

Before the World Trade Organization
Panel Proceedings

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

**THIRD PARTY ORAL STATEMENT OF AUSTRALIA
AS DELIVERED**

15 October 2025

TABLE OF CONTENTS

TABLE OF CASES.....	2
LIST OF ACRONYMS, ABBREVIATIONS AND SHORT FORMS	3
I. INTRODUCTION	4
II. ARTICLE X:3(A) OF THE GATT 1994	4
III. WITHDRAWAL OF A COMPLAINT UNDER THE ANTI-DUMPING AGREEMENT	6
IV. CONCLUSION	8

TABLE OF CASES

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>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>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 – 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 – 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

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
CUFTA	Coalition Against Unfair Trade in Fatty Acid
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
GATT	General Agreement on Tariffs and Trade 1994
Member	Member of the World Trade Organization
UN	United Nations
WTO	World Trade Organization

I. INTRODUCTION

1. Chair, distinguished members of the Panel – good morning. Thank you for the opportunity to make an oral statement at this session.
2. Australia considers this case raises important questions in relation to the interpretation of sub-paragraph 3(a) of Article X of the GATT 1994 and the obligations on an investigating authority if a complaint is withdrawn.
3. Before proceeding to set out Australia's views on these issues, Australia notes that the Russian Federation is a third party in this dispute and is present at this session. Australia would therefore like to reiterate its ongoing support for Ukraine and to again condemn in the strongest terms Russia's illegal and immoral invasion of Ukraine. Russia's aggression is a gross violation of international law, including the UN Charter, and is inconsistent with the global rules and norms that underpin multilateral organisations such as the WTO.

II. ARTICLE X:3(A) OF THE GATT 1994

4. Turning to the issues in this dispute, Indonesia claims that by continuing the anti-dumping investigation while terminating the anti-subsidy investigation following the withdrawal of the complaints in both proceedings, the European Union failed to administer the provisions governing the withdrawal of complaints in the Basic Anti-Dumping Regulation and the Basic Anti-Subsidy Regulation in "a uniform and reasonable manner" in violation of sub-paragraph 3(a) of Article X of the GATT 1994.¹ Indonesia argues that while the factual circumstances of the two investigations were the same, the Commission treated the proceedings very differently.²
5. The European Union disagrees with Indonesia's claims relating to the alleged lack of "uniformity" and "reasonableness" of the Commission's determinations to continue the anti-dumping investigation and terminate the anti-subsidy investigation³ and submits the claims are entirely meritless.⁴

¹ Indonesia's first written submission, para 62.

² Indonesia's first written submission, para 110.

³ First written submission of the European Union, para 80.

⁴ First written submission of the European Union, para 111.

6. Australia considers that an examination of claims under sub-paragraph 3(a) of Article X of the GATT 1994 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.⁵ Australia also considers that non-uniformity or differences in administrative processes do not, by themselves, constitute a violation of sub-paragraph 3(a) of Article X.⁶

7. The term "uniform" in sub-paragraph 3(a) has been interpreted to mean "of one unchanging form, character, or kind; that is or stays the same in different places or circumstances, or at different times".⁷ The requirement of uniform administration of laws and regulations has been understood to mean "uniformity of treatment in respect of persons similarly situated".⁸

8. Panels have also found that "uniform" administration under sub-paragraph 3(a) of Article X requires that laws be applied in a consistent and predictable manner.⁹

9. As for the term "reasonable", it has been interpreted to mean "not irrational or absurd", "proportionate", and "within the limits of reason, not greatly less or more than might be thought likely or appropriate".¹⁰ In *US – COOL*, the Panel found that whether an act of administration can be considered reasonable within the meaning of sub-paragraph 3(a) of Article X entailed "a consideration of factual circumstances specific to each case".¹¹

10. In the case before the Panel, the European Union argues there were "manifest differences"¹² between the anti-subsidy and anti-dumping proceedings.

⁵ Panel Report, *Thailand – Cigarettes (Philippines)* paras. 7.873-7.874.

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

⁷ Panel Report, *US – COOL*, para. 7.876.

⁸ Panel Report, *US – Stainless Steel (Korea)*, paras. 6.50.

