Before the World Trade Organization

Panel Proceedings

CHINA – MEASURES CONCERNING TRADE IN GOODS

(DS610)

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

18 December 2023

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LIST OF ACRONYMS, ABBREVIATIONS AND SHORT FORMS

Abbreviation	Full Form or Description
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
GATT	General Agreement on Tariffs and Trade
Member	Member of the World Trade Organization
SPS Agreement	Agreement on the Application of Sanitary and Phytosanitary Measures
WTO	World Trade Organization

QUESTION 1

To all third parties: In your view, what degree of consistency, if any, in the application of an unwritten measure is needed to establish its existence?

Response

1. Australia's submissions have argued in detail that there is no basis for any rule requiring proof of a specific feature[1] - let alone consistency of application - to establish an unwritten measure's existence.[2] Australia will not reiterate those arguments here. Rather, we focus on issues which might engage a panel in circumstances where consistency of application *is* found to be relevant.[3] Those issues may include the questions of: i) what might constitute *enough* consistency of application; and ii) how a panel might address examples of the *non-application* of a measure. In that regard, Australia offers three observations.[4]

2. *First*: in Australia's view, the EU's description of the import restriction measure does not suggest that the EU needs to prove an *absolute* ban on imports as part of its *prima facie* case. The EU is not challenging the import restriction measure as an absolute ban. Rather, the EU explains that "sudden and unexplained" difficulties obtaining IT customs clearance, including error messages and lengthy delays, resulted in significant cost and unpredictability and had the cumulative effect of restricting imports.[5] The EU openly acknowledges that some shipments were, in fact, allowed into the Chinese market.[6] As such, evidence which seeks to

[1] Save for "attribution" and "precise content". See Australia's third party written submission, para. 20.
[2] In particular, Australia recalls its prior written submission that the elements of a measure which need to be proven, and how to prove them, are case-specific (Australia's third party written submission, section III.C.). To the extent that the Panel's question may be viewed as an issue of evidence or evidentiary principles, Australia reiterates its written submission that "how much and precisely what kind of evidence will be required" is also case-specific (see Australia's third party written submission, para. 41, quoting Appellate Body Report, *US – Wool Shirts and Blouses*, p 14 and noting Appellate Body Reports, *Russia – Railway Equipment*, para. 5.187; *Japan – Apples*, para. 159). Australia also expressly rejects the standard of "unwavering consistency" for unwritten measures. See Australia's third party written submission, para. 25, and oral statement at the third party session at the first substantive meeting of the parties, para. 19.
[3] The Panel may be satisfied that consistency of application *is* relevant, based on its analysis of a specific measure. For example, see Panel Reports, *EC – Approval and Marketing of Biotech Products,* para. 7.1274, where the panel found that an "observable", "clear and repeated pattern of inaction, or delayed action" for certain approval processes, together with the lack of any approvals during the relevant period, warranted an inference that certain conduct was the result of an effective decision. Consistency of application may also be relevant, for example, to a panel's examination of the existence of an "underlying policy" (see Appellate Body Report, *US – Anti-Dumping Methodologies (China)*, para. 51.32, and fn. 404, citing Appellate Body Reports, *US – Zeroing (EC)*, para. 204; *US – Zeroing (Japan)* paras. 85 and 88) or to establish the existence of regulatory methodology which is characterised as a norm of general and prospective application (see Appellate Body Report, *US – Zeroing (EC)*, para. 204).
[4] For greater certainty, Australia's position is that it cannot offer an opinion as to the "degree of consistency" which is necessary to establish the existence of an unwritten measure, as the analysis is case-specific. Australia takes no position on the facts of this dispute.
[5] See in particular, the European Union's first written submission, paras. 76 – 83, 134 – 137.
[6] See for example, the European Union's first written submission, paras. 134 - 136.

disprove any "absolute ban", such as China's "examples of successful customs declarations of imports from or connected to Lithuania",[7] may be of limited relevance and probative value.

3. Instead (and as an example of a possible alternative analysis), where a high level of consistency in *successful* imports has been established,[8] rebuttal evidence which explains the observable pattern of aberrations from that trend, may be of superior probative value and relevance. Such evidence is missing from China's rebuttal.

