

Before the World Trade Organization
Panel Proceedings

**TÜRKIYE — MEASURES CONCERNING ELECTRIC VEHICLES AND
OTHER TYPES OF VEHICLES FROM CHINA**
(DS629)

THIRD PARTY WRITTEN SUBMISSION OF AUSTRALIA

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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>Brazil – Taxation</i>	<i>Panel Reports, Brazil – Certain Measures Concerning Taxation and Charges, WT/DS472/R, Add.1 and Corr.1 /WT/DS497/R, Add.1 and Corr.1, adopted 11 January 2019, as modified by Appellate Body Reports WT/DS472/AB/R/WT/DS497/AB/R, DSR 2019:II, p. 345</i> <i>Appellate Body Reports, Brazil – Certain Measures Concerning Taxation and Charges, WT/DS472/AB/R and Add.1 /WT/DS497/AB/R and Add.1, adopted 11 January 2019, DSR 2019:I, p. 7</i>
<i>China – Additional Duties (US)</i>	<i>Panel Report, China – Additional Duties on Certain Products from the United States, WT/DS558/R and Add.1, circulated to WTO Members 16 August 2023, appealed 18 September 2023</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>EC – Chicken Cuts</i>	<i>Panel Reports, European Communities – Customs Classification of Frozen Boneless Chicken Cuts, WT/DS269/R (Brazil) / WT/DS286/R (Thailand), adopted 27 September 2005, as modified by Appellate Body Report WT/DS269/AB/R, WT/DS286/AB/R, DSR 2005:XIX, p. 9295 / DSR 2005:XX, p. 9721</i>
<i>EC – Computer Equipment</i>	<i>Appellate Body Report, European Communities – Customs Classification of Certain Computer Equipment, WT/DS62/AB/R, WT/DS67/AB/R, WT/DS68/AB/R, adopted 22 June 1998, DSR 1998:V, p. 1851</i>

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<i>EC – Export Subsidies on Sugar</i>	<i>Appellate Body Report, European Communities – Export Subsidies on Sugar, WT/DS265/AB/R, WT/DS266/AB/R, WT/DS283/AB/R, adopted 19 May 2005, DSR 2005:XIII, p. 6365</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>EC – Tariff Preferences</i>	<i>Appellate Body Report, European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries, WT/DS246/AB/R, adopted 20 April 2004, DSR 2004:III, p. 925</i>
<i>EU – Palm Oil (Malaysia)</i>	<i>Panel Report, European Union and Certain Member States – Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels, WT/DS600/R and Add.1, adopted 26 April 2024</i>
<i>EU – Palm Oil (Indonesia)</i>	<i>Panel Report, European Union – Certain Measures Concerning Palm Oil and Oil Palm Crop-based Biofuels, WT/DS593/R and Add.1, adopted 24 February 2025</i>
<i>India – Tariffs on ICT Goods</i>	<i>Panel Reports, India – Tariff Treatment on Certain Goods in the Information and Communications Technology Sector, WT/DS582/R and Add.1 (EU) / WT/DS584/R and Add.1 (Japan) / WT/DS588/R and Add.1 (Chinese Taipei), circulated to WTO Members 17 April 2023</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>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
FTA	Free trade agreement
GATT	General Agreement on Tariffs and Trade
ICJ	International Court of Justice
Member	Member of the World Trade Organization
WTO	World Trade Organization

I. INTRODUCTION

1. Australia welcomes the opportunity to present its views to the Panel regarding the application and interpretation of Article II, Article XX and Article XXIV of the GATT 1994.

2. In this submission, Australia will address:

- The application of the bound rate in a WTO Member's schedule of concessions to goods which undertake technological advancement;
- Whether climate change mitigation measures can be justified by Article XX (b) and (g) of the GATT 1994;
- The interpretation of the phrase "between countries where the same conditions prevail" in the *chapeau* to Article XX of the GATT 1994; and
- Whether a complainant bears the onus to raise Article XXIV in its panel request or first written submission.

3. Australia does not present any position on the specific facts of this dispute and reserves the right to raise other issues at the third party hearing before the Panel.

II. ARTICLE II OF THE GATT AND LEGITIMATE EXPECTATIONS

4. China claims that Türkiye's additional duties on electric vehicles are inconsistent with Article II:1(b), first sentence, of the GATT 1994 because they exceed the bound rate in Türkiye's WTO schedule of concessions, and thus are also inconsistent with Article II:1(a) of the GATT.¹ Türkiye claims that a Member cannot be considered to have bound itself, at the end of the Uruguay Round, with respect to vehicles that incorporate a technology that "barely existed at that time and had no commercial relevance within the automobile sector."²

¹ China's First Written Submission, paras. 131, 132 and 273.

