

**Before the World Trade Organization
Panel Proceedings**

**EUROPEAN UNION – DEFINITIVE COUNTERVAILING DUTIES ON
NEW BATTERY ELECTRIC VEHICLES FROM CHINA**

(DS630)

AUSTRALIA'S EXECUTIVE SUMMARY

31 July 2026

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Short Title	Full Case Title and Citation
<i>EC – Countervailing Measures on DRAM Chips</i>	Panel Report, <i>European Communities – Countervailing Measures on Dynamic Random Access Memory Chips from Korea</i> , WT/DS299/R, adopted 3 August 2005, DSR 2005:XVIII, p. 86
<i>EU – CVD/AD on SSCRFP (Indonesia)</i>	Panel Report, <i>European Union – Countervailing and Anti-Dumping Duties on Stainless Steel Cold-Rolled Flat Products from Indonesia</i> , WT/DS616/R and Add.1, circulated to WTO Members 2 October 2025, appealed 21 November 2025
<i>Japan – DRAMS (Korea)</i>	Panel Report, <i>Japan – Countervailing Duties on Dynamic Random Access Memories from Korea</i> , WT/DS336/R, adopted 17 December 2007, as modified by Appellate Body Report WT/DS336/AB/R, DSR 2007:VII, p. 2805
<i>US – Anti-Dumping and Countervailing Duties (China)</i>	Appellate Body Report, <i>United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China</i> , WT/DS379/AB/R, adopted 25 March 2011, DSR 2011:V, p. 2869
<i>US – Carbon Steel (India)</i>	Appellate Body Report, <i>United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India</i> , WT/DS436/AB/R, adopted 19 December 2014, DSR 2014:V, p. 1727
<i>US – Countervailing Duty Investigation on DRAMS</i>	Appellate Body Report, <i>United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea</i> , WT/DS296/AB/R, adopted 20 July 2005, DSR 2005:XVI, p. 8131
<i>US – Countervailing Duty Investigation on DRAMS</i>	Panel Report, <i>United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea</i> , WT/DS296/R, adopted 20 July 2005, as modified by Appellate Body Report WT/DS296/AB/R, DSR 2005:XVII, p. 8243

LIST OF ACRONYMS, ABBREVIATIONS AND SHORT FORMS

Abbreviation	Full Form or Description
GATT	<i>General Agreement on Tariffs and Trade 1994</i>
SCM Agreement	<i>Agreement on Subsidies and Countervailing Measures</i>
VCLT	<i>Vienna Convention on the Law of Treaties</i>
WTO	World Trade Organization

I. EXECUTIVE SUMMARY OF AUSTRALIA'S WRITTEN SUBMISSION

A. INTERPRETATION OF "SPECIAL CIRCUMSTANCES"

1. Australia submits the term "special circumstances" under Article 11.6 of the SCM Agreement should be given its ordinary meaning consistent with the VCLT.¹ Further, the term "special circumstances" is not confined to a finite number of situations. Whether "special circumstances" exist would be highly dependent on the facts and should be determined on a case by case basis. Consequently, the Panel need not establish a test to determine irrefutably whether "special circumstances" apply.

2. Australia considers an investigating authority may self-initiate an investigation only where the circumstances deviate from the ordinary course of initiation as set out in Article 11.1 of the SCM Agreement. An ex-officio investigation under Article 11.6 would require "special circumstances" that are different from investigations initiated under Article 11.1.

3. Australia submits that the negotiating history indicates that there was no consensus among the GATT contracting parties with respect to the definition of "special circumstances".

B. DOMESTIC INDUSTRY SUPPORT AND ARTICLE 11.6

4. Article 11.6 of the SCM Agreement is concerned with situations "without... a written application".² Australia's view is that the assessment of industry support is not a relevant consideration under Article 11.6 of the SCM Agreement, noting this provision's textual difference from Article 11.4, which does require the examination of industry support.

C. THE LEGAL STANDARD FOR DETERMINING A "PUBLIC BODY"

5. An investigating authority is not precluded from determining that a group of entities, including all the entities in a particular sector of the economy, are public bodies, if its assessment is based on an examination of the entities' core characteristics and their relationship with government.³ Australia submits that in certain circumstances, a determination that focuses on evidence that a group of entities, whose core characteristics

¹ See Articles 31 - 32 of the VCLT.

² Article 11.6 of the SCM Agreement.

³ Panel Report, *EU – CVD/AD on SSCRFP (Indonesia)*, para. 7.156.

include non-commercial behaviour driven by their relationship with the government, may be sufficient evidence that the entities are exercising governmental functions.⁴

6. The term "public body" in Article 1.1(a)(1) of the SCM Agreement means "an entity that possesses, exercises or is vested with governmental authority".⁵ Australia cautions against trying to apply the notion of "governmental authority" too rigidly. No single test can be applied because there are complex and varied governance structures that exist across governments.

7. Australia further considers that no single characteristic is determinative and different types of evidence may be relevant to show that a government has bestowed authority on a particular entity.⁶ Relevantly, the evidence that may be considered in making a public body determination can include: any statute or legal instrument which expressly vests authority in an entity; evidence that points to a "sustained and systematic practice" of an entity exercising governmental functions; and evidence that a government exercises "meaningful control" over an entity and its conduct.⁷

8. In Australia's view, an approach which looks at the nature and extent of governmental control of an entity is consistent with the object and purpose of Article 1.1, which is to ensure that a subsidy provided by **any** public body within the meaning of Article 1.1(a)(1) is captured by the SCM Agreement.