4. *Second*: the prior disputes to which China refers in support of its arguments regarding a standard of "consistency" for unwritten measures, are not relevant to the current facts.[9] Unlike the disputes noted by China - where a consistent practice of relevant regulatory decisions potentially going back years were supported by reasons, computer software, manuals and the like - the import restriction measure at issue in this dispute is allegedly hidden through sporadic IT errors. In cases of disguised measures, Australia submits that it may often be impossible to satisfy any evidentiary standard of consistency of application. However, consistency or patterns may be evident, on an assessment of the totality of the evidence.[10]

5. *Third*: even by China's own argument, unwavering consistency in the application of a measure is not determinative of the existence of a measure. China argues that "repeated instances may be mere repetition" which "cannot alone support an inference that a Member's actions are caused by an unwritten measure".[11] An argument that a high level of consistency of application of a measure is both necessary, and at the same time, meaningless, is internally inconsistent. Given that China admits that "repeated instances" of application are not determinative, the *absence* of such "repeated instances" – or indeed, aberrations from a pattern – are also not determinative, by the same logic.

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[7] China's first written submission, paras. 104 – 107.

[8] China refers to 76 million consistently successful individual customs declarations per year, but points to no other evidence of similar technical issues experienced by other Members (as it suggests might be observed "from time to time"), nor any reasons for the technical issues identified by the EU specifically. See China's first written submission, para. 48.

[9] See China's first written submission, paras. 22 and 25 and fns. 18, 19 and 21, which variously cite Appellate Body Report, *US – Zeroing (EC)*; and Panel Reports, *US – Anti-Dumping Methodologies (China)*; *US – Zeroing (EC)*; *US – Zeroing (Japan)*; and *US – Zeroing (Korea)*.

[10] Australia recalls its prior written submission that the Panel should consider the evidence cumulatively, in totality. See Australia's third party written submission, paras. 36 – 43. In that respect, Australia observes that the EU also presents pages of evidence which it argues in support of the existence of the import restriction measure, in addition to various IT error messages. See the European Union's first written submission, paras. 94 – 122.

[11] China's first written submission, para. 284. Australia observes that the Appellate Body has previously followed a similar logic in one specific case (see Appellate Body Report, *US – Zeroing (Japan)*, paras. 7.50 – 7.53). Australia also refers to its earlier submissions at paragraph 4 and fn. 10, above, in that regard.

6. Based on the foregoing three points, Australia submits that evidence of "a small number of isolated instances of technical difficulties and delay, concerning no more than a dozen products […] and occurring over a brief period"[12] may be sufficient in certain circumstances, to contribute to an inference that a measure exists. Examples of the purported inconsistent application of that measure, which are premised upon the very facts through which the measure is allegedly disguised, logically seem to be of little probative value in rebutting such inference.

QUESTION 2

To all third parties: Australia, in paragraph 55 of its third-party submission, and Canada, in paragraph 25 of its third-party oral statement, argue that the Panel's assessment of the import restriction and the overarching measure is necessary and important to resolve this dispute. (a) What is the value added in the Panel making findings with respect to the European Union's claims concerning both the overarching measure and the import restriction measure? (b) In your view, what would be the implications of a finding by the Panel that the European Union has not demonstrated the existence of the import restriction measure to the Panel's assessment of the existence and content of the overarching measure?

Response to Question 2(a)

7. The claims brought by the EU engage "questions of great practical interest"[13] concerning the existence and operation of the unwritten measures. Questions as to the existence and operation of *both* unwritten measures are systemically very important,[14] but legally novel in some respects.

8. In this case, findings on additional claims may contribute to the effective implementation of any rulings and recommendations under the circumstances. The alleged unwritten measures are not static. They variously fluctuate, pause and may re-emerge

[12] China's first written submission, para. 292. Australia draws no conclusion as to whether China's description is an accurate characterisation of the evidence.
[13] This was a key factor in favour of the exercise of panel's discretion to reject judicial economy in *EEC - Dessert Apples*, para.12.20, quoted in Appellate Body Report, *US – Wool Shirts and Blouses*, fn. 29.
[14] See for example, the European Union's first written submission, para. 567. The systemic significance of the unwritten measures is also demonstrated through, and argued within, third party submissions.

through randomised means, at different times.[15] The overarching measure in particular, is described as having "progressive and fluctuating" implementation.[16] This means that where the Panel finds that the EU has made a *prima facie* case with respect to any single claim against either unwritten measure, a "genuine possibility"[17] would logically remain that such measure might be brought into compliance with one obligation, while still (or newly) contravening a separate obligation. This risk is heightened where the respondent denies the very existence of the measures. In Australia's view, these factors weigh in favour of the Panel exercising its mandate in such a way as to provide increased clarity to the parties, by declining to exercise judicial economy.

