

Before the World Trade Organization

Panel Proceedings

**TÜRKİYE — MEASURES CONCERNING ELECTRIC VEHICLES AND
OTHER TYPES OF VEHICLES FROM CHINA**

(DS629)

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

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Short Title	Full Case Title and Citation
<i>Brazil – Retreaded Tyres</i>	<i>Appellate Body Report, Brazil – Measures Affecting Imports of Retreaded Tyres, WT/DS332/AB/R, adopted 17 December 2007, DSR 2007:IV, p. 1527</i>
<i>China – Publications and Audiovisual Products</i>	<i>Appellate Body Report, China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products, WT/DS363/AB/R, adopted 19 January 2010, DSR 2010:I, p. 3</i>
<i>China – Raw Materials</i>	<i>Appellate Body Reports, China – Measures Related to the Exportation of Various Raw Materials, WT/DS394/AB/R / WT/DS395/AB/R / WT/DS398/AB/R, adopted 22 February 2012, DSR 2012:VII, p. 3295</i>
<i>EC – Seal Products</i>	<i>Appellate Body Reports, European Communities – Measures Prohibiting the Importation and Marketing of Seal Products, WT/DS400/AB/R / WT/DS401/AB/R, adopted 18 June 2014, DSR 2014:I, p. 7</i>
<i>Korea – Various Measures on Beef</i>	<i>Appellate Body Report, Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef, WT/DS161/AB/R, WT/DS169/AB/R, adopted 10 January 2001, DSR 2001:I, p. 5</i>
<i>Indonesia – Import Licensing Regimes</i>	<i>Appellate Body Report, Indonesia – Importation of Horticultural Products, Animals and Animal Products, WT/DS477/AB/R, WT/DS478/AB/R, and Add.1, adopted 22 November 2017, DSR 2017:VII, p. 3037</i>
<i>Turkey – Textiles</i>	<i>Appellate Body Report, Turkey – Restrictions on Imports of Textile and Clothing Products, WT/DS34/AB/R, adopted 19 November 1999, DSR 1999:VI, p. 2345</i>

Short Title	Full Case Title and Citation
<i>US – Gambling</i>	<i>Appellate Body Report, United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services, WT/DS285/AB/R, adopted 20 April 2005, DSR 2005:XII, p. 5663 (and Corr.1, DSR 2006:XII, p. 5475)</i>
<i>US – Gasoline</i>	<i>Appellate Body Report, United States – Standards for Reformulated and Conventional Gasoline, WT/DS2/AB/R, adopted 20 May 1996, DSR 1996:I, p. 3</i>
<i>US – Shrimp</i>	<i>Appellate Body Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R, adopted 6 November 1998, DSR 1998:VII, p. 2755</i>

LIST OF ACRONYMS, ABBREVIATIONS AND SHORT FORMS

Abbreviation	Full Form or Description
EU	European Union
EV	Electric Vehicle
FTA	Free Trade Area
GATT	General Agreement on Tariffs and Trade
IPLS	Import Permit Licensing Scheme
UN	United Nations
WTO	World Trade Organization

I. INTRODUCTION

1. Chair, distinguished members of the Panel – good afternoon. Thank you for the opportunity for Australia to participate as a third party in this dispute, and to make an oral statement at this session.

2. Australia considers this case raises important questions in relation to the application and interpretation of Article XX and Article XXIV of the GATT 1994.

3. Before proceeding to set out Australia’s views on the legal issues in this dispute, Australia would 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. ARTICLES XX (B) AND (G) OF THE GATT 1994

4. The normal sequence of analysis under Article XX involves two steps: first, an assessment of whether the measure at issue is provisionally justified under the relevant paragraph of Article XX; and, second, an assessment of whether that measure meets the requirements of the *chapeau*.¹

5. For the first step in the analysis under paragraph (b) of Article XX, Australia considers that the use of the word “necessary” in that paragraph does not mean that the measure must be “indispensable” to the achievement of the objective at issue.²

6. However, the Panel will need to assess all the relevant factors, particularly the extent to which the measure in question contributes to the achievement of its objective and the trade restrictiveness of the measure, in light of the importance of the interests or values at stake.³

¹ Appellate Body report, *Indonesia – Import Licensing Regimes (New Zealand)*, para 5.101.

² Appellate Body report, *Brazil – Retreaded Tyres*, para 150 citing Appellate Body report, *Korea – Various Measures on Beef*, para. 161.

³ Appellate Body report, *Brazil – Retreaded Tyres*, para 156.

7. In undertaking this assessment, the Panel should bear in mind that measures adopted to deal with global warming and climate change may have effects which can only be evaluated with the benefit of time.⁴

8. The Panel may also need to consider whether there are alternatives to the measure at issue which would make an equivalent contribution to the objective but be less trade restrictive.⁵ In such a case, it would rest upon China to identify possible alternatives to the measure at issue that Türkiye could have taken.⁶

9. For the first step in the analysis under paragraph (g) of Article XX, Australia considers that this paragraph permits the adoption or enforcement of trade measures that have "a close and genuine relationship of ends and means"⁷ to the conservation of exhaustible natural resources.

