Before the World Trade Organization

Panel Proceedings

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

(DS630)

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

24 July 2026

TABLE OF CONTENTS

TABLE OF CASES

Short Title	Full Case Title and Citation
US — Anti-Dumping and Countervailing Duties (China)	Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, adopted 25 March 2011, DSR 2011:V, p. 2869
US – Carbon Steel (India)	Appellate Body Report, *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R, adopted 19 December 2014, DSR 2014:V, p. 1727
US – Gasoline	Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, adopted 20 May 1996, DSR 1996:I, p. 3
US – Softwood Lumber VII	Panel Report, *United States – Countervailing Measures on Softwood Lumber from Canada, WT/DS533/R* and Add.1, circulated to WTO Members 24 August 2020, appealed 28 September 2020
US — Supercalendered Paper	Appellate Body Report, *United States – Countervailing Measures on Supercalendered Paper from Canada*, WT/DS505/AB/R and Add.1, adopted 5 March 2020, DSR 2020:III, p. 1149

LIST OF ACRONYMS, ABBREVIATIONS AND SHORT FORMS

Abbreviation	Full Form or Description
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
Member	Member of the WTO
SCM Agreement	Agreement on Subsidies and Countervailing Measures
VCLT	Vienna Convention on the Law of Treaties
WTO	World Trade Organization

QUESTION 2

What is the relevance of the fact that Article 12.7 refers to an "interested Member" and not just an "interested party"? In light of the scope of the SCM Agreement covering government conduct, does this reference suggest that an "interested Member" has a greater responsibility than an "interested party" for providing information that is not within its possession, but which pertains to entities within its jurisdiction?

RESPONSE

1. In relation to the first part of the question, Australia observes that for a financial contribution to amount to a subsidy it must be provided by a government or public body. Such governments and public bodies – as the providers of financial contributions – will hold "necessary information" for the purposes of Article 12.7 of the SCM Agreement. Consequently, the reference to "interested Member" in Article 12.7 is implicit acknowledgment that Members have, and can exercise, control over necessary information on potentially countervailable subsidies.

2. It further acknowledges that a refusal by "any interested Member" to provide access to necessary information (in the circumstances provided in Article 12.7) is a matter that may justify resorting to the facts available.

3. In relation to the second part of the question, Australia considers an "interested Member" has a greater responsibility than an "interested party" to provide information where it pertains to entities within its jurisdiction. This is because a WTO Member is uniquely positioned to obtain, verify, or facilitate access to necessary information relating to government authorities and other entities within its jurisdiction. For example, where information concerns the design, operation, or beneficiaries of a government programme, an investigating authority may reasonably expect the interested Member to assist in obtaining and providing that information in a manner that would not ordinarily be expected of an interested party.

QUESTION 3

China argues that "[i]n all cases, the authority must be able to explain and establish why the requested information is necessary to reach its determinations". China also claims that the European Commission "failed to explain why" the requested information was necessary. Is the investigating authority always required under Article 12.7 of the SCM Agreement to provide an explanation in its determinations as to why the requested information is "necessary"?

RESPONSE

4. Australia considers that an investigating authority is not always required to provide an explanation in its determination as to why the requested information is "necessary".

5. In particular, contrary to the submissions of China, Australia notes previous panel and Appellate Body decisions, including in *US – Supercalendered Paper,* have not established a blanket obligation for investigating authorities to provide an explicit explanation in their determinations as to why information is "necessary".[1]

6. Investigating authorities must be afforded sufficient flexibility to ensure that they can respond appropriately to the particular circumstances before them.

[1] Panel Report, *US – Supercalendered Paper*, para. 7.175.

QUESTION 5

With respect to Article 14(d) of the SCM Agreement:

a. Can an investigating authority resort to an "out-of-country" benchmark under Article 14(d) once it establishes that in-country prices for goods or services are distorted, or is it required to also establish that such distortion is because of the government's "predominant role" in providing those goods or services?

b. Are there any other circumstances besides the government's "predominant role" in the provision of goods or services in which an investigating authority can resort to an external benchmark under Article 14(d)? Are there other ways in which a government can intervene in a market resulting in its distortion sufficient to warrant recourse to a non-primary benchmark?

c. What is the relevance of such circumstances for Article 14(b), insofar as the latter provision does not refer to the "country of provision" but instead to a "comparable commercial loan"?