9. Australia further observes that the EU's characterisation of the unwritten measures does not support the exercise of judicial economy on claims, *as between the two unwritten measures* in this dispute.[18] The threshold question of whether a panel is entitled to exercise judicial economy with respect to any claim "is a legal question, and it turns on whether such a ruling would be superfluous from the perspective of implementation."[19] In Australia's view, the characterisation of the unwritten measures does not support a conclusion that any affirmative finding concerning one of the measures would necessarily lead to the "modification or withdrawal of the other [measure]", such that findings concerning that other measure would then be "superfluous".[20] Australia presents its views on the relationship

[15] See for example, the European Union's first written submission, para. 578 regarding the overarching measure. The import restriction measure also operates through a variety of subtle means, including dissuasive effect on traders.
[16] European Union's first written submission, para. 567.
[17] See Final Panel Report as issued to the parties, *Turkey – Pharmaceutical Products (EU)*, para. 7.255, where the panel stated that "a panel may opt to make findings where there is a genuine possibility that the Member concerned could modify or reintroduce the challenged measure in such a way that the substantive content of the measure is brought into conformity with substantive WTO obligations, but without any adjustment to the same alleged shortcomings with respect to the publication and administration of the measure such that they are repeated or otherwise carried over into the modified or reintroduced measure." The panel's general process of analysis in that case may be relevant and useful here. See also, Panel Reports, *China – Raw Materials*, paras. 7.636 – 7.637: "[…] in the event that China were in any instance to impost a quote that was justified pursuant to Article XX, it would be relevant for the parties to know whether the aspects of China's system of quote administration at issue in this dispute comply with the relevant provisions of GATT Article X. 7.637 Accordingly, the Panel will consider [those claims]."
[18] For an example of such analysis, see Final Panel Report as issued to the parties, *Turkey – Pharmaceutical Products (EU)*, paras. 7.265 – 7.275. The panel in that dispute exercised judicial economy in relation to a claim under one measure, where it had made a finding of inconsistency regarding a *separate* claim on a *separate* measure. The panel did so on the basis that the two measures were interlinked, such that the latter could not exist without the former. Therefore both measures would effectively disappear once the first measure was brought into compliance with the covered agreements. The panel also observed that the complainant in that dispute did not establish any need to rule separately on the claim for which it ultimately exercised judicial economy.
[19] Final Panel Report as issued to the parties, *Turkey – Pharmaceutical Products (EU)*, paras. 7.265.
[20] Final Panel Report as issued to the parties, *Turkey – Pharmaceutical Products (EU)*, paras. 7.265.

between the unwritten measures which support these submissions, at paragraphs 11 to 13, below.

Response to Question 2(b)

10. A finding by the Panel that the EU has not demonstrated the existence[21] of the import restriction measure may have some evidentiary consequences for the Panel's assessment of the existence of the overarching measure. However, in Australia's view such a finding does not require a further, consequential finding that the overarching measure does not exist.

11. The EU describes the import restriction measure and the SPS measures as "inter-linked", together "form[ing] a complex [i.e. the overarching measure,] that *shows* a targeted prohibition or restriction".[22] The EU clarifies the nature of the overarching measure, stating: "addressing the individual measures as isolated cases will not eliminate the problem faced by European Union industry in general and Lithuania in particular."[23] The EU also underscores the unpredictable implementation of the overarching measure, with China allegedly "decid[ing] to impose one or more restrictions on product categories utilising different regulatory mechanisms at its disposal."[24]

12. Based on the EU's description, Australia understands that the individual measures are manifestations of the overarching measure,[25] but do not *comprise* the overarching measure. That is, the EU does not appear to suggest that the SPS measures and the import restriction measure *are* the overarching measure, merely that they are examples of its application.

