

IN THE WORLD TRADE ORGANIZATION

**China – Enforcement of Intellectual Property Rights
DS611**

**Third Party Oral Statement by Norway
in the Appeal Arbitration under Article 25 of the DSU**

**Hearing
Geneva
4-5 June 2025**

Madam Chair, distinguished Appeal Arbitrators,

1. Norway welcomes the opportunity to present its views as a third party in these appeal arbitration proceedings under Article 25 of the DSU. As a strong supporter of the rules-based multilateral trading system, it is a great pleasure for Norway to participate in these MPIA proceedings. We commend the European Union and China for their commitments to seek a binding resolution to this dispute between them.

2. As the work of the Dispute Settlement Mechanism directly concerns the upholding of the rules based international order, we also find it appropriate and pertinent to address the situation in Ukraine.

3. Norway condemns in the strongest possible terms the Russian Federation’s illegal war of aggression against Ukraine. Norway demands Russia to end its hostilities and withdraw its forces immediately and unconditionally from Ukraine’s internationally recognised territory.

4. Turning to the present dispute, Norway did not present written or oral third party submissions at the panel stage of this dispute, or a written third party submission to the Appeal Arbitrators. In this oral statement, without taking a position on the facts of this dispute, Norway will offer some remarks on one legal issue of systemic importance, that is the legal standard applicable to the identification, characterisation and determination of the existence of an “unwritten” measure.

5. It has been clarified in numerous WTO disputes that a respondent’s characterisation of a measure cannot be determinative of applicable WTO obligations.¹ If the opposite was the case, a Member would be able to decide for itself which WTO obligations apply to its measures.

6. With respect to the determination of the existence of a measure, including when the measure in question is considered “overarching” or “unwritten”, the Appellate Body in *Argentina – Import Measures* explained that “the constituent elements that must be substantiated with evidence and arguments in order to prove the existence of a measure challenged will be informed by how such measure is described or characterized by the complainant. Depending on the characteristics of the measure challenged, other elements in

¹ See e.g. Appellate Body Report, *US– Zeroing (EC)*; Appellate Body Report, *Argentina – Import Measures*.

addition to attribution to a WTO Member and precise content may need to be substantiated to prove its existence”.²

7. As regards the burden of proof, the Appellate Body has stated that, “when bringing an ‘as such’ challenge against a ‘rule or norm’, a complaining party must clearly establish that the alleged ‘rule or norm’ is attributable to the responding Member, its precise content, and that it has general and prospective application”.³ With respect to situations where the alleged measure in question is unwritten, a panel must conduct a holistic assessment of the evidence before it.

8. As Japan points out in its written submission, the Panel has in this case correctly established that the existence of an unwritten measure requires evidence of: a) that the alleged measure is attributable to the responding Member; b) the precise content of the alleged measure; and c) its specific nature.⁴

9. In this regard, we would also make reference to the DSU provisions on the substantive and procedural aspects of appellate review, as referred to in the agreed procedures for this arbitration. Pursuant to Article 17.12 read in conjunction with Article 17.6, the appeal review shall be limited to “issues of law covered in the panel report and legal interpretations developed by the panel”.

Madam Chair, distinguished Appeal Arbitrators,

10. This concludes Norway’s statement here today. Thank you.

² Appellate Body Report, *Argentina – Import Measures*, para. 5.108

³ Appellate Body Report, *Argentina – Import Measures*, para. 5.104, referring to Appellate Body Report, *US – Zeroing (EC)*, para. 198.

⁴ See Japan’s third party submission, para 5.