Before the World Trade Organization

Panel Proceedings

TÜRKIYE — MEASURES CONCERNING ELECTRIC VEHICLES AND OTHER TYPES OF VEHICLES FROM CHINA

(DS629)

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

13 October 2025

TABLE OF CONTENTS

TABLE OF CASES

Short Title	Full Case Title and Citation
Argentina – Import Measures	Panel Reports, *Argentina – Measures Affecting the Importation of Goods*, WT/DS438/R and Add.1 / WT/DS444/R and Add.1 / WT/DS445/R 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
China – Raw Materials	Panel Reports, *China – Measures Related to the Exportation of Various Raw Materials*, WT/DS394/R, Add.1 and Corr.1 / WT/DS395/R, Add.1 and Corr.1 / WT/DS398/R, Add.1 and Corr.1, adopted 22 February 2012, as modified by Appellate Body Reports WT/DS394/AB/R / WT/DS395/AB/R / WT/DS398/AB/R, DSR 2012:VII, p. 3501
Colombia – Textiles	Appellate Body Report, *Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear*, WT/DS461/AB/R and Add.1, adopted 22 June 2016, DSR 2016:III, p. 1131
EC – Bananas III	Appellate Body Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas,* WT/DS27/AB/R, adopted 25 September 1997, DSR 1997:II, p. 591
EC – Seal Products	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
India – Tariffs on ICT Goods (EU)	Panel Report, *India – Tariff Treatment on Certain Goods in the Information and Communications Technology Sector*, WT/DS582/R and Add.1, circulated to WTO Members 17 April 2023, appealed 8 December 2023
India – Tariffs on ICT Goods (Chinese Taipei)	Panel Report, *India – Tariff Treatment on Certain Goods in the Information and Communications Technology Sector*, WT/DS588/R and Add.1, circulated to WTO Members 17 April 2023
Korea – Various Measures on Beef	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

LIST OF ACRONYMS, ABBREVIATIONS AND SHORT FORMS

Abbreviation	Full Form or Description
EU	European Union
EVs	Electric Vehicles
FTA	Free Trade Area
GATT	General Agreement on Tariffs and Trade 1994
HS	Harmonized System
HS 2012	WCO International Convention on the Harmonized Commodity Description and Coding System, effective 1 January 2012
HS 2017	WCO International Convention on the Harmonized Commodity Description and Coding System, effective 1 January 2017
IPLS	Import Permit Licensing Scheme
Paris Agreement	Paris Agreement to the United Nations Framework Convention on Climate Change, adopted 12 December 2015
UN	United Nations
WCO	World Customs Organization
WTO	World Trade Organization

I. ADDITIONAL DUTIES

QUESTION 1

In practice, under which subheading(s) of HS 2012 heading 87.03 were hybrid and electric vehicles classified in your respective applied tariff schedules *prior* to the HS 2017 amendment that created the new categories for these types of vehicles (i.e. in the 2012 version of the HS nomenclature) when imported into your territory?

Response

1. Australia classified electric vehicles under the subheading 8703.90 of the HS 2012. Hybrids were classified under subheadings 8703.21 to 8703.24 (for hybrids with a spark-ignition internal combustion engine), 8703.31 to 8703.33 (for hybrids with a compression-ignition internal combustion engine), and 8703.90 for hybrids not captured elsewhere.

QUESTION 2

What is the legal relevance, in WTO law, of the HS correlation tables (Exhibit CHN-21)?

Response

2. The HS correlation tables are a guide with no legal status[1] and therefore do not conclusively determine the correct HS classification of a good for the purpose of WTO dispute settlement. However, the HS correlation tables may provide relevant guidance to a panel on how a particular good is characterised under different iterations of the Harmonised System.

3. The weight a Panel ascribes to the 2012-2017 HS Correlation Tables should take into account the explanatory information accompanying it, stating that "…several differing views emerged concerning the present classification of certain goods, without the [WCO] Committee ruling officially on their classification. It was agreed that the Tables should be as comprehensive as possible and thus include correlations supported by several Contracting Parties"[2].

4. Australia submits therefore that it may be appropriate to give less weight to HS correlation tables where a Member can prove it held a differing view with respect to the classification of the relevant good at the WCO during the development of the updated HS.

[1] The WCO describes the 2012-2017 HS Correlation Tables as "[constituting] a guide published by the Secretariat and whose sole purpose is to facilitate implementation of the 2017 edition of the HS. **They have no legal status**" (emphasis in original). See, *Correlation Tables HS 2012-2017*, accessed on 8 October 2025 at: https://www.wcoomd.org/en/topics/nomenclature/instrument-and-tools/hs-nomenclature-2017-edition/correlation-tables-hs-2012-to-2017.aspx

[2] *Correlation Tables HS 2012-2017*, accessed on 8 October 2025 at: https://www.wcoomd.org/en/topics/nomenclature/instrument-and-tools/hs-nomenclature-2017-edition/correlation-tables-hs-2012-to-2017.aspx

QUESTION 3

What is the legal relevance, in WTO law, of the UN Conversion table (Exhibit CHN-22)? Are there differences with respect to the HS correlation tables that the Panel should be aware of?