⁹ Panel Reports, *US – COOL*, para. 7.876; *Argentina – Hides and Leather*, para. 11.83.

¹⁰ Panel Report, *US – COOL*, paras. 7.850-7.851.

¹¹ Panel Report, *US – COOL*, paras. 7.850-7.851.

¹² First written submission of the European Union, para 53.

11. According to the European Union, the primary differentiating factor was the phases of the respective investigations at the time of the withdrawal of the complaints.¹³ The two investigations were around six months apart.¹⁴ In the anti-dumping investigation, the withdrawal took place after dumping, injury and causation had been preliminarily established. In the anti-subsidy investigation, the Commission had not reached any finding of the existence of subsidisation. As such, the decision required in the anti-dumping investigation was whether to impose measures and the decision required in the anti-subsidy investigation was whether to investigate.¹⁵

12. The European Union also notes that there were differing reasons provided by CUFTA for the withdrawal of the respective complaints. The "influence from stakeholders" was given as a factor in the withdrawal of the anti-dumping complaint but was not raised with respect to the withdrawal of the anti-subsidy complaint.¹⁶

13. In Australia's view, uniform and reasonable administration, consistent with subparagraph 3(a) of Article X of the GATT 1994 does not require an investigating authority to reach identical results where the circumstances are different, as asserted by the European Union in this case.¹⁷

III. WITHDRAWAL OF A COMPLAINT UNDER THE ANTI-DUMPING AGREEMENT

14. Indonesia also claims that the European Union violated Article 5.6 of the Anti-Dumping Agreement because it proceeded with its investigation following the withdrawal of the complaint, without a separate determination that the conditions in that provision were satisfied.¹⁸

¹³ First written submission of the European Union, para 54.

¹⁴ First written submission of the European Union, para 54.

¹⁵ First written submission of the European Union, para 54.

¹⁶ First written submission of the European Union, para 59.

¹⁷ Panel Report, *US – Stainless Steel (Korea)*, para. 6.51

¹⁸ First written submission of Indonesia, para 3.

15. Indonesia argues the withdrawal of the complaint amounted to a "change" in the factual circumstances and the European Union was required to "promptly" make a new determination as to whether the "continuation" of the investigation remained justified or whether "termination" was required under Article 5.8.¹⁹ Indonesia claims that the investigation could only proceed as an *ex officio* investigation under Article 5.6.²⁰

16. The European Union argues that the claim is based on an "erroneous interpretation" of the Anti-Dumping Agreement²¹ and is not supported by the text and context of Article 5.6.²²

17. As noted by Indonesia, the situation of a withdrawn complaint that is currently before the Panel is not contemplated by the Anti-Dumping Agreement.²³

18. Article 5.6 of the Anti-Dumping Agreement expressly applies in "special circumstances" where the authorities of a Member decide to "initiate" an anti-dumping investigation without having received a written application by or on behalf of a domestic industry.

19. Australia agrees with the Panel in *US – Corrosion-Resistant Steel Sunset Review* that "[t]he text of Article 5.6 gives no indication that its evidentiary standards apply to anything but self-initiation of investigations".²⁴

20. In the case before the Panel, the European Union initiated the anti-dumping investigation after having received a written application by or on behalf of domestic industry.

21. Once an investigation has been initiated on the basis of sufficient evidence in such an application, 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 before the investigating authority.²⁵

¹⁹ First written submission of Indonesia, para 139.

²⁰ First written submission of Indonesia, para 165.

²¹ First written submission of the European Union, para 112.

²² First written submission of the European Union, para 143.

²³ First written submission of Indonesia, para 126.

²⁴ Panel Report, *US – Corrosion-Resistant Steel Sunset Review*, para 7.36.

²⁵ Panel Report, *US – Softwood Lumber V*, para. 7.137.

22. 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. As such, it did not require the Commission to find that the conditions in Article 5.6 were satisfied in order for it to continue the investigation.

23. 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.

IV. CONCLUSION

24. Australia thanks the Panel for its time, and the Secretariat for its work to assist the Panel. Australia hopes that its submissions today will be useful for the Panel's consideration of this matter.