RESPONSE

7. In response to the first part of the question, Australia considers that an investigating authority can resort to an "out-of-country" benchmark under Article 14(d) of the SCM Agreement once it establishes that in-country prices for goods or services are distorted. In fact, it has long been accepted by previous panels and the Appellate Body that the identification of price distortion is one ground for disregarding in-country prices.[2]

8. In-country prices of the relevant goods or services will be distorted where they deviate from market-determined prices as a result of government intervention in the market.[3] In such instances, an alternative benchmark may be appropriate.[4] The analysis necessary to arrive at such an appropriate benchmark will vary depending upon the circumstances of the case, the characteristics of the market being examined, and the nature, quantity, and quality of the information supplied by petitioners and respondents, including such additional information an

[2] See, e.g., Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, paras. 443, 446.
[3] Appellate Body Report, *US – Carbon Steel (India)*, para. 4.155.
[4] Panel Report, *US — Softwood Lumber VII*, para. 7.145; Appellate Body Report, *US – Softwood Lumber IV*, para. 106.

investigating authority seeks so that it may base its determination on positive evidence on the record.[5]

9. The "predominant role" of the government in providing goods or services is only *one* circumstance that could give rise to price distortions. Notably, the Appellate Body has observed that, "what would allow an investigating authority to reject in-country private prices is price distortion, not the fact that the government is the predominant supplier".[6]

10. Turning to the second part of the question, Australia considers that there are numerous possible circumstances besides the government's "predominant role" in the provision of goods or services in which an investigating authority can resort to an external benchmark under Article 14(d) of the SCM Agreement. The Appellate Body specifically acknowledged this is the case and never foreclosed the possibility that there could be other situations.[7] Ultimately, investigating authorities are looking for government interventions that result in price distortions, a far broader set of circumstances than government predominance.

11. Without limiting the range of possible circumstances, the following list is illustrative of interventions that may, depending on the facts of the market concerned and their effect on prices, be sufficient to warrant recourse to a non-primary benchmark:

a. government-administered or regulated prices;

b. significant government ownership or control of suppliers;

c. government direction of market participants;

d. explicit or implicit forms of government influence;

e. export restrictions or domestic supply restraints;

f. subsidies affecting production or supply;

g. monopoly or monopsony conditions created by government action;

h. artificial allocation of inputs, including government allocation systems for land, natural resources, energy, credit, or raw materials, which may prevent competitive pricing; and

i. distortions arising from broader industrial policy measures.

[5] Appellate Body Report, *US – Carbon Steel (India)*, para. 4.157.
[6] See Appellate Body Report, *US — Countervailing Measures (China)* (Article 21.5 – China), para. 5.138.
[7] Appellate Body Report, *US – Carbon Steel (India)*, para. 4.185.

QUESTION 6

What is the meaning of the terms "evidence … being used for initiating … the investigation" in Article 13.4 of the SCM Agreement?

RESPONSE

12. Australia submits that the phrase "evidence … being used for initiating … the investigation" should be interpreted in accordance with the ordinary meaning of the relevant terms in their context, in light of the object and purpose of the SCM Agreement.[8]

13. The ordinary meaning of the relevant terms is as follows:

   a. "evidence" is a "body of information", including "facts", "observations" and other material that may be relied upon to "support a conclusion" or "proposition",[9] and

   b. "used" is defined as "to make use or take advantage of an idea or thing as a means of achieving something".[10]

14. Read together the phrase "evidence … being used for initiating … the investigation" refers to information and other material relied upon by the investigating authority in reaching its decision to initiate the investigation. This interpretation is consistent with the context of Article 13.4 of the SCM Agreement. The phrase encompasses the information and material that forms part of the evidentiary basis for the initiation decision, rather than all information that may be in the possession of the investigating authority.

15. Australia submits that "confidential information" and "non-confidential information" may form part of the evidentiary basis relied upon by an investigating authority in deciding whether to initiate an investigation under Article 11.3 of the SCM Agreement.

16. Australia considers that "non-confidential" evidence should be interpreted having regard to the context provided by Article 12.4 of the SCM Agreement. That is, "confidential information" would include information that is *by its nature confidential,*[11] and information that is *provided on a confidential basis.*[12] Article 12.4 serves as relevant context for Article 13.4, and there is no suggestion that the meaning that Article 12.4 gives to the term "confidential" or

[8] Article 3.2 of the DSU; Appellate Body Report, *US – Gasoline*, paras. 16–17.
[9] Oxford Dictionaries online, "evidence" definition III.6.a., available at oed.com (accessed 7 July 2026).
[10] Oxford English Dictionary online, "use" definition II.10.a.i., available at oed.com (accessed 7 July 2026).
[11] Relevant extract: "any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom the supplier acquired the information)".
[12] Relevant extract: "any information …. Which is provided on a confidential basis by parties to an investigation".

