

CHINA – ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

ARBITRATION UNDER ARTICLE 25 OF THE UNDERSTANDING ON RULES AND
PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES

(DS611)

EXECUTIVE SUMMARY OF AUSTRALIA'S THIRD PARTY WRITTEN SUBMISSION

15 May 2025

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LIST OF ACRONYMS, ABBREVIATIONS AND SHORT FORMS

Abbreviation	Full Form or Description
IPR	Intellectual property right
TRIPS, or TRIPS Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights

1. Australia agrees with the European Union's claim that the Panel erred in the interpretation of the first sentence of Article 1.1 of the TRIPS Agreement. In Australia's view, the Panel incorrectly excluded the requirement upon Members to ensure their implementation of TRIPS provisions does not interfere with, or undermine, the ability of other Members to uphold their own TRIPS obligations.

A. THE PANEL ERRED FINDING THAT "NOTHING" RELEVANT SUPPORTS AUSTRALIA'S INTERPRETATION OF THE FIRST SENTENCE OF ARTICLE 1.1

2. The plain meaning of "give effect to" is to "to render operative".¹ Contrary to the Panel's findings, this plain meaning does not support an interpretation that is confined to domestic implementation. The context of the second and third sentences of Article 1.1 does not contradict that interpretation, because those provisions are conditional upon the first sentence.

3. The requirement for "effective" protection of IPRs in the Preamble to the TRIPS Agreement² is relevant to the interpretation of its object and purpose. That requirement necessitates that Members ensure their actions do not impair another's ability to uphold their obligations under the TRIPS Agreement.

4. Further, the balance of rights and obligations enshrined in Article 7 (Objectives) restrains Members from ignoring the effect of their measures on the ability of other Members to comply with their own TRIPS obligations. In Australia's submission, the Panel erred in failing to take proper account of those provisions.

B. THE PANEL ERRED IN ITS APPLICATION OF THE PRINCIPLE OF "GOOD FAITH"

5. Contrary to what appears to be the Panel's understanding, Australia does not rely upon principles of good faith to support the existence an obligation in the first sentence of Article 1.1, where it otherwise does not exist.

6. As set out in the above section, Australia's interpretive analysis of the first sentence of Article 1.1 is based on customary principles of interpretation. Australia's analysis draws on

¹ Oxford English Dictionary online, definition of "to give effect to" and "operative"
https://www.oed.com/dictionary/effect_n?tab=meaning_and_use#5751968 (accessed 9 May 2025).

² Preamble to the TRIPS Agreement, first recital.

principles of good faith in support of its interpretation. A Member cannot give effect to the provisions of the TRIPS Agreement in good faith if it actively hampers another Member's ability to meet their own TRIPS obligations.