13. In Australia's view, this means that any findings regarding the existence of the import restriction measure should not have direct consequences for the existence of the overarching measure. Rather, such a finding may have some impact upon the evidence which is available to the Panel, in considering the existence of the overarching measure. In that respect, Australia observes that a panel may refer to all of the evidence which the parties have put

[21] For greater certainty, Australia uses the term "existence" in this question to refer to "existence as a challengeable measure under the WTO Agreement", not in the general factual sense.
[22] European Union's first written submission, para. 566. (emphasis added)
[23] European Union's first written submission, para. 568.
[24] European Union's first written submission, para. 578.
[25] See by way of further examples, the EU's description of the relationship between the overarching measure and the other measures, at paras. 64, 188, 567, and 580 of the European Union's first written statement.

before it in making its findings. This entitlement should not be impacted by negative findings, based on the same evidence, with respect to a different measure.[26]

14. Where the Panel finds that the import restriction measure does not exist as a challengeable measure under WTO rules, the only clear consequence[27] is that the Panel has one less piece of information with which to inform its analysis of the existence of the overarching measure. That would not seem to be fatal to the EU's *prima facie* case, with respect to the overarching measure.

QUESTION 3

To all third parties: In your view, to be challenged successfully, should an unwritten measure have future application? If so, how can that be demonstrated?

Response

15. The relevance of the "future application" of a measure in any specific case will turn on the characteristics of the measure at issue and not whether it is written or unwritten. In other words, an unwritten measure need not have "future application" in order to be challenged successfully, unless it is a relevant characteristic of that measure.[28] The means of demonstrating such "future application" will be informed by the nature of the measure at issue.

16. The panel in *Indonesia - Chicken* considered "future application" in establishing the existence of an unwritten measure. It stated:

> There is a further issue with the evidence submitted by [the complainant] which concerns the third element of the test applicable to proving the existence of an unwritten measure, namely, the specific nature of the measure in terms of future application.
>
> […]
>
> As noted above, we believe that it is necessary to also demonstrate this latter element [ie whether the existence of a policy mandated the adoption of future measures] insofar as *the*

[26] That is, the relevant evidence is not removed from the Panel's consideration of the overarching measure as a result of any negative finding concerning the existence of the import restriction measure.
[27] Based on the information currently available to Australia.
[28] In support of this point, see Australia's third party written submission, section C ("The elements to be proven, and how to prove them, are case-specific") and in particular paragraph 20, on the core elements required to establish existence of a measure.

> *existence of an unwritten measure is not proven until it is proven that the measure has some form of application in the future*.[29]

17. The last sentence of that quote (italicised above) might be taken as an endorsement that "some form of application in the future" should be proven to establish the existence of a measure and therefore to challenge it successfully.[30] In Australia's view, such an interpretation is not supported. Rather, on a close reading, the context of that paragraph[31] suggests that the panel's consideration of "future application" was based on the complainant's characterisation of the measure.[32] Indeed, that panel subsequently stated that the complainant "had not submitted any evidence that would support *its contention* that the measure exists and continues to exist for as long as chicken [products] cannot be imported […]".[33] This interpretation is consistent with Australia's submissions on the well-established elements required to establish the existence of a measure, as described at paragraph 22, below.

18. The panel's analysis of "future application" in *Indonesia – Chicken* also does not appear to be based upon any general principle or provision, such as might support a widely-applicable rule. Indeed, there is no provision in the DSU which supports a requirement for "future application", in order to challenge a measure successfully.

19. The DSU imposes temporal limitations upon measures subject to challenge in the dispute settlement system. However, those limitations do not equate to a rule requiring "future application" in order to successfully challenge a measure.[34]

20. One relevant temporal limitation arises from Article 6.2 of the DSU. That provision operates together with Article 7.1, to provide that a measure is only within a panel's terms of reference where it is "'at issue', […] *at the time the panel request is made*".[35] Where a measure