"confidentiality" should be limited to Article 12. Australia submits that "non-confidential evidence", as that term is used in Article 13.4, would therefore, at least, not include information that falls within the scope of "confidential information" as defined under Article 12.4.

17. Where confidential information forms part of the evidence relied upon for initiation, the investigating authority is not required to disclose the confidential information itself in response to a request under Article 13.4 of the SCM Agreement. Instead, upon request, the investigating authority is required to provide access to a non-confidential summary of the relevant confidential information.

18. To give effect to the object and purpose of Article 13.4, any non-confidential summary should be in sufficient detail to enable a reasonable understanding of the essential elements of the underlying information, without disclosing confidential information itself.

QUESTION 7

Article 11.6 of the SCM Agreement includes the terms "special circumstances".

a. Does the existence of "special circumstances" constitute a separate requirement that an investigating authority must satisfy to initiate an ex officio investigation, in addition to collecting "sufficient evidence" of subsidization, injury and causation?

b. If your answer to the previous question is in the affirmative, what kind of circumstances qualify as "special"?

c. Is the investigating authority required to set out a finding on the existence of "special circumstances"? If any such requirement exists, must the finding be set out in the notice of initiation? In the published determinations?

RESPONSE TO QUESTION 7(A)

19. Yes, Australia submits that Article 11.6 expressly refers to initiation in "special circumstances" and this term should be given meaning and effect.

20. Australia considers that 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. Article 11.1 of the SCM Agreement provides the general test for initiating an investigation, namely upon a written application, but also includes a caveat, "except as provided in paragraph 6" of Article 11. Reading both of the articles together leads to a view that ordinarily an investigation is initiated by written application by domestic industry. An ex-officio investigation under Article 11.6 would require "special circumstances" that are different from how investigations are normally initiated under Article 11.1 of the SCM Agreement.

21. As discussed in our response to question 7(b), Australia considers that the discretion of an investigating authority to initiate ex-officio investigations is not a closed list.

RESPONSE TO QUESTION 7(B)

22. Australia considers that the term "special circumstances" should be interpreted based on its ordinary meaning, in accordance with Article 31 (General rules of interpretation) and Article 32 (Supplementary means of interpretation) of the VCLT.[13] As Australia explained in its written submission, the Oxford English Dictionary defines "special", inter alia, as "unusual" or

---

[13] See Articles 31 and 32 of the VCLT.

"out of the ordinary", while a "circumstance" is an "element that is part of or related to a situation, fact or narrative".[14] Australia therefore considers that "special circumstances" means a situation that departs from the ordinary course of events.[15]

23. Accordingly, Australia considers that 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.

24. Australia does not consider that Article 11.6 of the SCM Agreement contains a closed list of circumstances that may qualify as "special". Australia considers that the negotiating history on Article 11.6 does not demonstrate a consensus among Members regarding the definition of "special circumstances".

25. Australia agrees with the following point raised in the European Union's written submission, that "the discretion of an investigating authority to initiate ex officio investigations is not only to certain specific circumstances, such as when the domestic industry is "small"",[16] and (ii) "the SCM Agreement does not contain a "closed list" of elements that can exclusively be considered as "special circumstances".[17] Rather, Australia considers that the term "special circumstances" remains open to be addressed on an individual case by case basis, dependent on the facts.

RESPONSE TO QUESTION 7(C)

26. Australia considers that, where an investigating authority initiates an investigation pursuant to Article 11.6, it should be capable of demonstrating that it has addressed the requirement that "special circumstances" exist. Article 11.6 expressly refers to initiation in "special circumstances" and this term should be given meaning and effect.

27. However, Australia does not consider it necessary for the purposes of this dispute to determine the precise form in which an investigating authority must record or publish its assessment of the existence of "special circumstances". In Australia's view, the relevant consideration is whether the investigating authority's reasoning is sufficiently apparent to permit interested parties and, where appropriate, a reviewing panel to assess whether the

---

[14] Australia's written submission, para. 7; Oxford English Dictionary online, s.v. "special" (adj., n.), definition 3.a., and s.v "circumstance" (adj., n.), definition 11.5.a., available at oed.com, accessed 17 April 2026.
[15] Australia's written submission, para. 7.
[16] European Union's first written submission, para. 2926.
[17] European Union's first submission, para. 2941.

investigating authority's initiation is consistent with Article 11.6 of the SCM Agreement. Whether that reasoning appears in a notice of initiation, a published determination, or another contemporaneous document will depend on the design of the investigative process and the circumstances of the investigation.