European Union – Measures Related to Price Comparison Methodologies (WT/DS516)

Third Party Oral Statement of Australia
Second Substantive Meeting

16 May 2018
Mr. Chairman, distinguished Members of the Panel,

1. As highlighted in our submissions to date, Australia considers that the paramount legal issue raised by China's claims in this dispute is the scope of rights granted under the covered agreements to remedy injurious dumping.

2. To this end, and as Australia has already outlined in detail, interpreted in a manner that gives proper effect to all of the terms used in Article VI:1 of the GATT 1994, the Ad Note to Article VI:1, and Article 2.2 of the Anti-Dumping Agreement:

   • the general anti-dumping rules require a "proper comparison" with a comparable price "in the ordinary course of trade" – that is, with prices and costs determined by normal commercial practice; and
   • the very text of these provisions refutes China's central claim that the general anti-dumping rules prescribe a "strict comparison" with "home market prices and costs" and proscribe any recourse to third country prices or costs.

3. We will not restate these arguments in full at this meeting, but we observe that China's interpretation of the critical qualifying terms "proper", "comparable" and "ordinary course of trade" in its response to the Panel's questions effectively deprives those terms of any meaning.

4. Our brief statement today addresses China's further contention that the general anti-dumping rules discipline exclusively the individual "pricing practices", "pricing behaviour", or "pricing strategies" of the producer under investigation; and do not permit taking into account "domestic market conditions" – such as distortions within the domestic market that affect the producer's prices or costs.

5. In Australia's view, in making this claim, China fails to explain why Article 2.2 of the Anti-Dumping Agreement provides explicitly that a "particular market situation" may preclude a proper comparison between the domestic price and the export price for the purposes of determining dumping.

6. In fact, China itself acknowledges:

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1 Australia's third party written submission and third party oral statement at the first substantive meeting.
2 General Agreement on Tariffs and Trade 1994.
4 China's first written submission, paras. 134-136, 145, 155-156 and 167. (emphasis added)
5 China's first written submission, para. 145. (emphasis added)
6 China's first written submission, para. 167. (original emphasis omitted)
7 China's response to Panel Question No. 20.
8 China's opening statement at the second substantive meeting, para. 59. See also China's response to Panel Question No. 20, paras. 219, 221, 224, 229, 230, 231, 233, 234, 235, and 237. (emphasis added)
9 China's response to Panel Question No. 20, para. 230. See also paras. 232, 237, and 238. (original emphasis)
10 China's opening statement at the second substantive meeting, paras. 59-62.
that "Article 2.2 contemplates that a 'particular market situation' … may not permit a 'proper comparison' between the export price and the price of the like product in the home market of the producer;"\textsuperscript{11} and

- that this text "contemplates that there are circumstances in which a comparison between the export price and home market sales of the like product cannot identify 'dumping'."\textsuperscript{12}

7. However, China provides no explanation of how this acknowledgment can be reconciled with China's claim that "domestic market conditions"\textsuperscript{13} are irrelevant to determining dumping; nor any indication of the kind of "particular market situation" that China considers could render domestic prices unsuitable for this purpose.\textsuperscript{14}

8. Nor does China explain what factors an investigating authority legitimately could consider when determining the existence of a "particular market situation" if not market distortions that affect a producer's domestic prices or costs in a manner that renders these unsuitable or inappropriate for a proper comparison with the export price.\textsuperscript{15}

9. Rather, China simply asserts that the only inquiry permitted by the Anti-Dumping Agreement is one focused narrowly on the "conduct of the producer"\textsuperscript{16} or the producer's own "pricing behaviour"\textsuperscript{17} – regardless of whether the particular market situation has distorted that conduct or pricing. In Australia's view, the very terms used in the general anti-dumping rules again refute China's assertion.

10. We thank the Panel for the opportunity to attend this second substantive meeting and to present Australia's views.

\textsuperscript{11} China's response to Panel Question No. 20, para. 222.
\textsuperscript{12} China's response to Panel Question No. 20, para. 222.
\textsuperscript{13} China's response to Panel Question No. 20, para. 230. See also paras. 232, 237, and 238. (original emphasis omitted)
\textsuperscript{14} See China's response to Panel Question No. 20, para. 222; China's second written submission, paras. 147-152.
\textsuperscript{15} See China's response to Panel Question No. 20, para. 222; China's second written submission, paras. 147-152.
\textsuperscript{16} China's response to Panel Question No. 20, para. 228.
\textsuperscript{17} China's response to Panel Question No. 20, para. 235. See also paras. 219, 221, 224, 229, 230, 231, 233, 234, and 237.