an investigation has been initiated on the basis of sufficient evidence of dumping, the application has served its purpose".²
3. The reference to Article 5.6 in Article 5.1 of the Anti-Dumping Agreement merely suggests there is an alternative pathway available for an investigating authority to initiate an investigation. There is no obligation on an investigating authority to satisfy the requirements of Article 5.6 of the Anti-Dumping Agreement after the investigating authority has initiated the investigation on the basis of an application.

¹ Panel Report, *Mexico — Steel Pipes and Tubes*, para. 7.347.

² Panel Report, *US – Softwood Lumber V*, para. 7.137.

QUESTION 2

If Article 5.8 of the Anti-Dumping Agreement applies to the withdrawal of an application, why is Article 5.8 not the exclusive basis upon which obligations are cast upon the investigating authority in deciding whether to continue the investigation?

RESPONSE

4. Article 5.8 applies both before initiation of an investigation and after initiation of an investigation.³ It thus casts obligations upon the investigating authority with respect to its decision whether to initiate an investigation and – if an investigation is initiated – whether to proceed with the investigation based on the sufficiency of evidence of dumping and injury.

5. In this case, once the investigation was initiated on the basis of sufficient evidence in the application, the application had served its purpose.⁴

6. The mere subsequent withdrawal of the application – in and of itself – did not affect the sufficiency of evidence of either dumping or of injury before the investigating authority and therefore did not require the European Commission to terminate the investigation under Article 5.8.⁵ In that sense, Article 5.8 did not apply to the withdrawal of the application.

³ Panel Report, *US – DRAMS*, para. 6.87.

⁴ Panel Report, *US – Softwood Lumber V*, para. 7.137

⁵ Panel Report, *US – Softwood Lumber V*, para. 7.137

QUESTION 4

If an investigating authority has discretion under its domestic legislation to either continue or terminate the investigation upon withdrawal of the application, is the exercise of this discretion subject to the obligation under Article X:3(a) to administer the legislation in a uniform manner?

RESPONSE

7. Australia considers that the exercise of such statutory discretion is subject to the obligation under Article X:3(a) to administer legislation in a uniform manner if that legislation is of the kind described in Article X:1 of the GATT.⁶ The scope of measures to be applied in a uniform manner include: "laws, regulations, ... and administrative rulings...".⁷

8. Article X:3(a) does not prescribe how an investigating authority must achieve uniform administration⁸ or require uniformity of administrative processes.⁹ An investigating authority will therefore have some latitude when exercising statutory discretion; but that latitude is constrained by the requirements under Article X:3(a) to apply domestic legislation in a manner that is uniform, impartial and reasonable.¹⁰ These three requirements are legally independent and an investigating authority must satisfy each of the three standards when implementing laws.¹¹

9. In Australia's view, uniform administration requires an investigating authority to apply domestic legislation consistently and predictably.¹² Australia considers that features of the administrative process governing the application of relevant legislation may constitute evidence for establishing whether an investigating authority has applied its legislation in a uniform or non-uniform manner.¹³ However, the probative value of such evidence will "depend on the circumstances of each case and will necessarily vary from case to case".¹⁴

⁶ Appellate Body report, *EC – Selected Customs*, para 224.

⁷ GATT 1994, art. X:1(1).

⁸ Panel Report, *EC – Selected Customs Matters*, para. 7.141.

⁹ Appellate Body report, *EC – Selected Customs*, para 227.

¹⁰ Panel Reports, *Dominican Republic – Import and Sale of Cigarettes*, para. 7.383, *Thailand – Cigarettes (Philippines)*, para. 7.873.

¹¹ Panel Reports, *Argentina – Hides and Leather*, para 11.86, *Dominican Republic – Import and Sale of Cigarettes*, para. 7.383.

¹² Panel Report, *Argentina – Hides and Leather*, para 11.83.

¹³ Appellate Body Report, *EC – Selected Customs Matters*, para 225.

¹⁴ Appellate Body Report, *EC – Selected Customs Matters*, para 225.