² Türkiye's First Written Submission, para. 2.15.

5. To support its claim, Türkiye points to the Panel's finding in *EC – Computer Equipment*, that "the protection of legitimate expectations in respect of tariff treatment of a bound item is one of the most important functions of Article II."³ We note, however, that the Appellate Body in *EC – Computer Equipment* reversed the Panel's findings on this issue.⁴ The Appellate Body also rejected the panel's finding that interpreting the meaning of a concession in a Member's Schedule in light of the "legitimate expectations" was consistent with Article 31 of the *Vienna Convention on the Law of Treaties*.⁵

6. Members' WTO Schedules, as an integral part of the GATT 1994 and the WTO Agreement, are to be interpreted in accordance with customary rules of interpretation of public international law, pursuant to Article 3.2 of the DSU.⁶ This may include reference to supplementary material, including World Customs Organization materials such as the *Harmonized System* and its *Explanatory Notes*.⁷ A tariff concession in a Member's WTO Schedule applies to all products falling under the terms of the concession, as interpreted based on its ordinary meaning when read in context, and in light of the object and purpose of the agreement.⁸ The Panel in *India – Tariff Treatment* found that this included "new products that come into existence as a result of technological innovation, and which did not exist at the time that the concession in the Schedule was agreed upon".⁹

7. We also note that, in *China – Publications and Audiovisual Products*, the Appellate Body: (i) acknowledged that WTO scheduled commitments are continuing obligations and what they apply to may change over time; and (ii) found that to interpret each Member's scheduled commitments based on the ordinary meaning at the time that member was bound can produce unfavourable results, which would substantially undermine the security and predictability of Members' tariff commitments.¹⁰

³ Türkiye's First Written Submission, para. 2.15.

⁴ Appellate Body Report, *EC – Computer Equipment*, para. 81.

⁵ Appellate Body Report, *EC – Computer Equipment*, para. 83.

⁶ Article II:7 of the GATT; Appellate Body Reports, *EC – Computer Equipment*, para. 84; *EC – Export Subsidies on Sugar*, para. 167; and Panel Reports, *EC – Chicken Cuts*, para. 7.87; *India – Tariff Treatment*, para. 7.63.

⁷ Appellate Body Report, *EC – Computer Equipment*, para. 89.

⁸ Panel Report, *India – Tariff Treatment*, para. 7.63.

⁹ Panel Report, *India – Tariff Treatment*, para. 7.63.

¹⁰ Appellate Body Report, *China – Publications and Audiovisual Product*, paras. 396-397.

III. ARTICLE XX (B) AND (G) OF THE GATT 1994

8. A significant issue in this dispute is the operation of Articles XX (b) and (g) of the GATT. These provisions play an integral part in providing appropriate policy space to WTO Members to pursue measures that are inconsistent with the GATT, but necessary to protect human, animal or plant life or health (paragraph (b)) or relating to the conservation of exhaustible natural resources (paragraph (g)).

9. It is well-established that it is for each Member to set its own policy objectives within the scope of each of the areas of public interest enumerated in Article XX of GATT 1994.¹¹ Australia recognises the right of WTO Members to take measures necessary for protecting legitimate public policy objectives such as environmental protection.¹²

10. The ICJ has recently found that the consequences of climate change are severe and far-reaching and that they affect both natural ecosystems and human populations. These consequences pose an urgent and existential threat.¹³

11. Australia considers that, in principle, a GATT inconsistent measure undertaken in pursuit of climate change mitigation may be justified under both Article XX (b) and (g) of the GATT 1994, provided the measure at issue is provisionally justified under sub paragraph (b) and (g); and the measure satisfies the requirements of the *chapeau*. In Australia's view, panels and the Appellate Body have been correct in finding that measures undertaken to pursue a legitimate climate change mitigation objective can fall within the scope of Article XX of the GATT.

¹¹ Appellate Body Reports, *US – Gasoline*, page 30; *Brazil – Retreaded Tyres*, para. 140.

¹² Australia's third party submission, 14 December 2021, *EU – Palm Oil (Malaysia)*, para. 2.

¹³ Advisory Opinion of the ICJ, 31 July 2025, para. 73.

