

Before the World Trade Organization

Panel Proceedings

**EUROPEAN UNION – COUNTERVAILING AND ANTI-DUMPING
DUTIES ON STAINLESS STEEL COLD-ROLLED FLAT PRODUCTS
FROM INDONESIA**

(DS616)

**THIRD PARTY ORAL STATEMENT OF AUSTRALIA
AS DELIVERED**

18 April 2024

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TABLE OF CASES

Short Title	Full Case Title and Citation
<i>Brazil – Aircraft</i>	Panel Report, <i>Brazil – Export Financing Programme for Aircraft</i> , WT/DS46/R, adopted 20 August 1999, as modified by Appellate Body Report WT/DS46/AB/R, DSR 1999:III, p. 1221
<i>US – Softwood Lumber VI (Article 21.5 – Canada)</i>	Appellate Body Report, <i>United States – Investigation of the International Trade Commission in Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada</i> , WT/DS277/AB/RW, adopted 9 May 2006, and Corr.1, DSR 2006:XI, p. 4865

LIST OF ACRONYMS, ABBREVIATIONS AND SHORT FORMS

Abbreviation	Full Form or Description
Commission	European Commission
Member	Member of the World Trade Organization
SCM Agreement	Agreement on Subsidies and Countervailing Measures
WTO	World Trade Organization

I. INTRODUCTION

1. Chair, distinguished members of the Panel – good morning. My name is Isabel Wormald, an officer of Australia's Department of Foreign Affairs and Trade. Thank you for this opportunity for Australia to participate as a third party in this dispute, and to make an oral statement at this session.

2. Australia considers this case raises issues of fundamental importance to the effective functioning of the rules-based multilateral trading system. I will first make some observations about the systemic implications of this case. Next, I will emphasise the key submissions Australia made with respect to one of the central issues in this dispute: attribution.

II. SYSTEMIC IMPLICATIONS

3. Ensuring WTO rules – including WTO subsidy rules – are interpreted and applied properly, and in a way that allows Members to address trade-distortive behaviour, is critical to maintaining confidence in the rules-based trading system. A panel's findings with respect to the interpretation and application of the WTO Agreement on Subsidies and Countervailing Measures have the potential to bolster Members' confidence in the ability for trade distorting subsidies to be appropriately disciplined by WTO rules. Equally, a panel's findings could have the opposite effect. With this in mind, Australia urges the Panel to carefully consider the systemic implications of its findings in this dispute.

4. In its written submissions, Canada raised its concern that the types of bilateral cooperation arrangements described in the European Commission's determination generate trade-distortive effects that are challenging for Members to discipline under the SCM Agreement.¹ Likewise, the US raised its concerns about 'strategic attempts to target specific industries for domestic or global market dominance' using extensive government support, including in a manner that attempts to 'neutralize' WTO subsidy disciplines.² These types of arrangements can substantially distort global trade and commodity prices, and these distortions can be exacerbated when combined with other potentially WTO-inconsistent

¹ Canada's third party written submission, para. 3.

² United States' third party written submission, para. 2.

measures. Australia also agrees with Canada's assessment that these types of arrangements are challenging for Members to address under the disciplines of the SCM Agreement.

5. If WTO subsidy rules are interpreted in a way which precludes Members from taking measures to address trade-distortive bilateral cooperation arrangements, this will inevitably have significant adverse implications for the rules-based trading system. The object and purpose of the SCM Agreement is to discipline subsidies which distort international trade.³ In Australia's view, an interpretation which constrains Members' ability to use the SCM Agreement to properly address trade-distortive subsidies risks undermining the credibility of the rules-based trading system. The Panel should therefore be careful to avoid endorsing any interpretation of the SCM Agreement which unduly reduces the ability of WTO Members to discipline these types of arrangements.

III. ATTRIBUTION

6. I will not repeat all of Australia's written submissions with respect to attribution. However, I would like to take this opportunity to emphasise three of the points made in Australia's submissions:

- a. First, the task of the Panel is to assess whether the Commission's conclusions were 'reasoned and adequate' in light of the evidence on the record.⁴ As you know, the Panel's role is not to undertake a *de novo* review, and neither should it defer to the conclusions of an investigating authority.⁵
- b. Second, the Panel should not foreclose an interpretation of the SCM Agreement that would allow for attribution, if doing so would provide a pathway for the circumvention of WTO subsidy rules.
- c. Third, and equally, the Panel should ensure its findings do not result in undue expansion of WTO subsidy rules in a way that would impact the ability of States to attract investment, including through the use of regular, commonplace funding arrangements. As Japan observed in its submissions, cross-border energy and

³ Panel Report, *Brazil – Aircraft*, para. 7.26.

⁴ Appellate Body Report, *US – Softwood Lumber VI (Article 21.5 – Canada)*, para. 93.

⁵ Appellate Body Report, *US – Softwood Lumber VI (Article 21.5 – Canada)*, para. 93.

infrastructure investment projects are frequently carried out across the world, and, in most cases, these projects should not be considered actionable as subsidies attributed to host states.⁶

7. These three points, and the systemic implications I have noted earlier, underscore the importance of the Panel taking a careful approach in this dispute.

8. As outlined in Australia’s submissions, the question before the Panel in this case is whether, in light of the evidence on the record, the Commission reached a 'reasoned and adequate conclusion'.⁷ In the event that the Panel takes the view that the Commission did *not* meet that standard in this case, the Panel need not delineate a general test or threshold that would need to have been met in order for attribution to have been permissible under the SCM Agreement. It would be more appropriate for the Panel to confine itself to making an 'objective assessment of the matter before it'.⁸ That is, the Panel's focus should be on determining whether the Commission discharged its obligations as an investigating authority.

9. Australia thanks the Panel for its careful consideration of this matter.

⁶ Japan's third party written submission, para. 20.

⁷ Appellate Body Report, *US – Softwood Lumber VI (Article 21.5 – Canada)*, para. 93.

⁸ Article 11, DSU.