Response

5. Australia understands the UN Conversion and correlation tables are a compilation of the different iterations of the HS. As such, while they may provide relevant guidance as to the classification of a good across different iterations of the HS, they are less relevant than the correlation tables prepared by the WCO Committee. These tables may provide guidance to the panel, but they have no legal status.

6. Given our understanding that the UN Conversion and correlation tables are a compilation of WCO data, there should not be differences between the UN Conversion and correlation tables and the WCO tables. To the extent that any difference may arise, the WCO tables should be given greater weight as the original version.

QUESTION 4

Please comment on the following excerpt of paragraph 7.64 of the Panel report in *India – Tariffs on ICT Goods (EU)* (original footnotes included):

[…] It is also uncontested by the parties that, pursuant to the rules of interpretation of the HS, any product at any moment in time must fall within the product scope of a tariff item in the HS nomenclature.[3] This necessarily includes new products that come into existence, for instance as a consequence of technological innovations, subsequent to a given HS nomenclature having been concluded. We agree with the parties on this point.[4][5]

Please focus exclusively on the application of the Harmonized System in practice.

Response

7. Australia agrees with the statement in this excerpt.

8. The administration of Australia's customs processing regime relies on every product at any given moment in time falling within the product scope of the HS, including for the correct application of duties and collection of statistical data. The applicable tariff line for a product must be included in an importer's full import declaration for entry of the product into Australia, and Australia provides importers with a range of resources to facilitate the correct classification of the relevant product.

9. Australia notes that this is one purpose of the XXXX.90 subheading under the HS: it captures goods that fall under the more general description at the 4-digit level but do not fall under any of the more specific descriptions at the 6-digit level.

[3] Footnote original 325: India's response to Panel question No. 10, para. 31 ("[t]he General Rules of Interpretation, annexed to the [HS Convention], allow for **all** products to be classified under one or the other heading of any version of the HS, and therefore, also the Schedule of Concessions of any given country (if unbound tariff lines are also included in the Schedule of Concessions)" (emphasis original)); European Union's response to Panel question No. 101 ("[t]he European Union considers that the HS nomenclature is exhaustive in the sense that every good must find its place in the HS").
[4] Footnote original 326: We observe that the General Rules for the Interpretation of the Harmonized System, in addition to setting out detailed rules for classification, set forth a residual interpretative rule that goods which cannot otherwise be classified "shall be classified under the heading appropriate to the goods to which they are most akin". (See General Rules for the Interpretation of the Harmonized System, (Exhibit EU-54), para. 4).
[5] Panel Report, *India – Tariffs on ICT Goods (EU)*, para. 7.64.

QUESTION 5

In paragraphs 11 and 12 of its oral statement at the first substantive meeting with the Panel, Canada stated that (original footnotes included):

> *"11. Moreover, Canada notes that while transposing a Member's Tariff Schedule is a complex and time-consuming process, it is also a mechanical one. HS correlation tables are prepared and approved to identify overlap in product coverage between the HS updates, thus avoiding changes in the scope of a Member's concessions.[6] As such, where a Member already has commitments under its existing coverage with respect to a product at issue, this would not change as a result of that Member's transposition process.*
>
> *12. In any event, if modifications to the scope of a Member's concessions were proposed due to the HS update, a Member could decide to enter into consultations and renegotiations pursuant to GATT Article XXVIIII, as is recognized in the General Council Decision on HS2007 Transposition Procedures.[7] Canada notes that Türkiye has not entered into any such renegotiations."[8]*

Please comment on the nexus between the transposition of WTO Schedules of concessions to reflect new version of the HS and Article XXVIII of the GATT 1994 that was described by Canada.

Response

10. Australia agrees with Canada that the transposition process is intended to be a mechanical one and, as such, where a Member has commitments with respect to a product at issue under its existing coverage, that commitment should not change as a result of that Member's transposition process

11. The General Council Decision of 15 December 2006 (WT/L/673) states that some complex technical transpositions of a particular tariff line may result in a change in the scope of a concession for that line.[9] Where the scope of a concession has been modified as a result

[6] Panel Report, *India – Tariffs on ICT Goods (Chinese Taipei)*, para 7.179.
[7] General Council Decision on HS2007 Transposition Procedures, WT/L/673, para. 15.
[8] Canada's Third-Party Oral Statement, paras. 11-12.
[9] General Council Decision on HS2007 Transposition Procedures, WT/L/673, para. 4

of the transposition in a way that impairs the value of the concession, a Member is required to enter GATT Article XXVIII consultations and negotiations.[10]

[10] General Council Decision on HS2007 Transposition Procedures, WT/L/673, para. 15.