12. Australia recalls that, in *EU – Palm Oil (Malaysia)*, and in *EU – Palm Oil (Indonesia)* the Panel referred to the Appellate Body's suggestion in *Brazil – Retreaded Tyres* that "measures adopted in order to attenuate global warming and climate change" would fall within the scope of Article XX(b) of the GATT 1994.¹⁴ The Appellate Body also noted that "certain complex public health or environmental problems may be tackled only with a comprehensive policy comprising a multiplicity of interacting measures."¹⁵

13. In respect of Article XX(g), the Appellate Body has found that the term "natural resources" is "by definition, evolutionary"¹⁶ and that the terms "exhaustible natural resources" must be read "in the light of contemporary concerns of nations about the protection and conservation of the environment".¹⁷

14. In *US - Gasoline*, the Appellate Body accepted the panel's finding that, as clean air is a "natural resource" susceptible to depletion, "a policy to reduce the depletion of clean air was a policy to conserve an exhaustible natural resource".¹⁸

15. The Appellate Body has also concluded that Article XX(g) referred to the conservation of both living and non-living exhaustible natural resources.¹⁹ Recently, the panel in *EU – Palm Oil (Indonesia)* considered that measures taken to avoid or reduce greenhouse gas emissions and climate change fall within the scope of the objective of "the conservation of exhaustible natural resources".²⁰

¹⁴ Panel Reports, *EU and Certain Member States – Palm Oil (Malaysia)*, paras 7.281, 7.1085 and *EU – Palm Oil (Indonesia)*, paras 7.290, 7.1093; Appellate Body Report, *Brazil – Retreaded Tyres*, para. 151.

¹⁵ Appellate Body Report, *Brazil – Retreaded Tyres*, para. 151; Panel Report, *EU – Palm Oil (Indonesia)* para. 7.290.

¹⁶ Appellate Body Report, *US – Shrimp*, para. 130.

¹⁷ Appellate Body Report, *US – Shrimp*, para. 129.

¹⁸ Appellate Body Reports, *US – Gasoline*, pages 14, 19; *US – Shrimp*, paras. 136, 141.

¹⁹ Appellate Body Report, *US – Shrimp*, para. 131.

²⁰ Panel Reports, *EU – Palm Oil (Indonesia)*, para 7.286 and *EU – Palm Oil (Malaysia)*, para. 7.277.

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

16. Türkiye claims that, for the purposes of the *chapeau* to Article XX, "China cannot be considered as a WTO Member in which the "same conditions prevail" as Türkiye or other WTO Members",²¹ including because of, *inter alia*, China's share of global electric vehicle and electric vehicle battery production and its industry policies directed towards the electric vehicle sector.²²

17. Australia considers that whether the same conditions prevail in different countries is an objective question.²³

18. The Appellate Body has noted that "condition" is defined as "a way of living or existing"; "the state of something"; "the physical state of something"; and "the physical or mental state of a person or thing".²⁴ The term "conditions" in the *chapeau* to Article XX can thus potentially encompass a wide variety of circumstances within WTO Members.²⁵

19. In addition, the Appellate Body in *EC – Seal Products* stated that:

We consider that, in determining which "conditions" prevailing in different countries are relevant in the context of the *chapeau*, the subparagraphs of Article XX, and in particular the subparagraph under which a measure has been provisionally justified, provide pertinent context ... [T]he type or cause of the violation that has been found to exist may [also] inform the determination of which countries should be compared with respect to the conditions that prevail in them.²⁶

20. The Appellate Body has also noted that the "contours and contents of [the] standards [in the *chapeau* to Article XX] will vary as the kind of measure under examination varies."²⁷

²¹ Türkiye's First Written Submission, para. 2.127.

²² Türkiye's First Written Submission paras. 1.6 and 2.128.

²³ Appellate Body Report, *Brazil Retreaded Tyres*, para. 31.

²⁴ Appellate Body Report, *EC – Seal Products*, para. 5.299.

²⁵ Appellate Body Report, *EC – Seal Products*, para. 5.299.

²⁶ Appellate Body Reports, *EC-Seal Products*, para. 5.300 and *Indonesia – Import Licensing Regimes*, para. 5.99.

²⁷ Appellate Body Report, *US – Shrimp*, para. 120.

21. Australia recalls that the relevant measure being examined is higher tariffs on Chinese electric vehicles, that the alleged violation includes a claim that China is not provided with most favoured nation status by Türkiye vis-à-vis tariffs on electric vehicles, that the exceptions relied upon by Türkiye both relate to climate change mitigation, and that a shift from internal combustion vehicles to electric vehicles could assist in climate change mitigation.