9. A "public body" determination requires consideration of the "core characteristics and functions of the relevant entity, its relationship with the government, and the legal and economic environment prevailing in the country in which the investigated entity operates".⁸

10. An investigating authority should avoid "focusing exclusively or unduly on any single characteristic without affording due consideration to others that may be relevant".⁹

⁴ Panel Report, *EU – CVD/AD on SSCRFP (Indonesia)*, para. 7.156.

⁵ Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, para. 317; Appellate Body Report, *US – Carbon Steel (India)*, para. 4.29.

⁶ Panel Report, *US – Carbon Steel (India) (Article 21.5 – India)*, para. 7.79.

⁷ Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, para. 318.

⁸ Appellate Body Report, *US – Carbon Steel (India)*, para. 4.29.

⁹ Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, para. 319.

D. ENTRUSTMENT OR DIRECTION OF PRIVATE BODIES

11. Australia considers that Article 1.1(a)(1)(iv) of the SCM Agreement is intended to ensure that governments do not evade their obligations under the SCM Agreement by using private bodies to perform functions that would otherwise fall within Article 1.1(a)(1), were they to be performed by the government itself. Article 1.1(a)(1)(iv) "is, in essence, an anti-circumvention provision".¹⁰

12. Australia submits that "an interpretation of the term "entrusts" that is limited to acts of "delegation" is too narrow",¹¹ "an interpretation of the term "directs" that is limited to acts of "command" is also too narrow",¹² and that "in some circumstances, "guidance" by a government can constitute direction".¹³

13. Subtle and informal means of "direction" and "entrustment" are not excluded from the scope of Article 1.1(a)(1)(iv), where properly supported by the evidence.¹⁴ As the Panel in *Japan – DRAMs (Korea)* observed, "entrustment or direction of a private body will rarely be formal, or explicit. For this reason, allegations of government entrustment or direction are likely to be based on pieces of circumstantial evidence".¹⁵

II. EXECUTIVE SUMMARY OF AUSTRALIA'S ORAL STATEMENT**A. PUBLIC BODY**

14. Australia maintains that no single criterion is determinative, and different types of evidence may be relevant in assessing whether an entity is a "public body" under Article 1.1(a)(1) of the SCM Agreement. A "public body" determination should be a holistic assessment based on the "core characteristics and functions of the relevant entity, its relationship with the government, and the legal and economic environment prevailing in the country in which the investigated entity operates".¹⁶ Panels should not focus narrowly on

¹⁰ Appellate Body Report, *US – Countervailing Duty Investigation on DRAMS*, para. 113.

¹¹ Appellate Body Report, *US – Countervailing Duty Investigation on DRAMS*, para. 110.

¹² Appellate Body Report, *US – Countervailing Duty Investigation on DRAMS*, para. 111.

¹³ Appellate Body Report, *US – Countervailing Duty Investigation on DRAMS*, para. 116.

¹⁴ Appellate Body Report, *US – Countervailing Duty Investigation on DRAMS*, para. 110.

¹⁵ Panel Report, *Japan – DRAMs (Korea)*, para. 7.73. See also, Appellate Body Report, *US – Countervailing Duty Investigation on DRAMS*, fn. 277: "... [a holistic] approach is particularly relevant **in cases of entrustment or direction under Article 1.1(a)(1)(iv), where much of the evidence that is publicly-available, and therefore readily accessible to interested parties and the investigating authority, will likely be of a circumstantial nature.**" (emphasis added)

¹⁶ Appellate Body Report, *US – Carbon Steel (India)*, para. 4.29.

isolated acts of conduct and should also ensure that their analysis remains fact-specific and responsive to the circumstances of each case.¹⁷

B. ARTICLE 12.7 OF THE SCM AGREEMENT

15. Article 12.7 of the SCM Agreement does not require investigating authorities to adopt a rigid or formalistic approach in identifying or selecting replacement facts. Rather, it requires a "process of reasoning and evaluating which "facts available" reasonably replace the missing information".¹⁸ The evaluation will depend on the circumstances of the investigation, including the nature and quality of the information available on the record. Importantly, "all substantiated facts on the record must be taken into account".¹⁹

16. There has to be a "connection between the "necessary information" that is missing and the particular "facts available" on which a determination under Article 12.7 is based".²⁰ The investigating authority must base its findings on facts that are supported by the record and explained through a reasoned analysis.²¹ Article 12.7 of the SCM Agreement does not expressly characterise the use of "facts available" as "exceptional".

C. CONFIDENTIALITY UNDER ARTICLE 12.4 OF THE SCM AGREEMENT

17. Australia recalls that requests for confidential treatment under Article 12.4 of the SCM Agreement, or claims that information cannot be provided due to confidentiality, do not, in themselves, preclude investigating authorities from seeking "necessary information" from an interested party, and do not prevent recourse to "facts available" under Article 12.7 if information is withheld after having been requested.²²

18. Instead, Article 12.4.1 of the SCM Agreement provides for interested parties that provide confidential information to furnish non-confidential summaries of that information. Where such summaries are not provided, or lack sufficient detail, and consequently the investigating authority cannot verify the information, Article 12.7 may be engaged.

¹⁷ Panel Report, *EU – CVD/AD on SSCRFP (Indonesia)*, para. 7.156.

¹⁸ Appellate Body Report, *US – Carbon Steel (India)*, para. 4.419.

¹⁹ Appellate Body Report, *US – Carbon Steel (India)*, para. 4.419.

²⁰ Appellate Body Report, *US – Carbon Steel (India)*, para. 4.416.

²¹ Appellate Body Report, *US – Carbon Steel (India)*, para. 4.419.

²² Panel Report, *EC – Countervailing Measures on DRAM Chips*, para. 7.80.