[29] Panel Report, *Indonesia – Chicken*, para. 7.684. (emphasis added)
[30] Noting Australia's prior written submission that "[e]xamples from prior disputes may be informative and illustrative, but they must not determine the Panel's analytical approach or conclusions in subsequent disputes." (Australia's third party written submission, para. 24).
[31] To which the panel refers with the words "[a]s noted above".
[32] Panel Report, *Indonesia – Chicken*, para. 7.624: "[The complainant] emphasizes that it is not excluding the possibility that other measures exist or may be adopted in the future that could also form part of the constitutive elements of the alleged general prohibition." (footnote omitted). This conclusion is further reinforced by the panel's summary on "future implementation", at para. 7.688 of its report. The panel's findings are relevant to the alleged underlying policy objective of the unwritten measure.
[33] Panel Report, *Indonesia – Chicken*, para. 7.687. (emphasis added)
[34] In order to be successfully challenged, a measure must be found to exist and must also be found to be WTO-inconsistent. Australia has sought to broadly address both of those aspects, through its answer to this question.
[35] See Article 6.2 of the DSU and Appellate Body Reports, *EC – Bananas III (Article 21.5 – Ecuador II) / EC – Bananas III (Article 21.5 – US)*, para. 268, quoting Appellate Body Report, *US – Upland Cotton*, paras. 269 – 272. (emphasis added)

has expired, it may still be within a panel's terms of reference "if [a] Member considers, with reason, that benefits accruing to it under the covered agreements are *still being impaired*".[36] This means that a measure cannot be "challenged successfully" if it does not have a relevant contemporaneous *effect*. However, contemporaneous effect is not the same thing as "future application".[37]

21. Article 19.1 of the DSU also imposes temporal limitations upon a measure, for the purposes of a panel's recommendations. Such recommendations are "prospective in nature in the sense that [they] have an effect on, or consequences for, a WTO Member's implementation obligations that arise after the adoption of a panel […] report".[38] In that connection, it may be "pointless" for a panel to make recommendations with respect to a measure which is no longer in operation.[39] However, this does not equate to a requirement for "future application" in order to successfully challenge a measure. In any case, the prospective nature of Article 19.1 does not prohibit a panel from making findings on the WTO-consistency of an expired measure.[40] Article 19.1 of the DSU therefore logically cannot support any rule that an unwritten measure must have "future application" in order to be successfully challenged.

22. Australia's previous written submissions identify the well-established elements which are necessary to ascertain the existence of a measure.[41] Those elements do not include "future application". Indeed, those same core elements were endorsed by the panel in

[36] Appellate Body Report, *US – Upland Cotton*, para. 270. (emphasis added)
[37] There is also a separate but related matter of measures which expire *after* the establishment of a panel. This argument is not raised by China in this dispute. In any event, the expiry of a measure after the establishment of a panel is not legally determinative to a panel's consideration of that measure and therefore logically cannot support any rule requiring "future application". See Appellate Body Report, *EC – Bananas III (Article 21.5 – Ecuador II) / EC – Bananas III (Article 21.5 – US)*, paras. 269 – 270, referred to in Panel Report, *India – Tariff Treatment on ICT Goods (Japan)*, para. 7.295 and fn 772, which demonstrate the panel's discretion in this context. In exercising its discretion, a panel should objectively assess whether the '"matter' before it, within the meaning of Article 7.1 and Article 11 of the DSU, has been fully resolved" (Appellate Body Report, *EU – PET (Pakistan)*, para. 5.43. See also, para. 5.44.) In Australia's submission, the requirement to consider whether a matter has been fully resolved is not the same as a requirement that a measure must have "future application".
[38] Appellate Body Reports, *China – Raw Materials*, para. 260.
[39] Panel Report, *US – Poultry (China)*, para. 7.56.
[40] See for example, Panel Report, *India – Tariffs on ICT Goods (Japan)*, para. 7.295: "Some panels have exercised [their discretion to decide how to take into account subsequent repeals of measures covered by its terms of reference] by making findings on the WTO-consistency of the expired measures, while refraining from making recommendations pursuant to Article 19 of the DSU." (footnotes omitted)
[41] The elements required to establish the existence of a measure are set out at paragraph 20 of Australia's third party written submission. Australia also submits that "[t]here is simply no uniform requirement which a claimant must necessarily satisfy to prove the existence of an unwritten measure" (Australia's third party written submission, para. 28 and fn 42).

Indonesia – Chicken, which did not take the opportunity to add the element of "future application".[42]

23. Where "future application" is a characteristic of an unwritten measure, the means of demonstrating it will be informed by the nature of the measure at issue.

QUESTION 4

To all third parties: What, if any, would be the relevance of the consequences of an alleged unwritten measure to demonstrating its existence?

