

World Trade Organization

Panel Proceedings

China - Measures concerning Trade in Goods

WT/DS610

Third Party Oral Statement

by

Norway

at the Third Party Session of the Panel

Geneva, 28 November 2023

Mr Chair, Members of the Panel,

1. Norway welcomes this opportunity to present its views on the issues raised in these panel proceedings.
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 Russia's illegal war of aggression against Ukraine in the strongest possible terms. We stand firmly together with our allies and partners in response to Russia's war. Norway urges Russia to end its hostilities and withdraw its forces immediately and unconditionally from the territory of Ukraine within its internationally recognised borders.
4. Turning to present dispute, Norway did not present a written submission to the Panel. 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: i.e. the legal standard governing the applicability of WTO obligations with respect to the identification and characterisation of a 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. Rather, it is for a panel to decide whether a covered agreement applies to a measure using the substantive criteria in WTO law. First, a panel must ascertain the legal standard in the agreement governing the applicability of the agreement. Second, a panel must assess the facts, in particular the nature and character of the measures at

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

issue, and apply the legal standard to the relevant facts. The same principles must apply, also with respect to the determination of the existence of a measure, including when the measure in question is considered “overarching” or “unwritten”.

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”.² As explained by the Appellate Body in *Argentina – Import Measures*, “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 addition to attribution to a WTO Member and precise content may need to be substantiated to prove its existence”.³ As pointed out by other third parties with respect to situations where the alleged measure in question is unwritten, the panel must conduct a holistic assessment of the evidence before it.⁴
8. In this regard, we would also make reference to the DSU Article 11 on a panel’s obligation to make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements”.

Mr Chair, Members of the Panel,

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

² Appellate Body Report, *Argentina – Import Measures*, para. 5.104, referring to Appellate Body Report, *US – Zeroing (EC)*, para. 198.

³ Appellate Body Report, *Argentina – Import Measures*, para. 5.108.

⁴ See Switzerland’s third party submission, para. 11 and United Kingdom’s third party submission, para. 29.