QUESTION 7

Does a valid *prima facie* case under Article XX of the GATT 1994 require a respondent to justify, under the relevant subparagraphs, each individual inconsistency that has been established?

Response

12. Yes.

13. The relevant matter to be justified under a subparagraph of Article XX is the aspects of the relevant measure that give rise to the inconsistency with GATT 1994.[11] Therefore, to establish a *prima facie* case under Article XX, each allegedly inconsistent aspect must be justified under a paragraph of Article XX.

[11] Appellate Body Reports, *EC – Seal Products*, para. 5.185.

QUESTION 8

For the justification of a measure under Article XX of the GATT 1994, is the same difference in treatment that results in an MFN violation relevant to the chapeau or should it only be considered in the subparagraphs?

Response

14. The difference in treatment which results in an MFN violation may be relevant to the chapeau as well as the relevant paragraph(s) of Article XX.

15. Where a Member attempts to justify under Article XX a measure that gives rise to a breach of Article I, the measure discriminates (i.e. provides different treatment) by definition.

16. The relevant question under the *chapeau* of Article XX is whether such discrimination is arbitrary or unjustifiable. The mere fact of a *prima facie* MFN violation cannot mean the requirements of the *chapeau* are not capable of being met, otherwise Article XX could never justify an MFN breach.

17. In relation to the sub paragraphs, the difference in treatment which results in an MFN violation is relevant in that it helps identify the aspect or aspects of the challenged measure which must be justified.

QUESTION 9

In the Panel's interpretation and application of Article XX of the GATT 1994 as raised by Türkiye, what is the role of commitments Türkiye has undertaken in other international instruments such as the Paris Convention or the Glasgow Declaration?

Response

18. Türkiye's commitments in other international instruments such as the Paris Agreement and the Glasgow Declaration may be relevant context for the Panel when considering whether Türkiye's measures can be provisionally justified under paragraphs (b) and (g) of Article XX. In particular, Türkiye's commitments under these instruments may demonstrate the legitimacy of its assertion that its policy objectives are being furthered by its measures.

19. However, the existence of commitments under other international instruments does not, in and of itself, satisfy the requirements of Article XX.

II. IMPORT PERMIT LICENSING SCHEME

QUESTION 11

In what circumstances (if any) would the fact that domestic market requirements are enforced with respect to imported products through an import licensing scheme constitute discrimination inconsistent with Article III:4 of the GATT 1994?

Response

20. It is possible for measures which are enforced at the border to be inconsistent with Article III:4 of the GATT 1994. As provided by *Ad* Article III of the GATT 1994, any law, regulation or requirement which is enforced, in the case of an imported product, at the time or point of importation, is nevertheless to be regarded as a law, regulation or requirement of the kind referred to in Article III:1, and is therefore subject to the provisions of Article III.

21. If domestic market requirements enforced on imports through an import licensing scheme provide imported goods with treatment less favourable than like domestic goods, through modifying the conditions of competition in favour of domestic goods, then this may constitute discrimination inconsistent with Article III:4.[12]

[12] Appellate Body Report, *EC – Bananas III*, para. 213.

QUESTION 12

The Panel refers to China's arguments in paragraph 183 of its first written submission that "importers that cannot meet the conditions required to obtain an import permit certificate are prohibited from importing Chinese EVs and externally rechargeable hybrid vehicles" and that "(t)his in itself has limiting effects "and to Türkiye's argument in paragraph 3.122 of its first written submission that "it is simply not enough for China to point to the mere existence of conditions for the issuance of an import permit under the IPLS and, on that basis, claim a violation of Article XI." In light of these statements, does non-automatic licensing *per se* have limiting effects on importation inconsistent with Article XI:1 of the GATT 1994? If not – in what circumstances would a non-automatic import licensing scheme be inconsistent with Article XI:1?

Response

22. No, non-automatic licensing does not *per se* have limiting effects on importation inconsistent with Article XI:1 of the GATT 1994. As the Panel said in *China – Raw Materials,* licences to implement a measure justified under another provision of the WTO Agreement (such as GATT Article XI:2, XII, XVIII, XIX, XX or XXI) may be consistent with Article XI:1, as long as the licence does not by its nature have a limiting or restrictive effect.[13]

23. What is relevant when examining the consistency of a measure under Article XI:1 of the GATT 1994 is whether the measure at issue prohibits or restricts trade – i.e. whether it has a limiting effect on imports (or exports) – rather than the means by which such a restriction or prohibition is made effective.[14] If a non-automatic licensing scheme has a limiting effect on imports, which is not otherwise justified under another provision of the WTO Agreement, it will be inconsistent with Article XI:1.