Response

24. The consequences of an alleged unwritten measure are manifest though evidence, which will likely be of a circumstantial nature. That evidence may include, for example, statistics which seek to demonstrate the trade effects of that measure. A panel may generally use any of the evidence before it, including circumstantial evidence, in order to establish the existence of a measure.[43]

25. The relevance, meaning and probative value of evidence should be assessed on a case-by-case basis. Trade statistics and other circumstantial evidence which might demonstrate the consequences of an alleged unwritten measure should not be dismissed merely because they may not singularly establish any fact. The Panel should consider the context of the unwritten measure and the totality of the evidence before it in a cumulative manner, in weighing the relevance, meaning and probative value of the evidence as to consequences.[44]

26. Finally, to the extent that this question engages with issues related to the expiry of a measure and its effects, Australia refers the Panel to its submissions on Question 3 above, at paragraphs 20 and 21.

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[42] Panel Report, *Indonesia – Chicken*, para. 7.656. This enumeration of the elements required to ascertain the existence of an unwritten measure is consistent with Australia's submissions at paragraph 20 of its third party written submission.
[43] See Appellate Body Report, *EC – Hormones*, para. 135: "it is generally within the discretion of the Panel to decide which evidence it chooses to utilize in making findings."
[44] See Australia's first written submission, paras. 36 – 40. See also, Panel Reports, *EC – Approval and Marketing of Biotech Products*, para. 7.533 where the panel found that documents and statements "add[ed] an important element to the evidence […] they point to a reason for the absence of approvals during the relevant time period. The relevant documents and statements suggest that there were no approvals because a moratorium on approvals was in effect." The panel came to that conclusion, even though some of the relevant documents and statements suggested an alternative reason for the absence of approvals.

QUESTION 5

To all third parties: Annex A(1) of the SPS Agreement defines SPS measures as "[a]ny measure applied … to protect" human, animal or plant life or health from certain SPS risks or to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests. Can a measure that is "designed to punish" a WTO member at the same time have the objective of protecting human, animal, plant life or health or the territory of a Member against an SPS risk within the meaning of Annex A(1) of the SPS Agreement and thus qualify as an SPS measure under that Agreement?

Response

27. Australia makes a brief observation on the issues raised by the Panel through this question.

28. The SPS Agreement contemplates that the outward purpose of an SPS measure may co-exist with a disguised purpose[45] or intent.[46] The purposes of a measure under Annex A(1) "should […] be ascertained on the basis of objective considerations, for instance by examining whether there is an objective relationship between the stated purposes and the text and structural features of the relevant measure."[47]

[45] See for example, Appellate Body Report, *Australia – Salmon*, para. 166, concerning Article 5.5 of the SPS Agreement: "We note that a finding that an SPS measure is not based on an assessment of the risks to human, animal or plant life or health […] is a strong indication that this measure *is not really concerned with the protection of human, animal or plant life or health but is instead a trade-restrictive measure taken in the guise of an SPS measure*, i.e. a 'disguised restriction on international trade'." (emphasis added), quoted in Panel Report, *Russia – Pigs (EU)*, para. 7.1390. See also, the Preamble to the SPS Agreement.

[46] For example, the phrase "disguised restriction on international trade" as found in Article 2.3 of the SPS Agreement, has been associated with the concept of "intent". The Panel in *EC - Asbestos* interpreted that phrase for the purposes of Article XX of GATT 1994 (which may offer guidance to the interpretation of Article 2.3 of the SPS Agreement: see e.g. Panel Reports, *Russia – Pigs (EU)*, para. 7.1386 and *Korea – Radionuclides (Japan)*, para. 7.260). The Panel in *EC - Asbestos* stated: "In accordance with the approach defined in Article 31 of the Vienna Convention, we note that, as ordinarily understood*, the verb 'to disguise' implies an intention.* Thus, 'to disguise' (déguiser) means, in particular, 'conceal beneath deceptive appearances, counterfeit', 'alter so as to deceive', 'misrepresent', 'dissimulate'. Accordingly, a restriction which formally meets the requirements of Article XX(b) will constitute an abuse if such compliance is in fact only a *disguise to conceal the pursuit of trade restrictive objectives*." (Panel Report, *EC – Asbestos,* para. 8.236 (emphasis added), quoted in Panel Report, *Colombia - Textiles*, para. 7.549.

[47] Panel Reports, *EC – Approval and Marketing of Biotech Products*, para 7.2558. (footnotes omitted) See also, Appellate Body Report, *Australia – Apples*, para. 172.