

Before the World Trade Organization

Panel Proceedings

**UNITED STATES — ANTI-DUMPING MEASURE ON OIL COUNTRY
TUBULAR GOODS FROM ARGENTINA**
(DS617)

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

26 July 2024

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<i>Chile – Price Band System</i>	Appellate Body Report, <i>Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products</i> , WT/DS207/AB/R, adopted 23 October 2002, DSR 2002:VIII, p. 3045 (Corr.1, DSR 2006:XII, p. 5473)
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<i>Morocco - Hot-Rolled Steel (Turkey)</i>	Panel Report, <i>Morocco – Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey</i> , WT/DS513/R and Add.1, adopted 8 January 2020; appeal withdrawn by Morocco as reflected in Appellate Body Report WT/DS513/AB/R
<i>US — Ripe Olives from Spain</i>	Panel Report, <i>United States – Anti-Dumping and Countervailing Duties on Ripe Olives from Spain</i> , WT/DS577/R and Add.1, adopted 20 December 2021

LIST OF ACRONYMS, ABBREVIATIONS AND SHORT FORMS

Abbreviation	Full Form or Description
Anti-Dumping Agreement	Agreement on the Implementation of Article VI of GATT 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 201
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
GATT	Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, 1867 U.N.T.S. 14, 33 I.L.M. 1143 (1994)
Member	Member of the World Trade Organization
WTO	World Trade Organization

QUESTION 1

In support of some of their arguments, the parties have submitted exhibits in which information that appears to be at the heart of the parties' arguments is redacted. In your view, what are the rules and principles that, in such instances, should guide the Panel's assessment of whether the authorities' establishment of the facts was proper and their evaluation of the facts was unbiased and objective?

Response

1. For claims under the Anti-Dumping Agreement, the guiding principle for a panel stems from the very provision identified in the Panel's question, Article 17.6. That is, the guiding principle stems from the standard of review in the Anti-Dumping Agreement – the task at hand is not to undertake a *de novo* review. It is not to step into the shoes of the original decision maker, but rather to examine whether the investigating authority has adequately performed its investigative function and has adequately explained how the evidence supports its conclusions.¹
2. In this regard, an investigating authority's establishment of a fact can, and must, be distinguished from the fact itself. Similarly, an investigating authority's evaluation of evidence is a separate inquiry to how a panel, if it were the original decision maker, would have performed the same task.
3. The view that a panel should "not simply defer to the conclusions of the investigating authority"² does not necessarily require disclosure of redacted information. A panel's examination could still be "in-depth" and "critical and searching"³ notwithstanding that certain information on which that conclusion is based is redacted.
4. There are means by which a panel could gather information in order to assist its task. Australia recalls that Article 13 of the DSU "grants discretionary authority to panels to seek information from relevant sources."⁴ Where information necessary to a panel's assessment

¹ Appellate Body Report, *China — HP-SSST (Japan)*, para. 5.255.

² Panel Report, *Morocco - Hot-Rolled Steel (Turkey)*, para. 7.2.

³ Panel Report, *Morocco - Hot-Rolled Steel (Turkey)*, para. 7.2. (footnote omitted)

⁴ Panel Report, *US — Ripe Olives from Spain*, para. 7.200. (footnote omitted)

cannot be provided because of confidentiality requirements, the panel should seek alternative information from the relevant Member to fill the gap in the panel's understanding. The panel could also seek information from an alternative relevant source as are no "*a priori* restriction[s] on the individual to whom, or body to which, [a panel] might direct a request."⁵

5. The panel must also be guided by affording disputing parties' due process.⁶ Where necessary, the panel could consider posing questions to parties to ensure each has a right to be heard on its treatment of redacted information, or request for further information. This method has been successfully used in past disputes. This would be particularly necessary should there be a dispute as to the extent of redactions.

6. There are also important guiding principles for WTO Members in the dispute process. In particular, a Member is required to act in good faith in its conduct during a dispute settlement proceeding, as required by Article 3.10 of the DSU.⁷ This includes any decision to redact information in panel proceedings.

⁵ Panel Reports, *Australia – Tobacco Plain Packaging*, para. 1.91. (footnote omitted)

⁶ Appellate Body Report, *Chile – Price Band System*, para. 176.

⁷ Appellate Body Report, *Canada – Continued Suspension*, para. 313.