10. There must be a "sufficient nexus" between the challenged measure and a legitimate policy goal under paragraph (g) of Article XX.⁸ This excludes from the scope of paragraph (g) measures which are "merely incidentally or inadvertently aimed at a conservation objective".⁹

11. For the first step in the analysis under both paragraphs (b) and (g), Australia notes that internal combustion vehicles release greenhouse gases when driven, that hybrid vehicles generally release fewer greenhouse gas emissions when driven, and that electric vehicles release no greenhouse gas emissions when driven.

12. The Panel will need to consider whether it has been established that additional duties on all three types of such vehicles from China contribute sufficiently to the asserted environmental objectives given: (1) that each type of vehicle contributes differently to the level of greenhouse gases in the atmosphere when driven; and (2) that one type of vehicle contributes no greenhouse gases at all when driven.

⁴ Appellate Body Reports, *Brazil – Retreaded Tyres*, para 151 noting that, in *US – Gasoline*, the Appellate Body stated, in the context of Article XX(g) of the GATT 1994, that, "in the field of conservation of exhaustible natural resources, a substantial period of time, perhaps years, may have to elapse before the effects attributable to implementation of a given measure may be observable"; *US – Gasoline*, p. 21, DSR 1996:I, 3, at 20.

⁵ Appellate Body report, *Brazil – Retreaded Tyres*, para 156.

⁶ Appellate Body Report, *US – Gambling*, para. 311.

⁷ Appellate Body Reports, *US – Shrimp*, para 136; *China – Raw Materials*, para. 355.

⁸ Appellate Body report, *US – Shrimp*, para 133.

⁹ Appellate, Body report, *China - Raw Materials*, para 360

III. CHAPEAU OF ARTICLE XX OF THE GATT 1994 – "SAME CONDITIONS PREVAIL"

13. If the Panel finds that the additional duties on certain Chinese vehicles satisfy the text of paragraphs (a) and/or (g) of Article XX of the GATT 1994, it will then need to consider the second step in the analysis; that is, whether the chapeau to Article XX is satisfied.

14. One of the requirements of the chapeau is that the higher duties on Chinese vehicles must not be “applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail”.¹⁰

15. The chapeau to Article XX does not expressly limit the type of prevailing “conditions” which may be considered in making this assessment.

16. However, context for determining the relevant “conditions” would include: (1) the type or cause of the underlying violation; and (2) the paragraph or paragraphs of Article XX under which the measure in question is provisionally justified.¹¹

17. Türkiye argues that China’s high share of global EV and EV battery production and its industry policy toward the EV industry are relevant conditions.

18. In deciding whether these are prevailing conditions for the purposes of the chapeau to Article XX, the Panel should consider the extent and nature of the relationship between: (1) China’s high share of global EV and EV battery production and its industry policy toward the EV industry; and (2) the use of the additional duties against Chinese vehicles to protect human, animal or plant life and health and/or to conserve exhaustible natural resources.

19. The closer that relationship, the more likely it is that China’s high share of global EV and EV battery production and its industry policy toward the EV industry are relevant prevailing “conditions”.

¹⁰ See the *chapeau* of Article XX of the GATT 1994.

¹¹ Appellate Body reports, *EC – Seal Products*, paras 5.299-5.301

20. In assessing that relationship, the panel will need to consider Türkiye’s argument that excessive dependence on Chinese EVs could create supply chain vulnerabilities and that “Türkiye needs to develop its own EV industry if it wants to achieve a real and sustainable green transition in its territory”. The Panel will also need to consider China’s argument that Türkiye’s measures will delay Türkiye’s “transition to a cleaner economy that could positively contribute to mitigating global climate change”.¹²

21. If the Panel finds in favour of Türkiye on this point, the Panel should then consider whether the differential treatment of China is not “arbitrary or unjustifiable” given any established differences in global market shares and industry policies between China and other WTO Members.

22. In considering the additional duties on Chinese internal combustion vehicles, the Panel will also need to consider the relevance – if any – of China’s high share of global EV and EV battery production and its industry policy toward the EV industry to those particular additional duties.

IV. ARTICLE XXIV

23. Türkiye argues that the exemption of the EU and its FTA partners from its import permit licensing scheme (IPLS) is justified under Article XXIV.¹³

24. Paragraph 5 of Article XXIV provides that the provisions of the GATT “shall not prevent ... the formation of a customs union or ... a free trade area”. The question may therefore arise as to whether the formation of the Türkiye-EU customs union and Türkiye’s FTAs would have been prevented if Türkiye were not allowed to introduce the IPLS. Australia makes two observations in this regard.

25. Firstly, the Panel may need to consider the fact that paragraph 8 of Article XXIV provides that measures permitted under Article XX do not need to be eliminated in order to properly form a customs union or free-trade area. Australia notes that Türkiye has made an argument in the alternative that the IPLS complies with paragraph (d) of Article XX.¹⁴

¹² China first written submission, para 8.

¹³ Türkiye's first written submission, para 3.30

¹⁴ Türkiye's first written submission, para. 3.197.

26. Secondly the FTAs and customs union which Türkiye relies upon may themselves contain exceptions which permit certain measures which are necessary to secure compliance with Türkiye's laws or regulations (for example, Article 11.1 of Türkiye's FTA with the UK provides that GATT Article XX and its interpretive notes are incorporated into and made part of the FTA *mutatis mutandis*).¹⁵

V. CONCLUSION

27. Australia thanks the Panel for its time and hopes that its comments will be useful for the Panel's consideration of this matter.

¹⁵ See Exhibit TUR-62.