24. As such, "the mere existence of conditions for the issuance of an import permit under the IPLS" is insufficient to establish a violation of GATT Article XI:1.

[13] Panel Reports, *China – Raw Materials,* para. 7.957.
[14] Panel Reports, *Argentina – Import Measures,* para. 6.363.

QUESTION 16

With respect to the alleged violation of Article I:1 of the GATT 1994, Türkiye raises a defence under Article XX(d) "in the alternative", should the Panel reject Türkiye's defence under Article XXIV and the Enabling Clause (Türkiye's first written submission, paragraph 3.198 and footnote 413). In paragraph 97 of its third-party submission, the European Union takes the view that "Article XXIV:5 cannot be invoked for inconsistencies with Article I:1 of the GATT 1994 in respect of measures that can be justified under Article XX." Please comment on the European Union's view.

Response

25. Australia recalls it made submissions with respect to this issue in paragraphs 23 to 26 of its oral statement.

26. WTO Members are not required to eliminate restrictive regulations of commerce that are permitted by Article XX in order to form a customs union or FTA within the terms of GATT Article XXIV.

27. Australia therefore agrees with the EU that paragraph 5 of Article XXIV cannot be invoked for MFN violations that are justified under Article XX.

QUESTION 17

With respect to the analysis of Türkiye's defence under Article XXIV of the GATT 1994, what is the relevance of the fact, mentioned by Australia in paragraph 26 of its oral statement, that "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 and regulations"?

Response

28. Türkiye's FTAs and customs union may contain exceptions which permit Türkiye to adopt or maintain measures which are necessary to secure compliance with its laws and regulations.

29. Given that such measures would not be inconsistent with the FTA or the customs union, there may be no need under GATT Article XXIV to "carve out" the partners to those FTAs and the customs union from the application of such measures.

QUESTION 21

To justify the potential inconsistency of a measure with Article I:1 of the GATT 1994 under either Article XXIV or the Enabling Clause, does the respondent have to refer to specific provisions in all its existing FTAs?

Response

30. To justify an MFN violation under Article XXIV, the respondent has to refer to specific provisions in all relevant existing free trade agreements and establish that those agreements satisfy all the relevant conditions of Article XXIV.

31. If justifying a measure under Article XXIV, the respondent should provide evidence that, at the formation of the respective free trade areas, the duties and other regulations of commerce imposed on the trade of others are not higher or more restrictive than the corresponding duties and other regulations of commerce prior to the formation of the respective free trade areas.

32. The respondent should also cite specific provisions of the relevant agreements that evidence the elimination of duties and other restrictive regulations on substantially all trade in originating products—except where such measures are permitted under Articles XI, XII, XIII, XIV, XV, and XX. This could include, for example: (a) the provision of the agreements that expressly establish the free trade areas; (b) specific references to goods tariff schedules where the parties have agreed to remove or reduce duties; and (c) key provisions or commitments which show the elimination of other restrictive regulations.

33. While it is common practice that FTAs contain an article expressly stating that the parties are establishing a free trade area consistent with Article XXIV, these provisions alone are not enough to demonstrate that the agreement in substance satisfies the requirements of Article XXIV.

QUESTION 22

Please comment on Japan's statements in paragraph 25 of its third-party submission that "the alleged contribution to 'consumer confidence' and 'environmentally sound handling' is irrelevant in examining the measure's contribution to 'securing compliance with specific rules' in the context of Article XX(d)." What relevance, if any, should the Panel attach to the potential contribution of these requirements to consumer protection as argued by Türkiye in the context of its analysis under Article XX(d) of the GATT 1994?

Response

34. When assessing the measure's contribution to the enforcement of the law or regulation at issue, the panel should assess how the IPLS secures compliance with Türkiye's Consumer Protection Law or After Sales-Services Regulation, rather than assessing how the IPLS contributes to the underlying policy objectives of those laws.[15]

35. A measure's contribution to the enforcement of the relevant law or regulation is only one component of the necessity calculus under Article XX.[16] A panel assessing a measure claimed to be necessary to secure compliance of a WTO-consistent law or regulation may, in appropriate cases, take into account the relative importance of the common interests or values that the law or regulation to be enforced is intended to protect.[17]

[15] Appellate Body Report, *Colombia – Textiles*, para. 5.103.
[16] Appellate Body Report, *Colombia – Textiles*, para. 5.72.
[17] Appellate Body Report, *Korea – Various Measures on Beef*, para. 164.