V. ARTICLE XXIV

22. Türkiye claims that China's failure to raise Article XXIV of the GATT 1994 in its panel request or its first written submission vitiates its challenge against the exclusion of FTA or customs union partners whose agreements do not fall within the Enabling Clause.²⁸

23. Specifically, Türkiye refers to the findings of the Appellate Body in *EC – Tariff Preferences*, where the Appellate Body said that “with respect to certain affirmative defences, a complainant is required not only to state a claim of violation, but must also “raise” (mention) the affirmative defence that is a “plain” (obvious) legal basis for the challenged measure and explain why, in its view, the conditions for the application of the affirmative defence are not satisfied”.²⁹ Türkiye claims that the Appellate Body's ruling in *EC – Tariff Preferences*, applies “with equal force” to Article XXIV.³⁰

24. As noted by the Panel in *China – Additional Duties*, the approach taken by the Appellate Body in *EC – Tariff Preferences* was unusual.³¹ The Appellate Body in *EC – Tariff Preferences* recognised that its treatment of the Enabling Clause was “special” and justified by “the particular circumstances” of that case.³² The Panel in *China – Additional Duties* observed that the Appellate Body also placed particular emphasis on the Enabling Clause's “special status in the covered agreements”, which engendered “particular implications for WTO dispute settlement.”³³

²⁸ Türkiye's first written submission, paras. 3.23 and 3.11.

²⁹ Türkiye's first written submission, para. 3.12, citing *EC – Tariff Preferences*, paras. 110, 113.

³⁰ Türkiye's first written submission, para. 3.23.

³¹ Panel Report, *China – Additional Duties*, para. 7.31.

³² Appellate Body Report, *EC – Tariff Preferences*, paras. 106, 110.

³³ Panel Report, *China – Additional Duties*, para. 7.31; Appellate Body Reports, *EC – Tariff Preferences*, para. 110. The Appellate Body confirmed the exceptional nature of this approach in *Brazil – Taxation*. See Appellate Body Report, *Brazil – Taxation*, paras. 5.361-5.362.

25. The Appellate Body agreed with the finding of the Panel in *Brazil – Taxation* that “a burden to invoke a particular provision of the Enabling Clause in a panel request could only be placed on a complaining party, if that complaining party was *appropriately informed prior to the time of the panel request* that the responding party considered the relevant measure to be adopted and justified pursuant to the Enabling Clause” [emphasis added].³⁴ Indeed, the Panel considered that “an alternative approach could result in absurd outcomes, such as a complaining party invoking *all* the provisions of the Enabling Clause in its panel request in any dispute involving claims under Article I:1 of the GATT 1994, in order to resolve its burden of invocation and guard against *all* possible defences raised by a responding party pursuant to the Enabling Clause.”³⁵

26. As the Appellate Body stated in *Brazil – Taxation*,³⁶ the Appellate Body’s statements in *EC – Tariff Preferences* concerning the burden on the complaining party to raise the Enabling Clause and identify the relevant provision(s) thereof in its panel request should be read in the context of the challenged measure at issue in that dispute, i.e. the tariff preference scheme, which as the Appellate Body itself indicated, was “*plainly taken* pursuant to the Enabling Clause”.³⁷

³⁴ Appellate Body Report, *Brazil – Taxation*, para. 5.366; Panel report, *Brazil – Taxation*, para. 7.1064.

³⁵ Panel Report, *Brazil – Taxation*, para. 7.1064.

³⁶ Appellate Body Report, *Brazil – Taxation*, para. 5.362.

³⁷ Appellate Body Report, *EC – Tariff Preferences*, para. 110.

27. In that case, the Appellate Body further noted that the challenged measure in that dispute was “*unmistakably* a preferential tariff scheme, granted by a developed country Member in favour of developing countries, and proclaiming to be in accordance with the GSP” [emphasis added].³⁸ Thus, the Appellate Body found it “clear, on the face of the Regulation and from official, publicly-available explanatory documentation”, that the “Drug Arrangements” at issue in that dispute were “part of a preferential tariff scheme implemented by the European Communities pursuant to the authorization in paragraph 2(a) of the Enabling Clause.”³⁹ Accordingly in that dispute, the Appellate Body noted that India would have been “well aware” that the Drug Arrangements must comply with the requirements of the Enabling Clause, and that “the European Communities was likely to invoke the Enabling Clause in response to a challenge of inconsistency with Article I:1.”⁴⁰

28. In Australia’s view, the approach adopted by the Appellate Body in *EC – Tariff Preferences* was based on the circumstances of that case which dictated a “special approach”.⁴¹ This unique approach to the Enabling Clause cannot be assumed to automatically translate to Article XXIV.

VI. CONCLUSION

29. Australia thanks the Panel for the opportunity to submit its views on the issues raised in this dispute.

³⁸ Appellate Body Reports, *EC – Tariff Preferences*, para. 116; *Brazil – Taxation*, para 5.362.

³⁹ Appellate Body Report, *EC – Tariff Preferences*, para. 117.

⁴⁰ Appellate Body Report, *EC – Tariff Preferences*, para. 117.

⁴¹ Appellate Body Report, *EC – Tariff Preferences*, paras. 106-107.