

EUROPEAN UNION – ANTI-DUMPING MEASURES ON FATTY ACID (INDONESIA)

(DS622)

**ORAL STATEMENT OF THE UNITED STATES OF AMERICA
AT THE THIRD-PARTY SESSION**

October 15, 2025

Mr. Chairperson, Members of the Panel,

1. The United States appreciates the opportunity to appear before you today and provide our views as a third party in this dispute.

2. We will first briefly address Article 17.6(ii) of the Anti-Dumping Agreement, which establishes a specific standard of review for a panel undertaking its objective assessment under Article 11 of the DSU, and then address Indonesia’s claims under Articles 5.6 and 5.4 of the Anti-Dumping Agreement.

I. If an Investigating Authority’s Interpretation of a Provision of the Anti-Dumping Agreement is ‘Permissible’ Under Article 17.6(ii), a Panel Must Accept It

3. Article 17.6(ii) of the Anti-Dumping Agreement indicates, in part, that “[w]here the panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, the panel shall find the authorities’ measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations.”¹

4. As the United States has explained for years,² the ordinary meaning of “permissible” is “can or ought to be permitted” or “allowable.”³ A “permissible” interpretation thus is an interpretation that can be reached under customary rules of interpretation, as reflected in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties*. Nothing in customary rules of

¹ Anti-Dumping Agreement, Art. 17.6(ii).

² See, e.g., [U.S. Statement in the DSB Meeting of February 19, 2009](#) (WT/DSB/M/265).

³ The New Shorter Oxford English Dictionary, 4th ed., L. Brown (ed.) (Clarendon Press, Oxford, 1993), Vol. 2, p. 2166.

interpretation says an interpretation is not “permissible” simply because another interpretation could also result from the application of those rules.

5. The award by the arbitrators in *Colombia – Frozen Fries* provides an exemplar. There, the arbitrators recognized that the subparagraphs of Article 17.6 “must be understood in a manner granting special deference to investigating authorities under the Anti-Dumping Agreement.”⁴ Their analysis directly addressed the nature of treaty interpretation under the Vienna Convention and explained that a logical:

approach assumes, as the second sentence [of Article 17.6(ii)] does, that different treaty interpreters applying the same tools of the Vienna Convention may, in good faith and with solid arguments in support, reach different conclusions on the “correct” interpretation of a treaty provision. This may be particularly true for the Anti-Dumping Agreement, which was drafted with the understanding that investigating authorities employ different methodologies and approaches.⁵

6. The arbitrators favorably noted the observation that the *Vienna Convention* rules “are facilitative not disciplinary and do not ‘instruct the treaty interpreter to find a single meaning of the treaty’ as a former Appellate Body member has written.”⁶

7. Where an investigating authority has relied on one such interpretation, a panel should find the measure consistent with the Anti-Dumping Agreement.

⁴ *Colombia – Frozen Fries* (Article 25), para. 4.12 (footnote omitted).

⁵ *Colombia – Frozen Fries* (Article 25), para. 4.14 (footnote omitted).

⁶ *Colombia – Frozen Fries* (Article 25), para. 4.14, n.43 (quoting D. McRae, “Treaty Interpretation by the WTO Appellate Body: The Conundrum of Article 17(6) of the Anti-Dumping Agreement,” in E. Cannizzaro (ed.), *The Law of Treaties Beyond the Vienna Convention* (Oxford University Press, 2011), Chapter 10, p. 179).

8. Similarly, where the Anti-Dumping Agreement is silent, a panel must respect the absence of a rule where one is not found in the text. Such an approach is necessary to conform with Article 3.2 of the DSU, which provides that the “[r]ecommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.”⁷

II. Claims Relating to Article 5.6 of the Anti-Dumping Agreement

9. Article 5.6 provides an evidentiary standard for an investigating authority to initiate an investigation where no “written application by or on behalf of a domestic industry” has been submitted.⁸ Article 5.6 does *not* apply to the circumstance in which an investigating authority has already initiated an investigation pursuant to a written application, but the application was subsequently withdrawn.

10. Indonesia concedes this point at paragraph 126 of its first written submission, where it states, “No provision in the Anti-Dumping Agreement expressly addresses the situation, and the corresponding obligations of the investigating authority, where an investigation is initiated following a written complaint, that complaint is subsequently withdrawn, and the authority nevertheless decides of its own motion to continue the investigation.”⁹

11. The Anti-Dumping Agreement thus cannot be read as not permitting a Member from proceeding, as the European Commission did here, where the Anti-Dumping Agreement is silent

⁷ Understanding on Rules and Procedures Governing the Settlement of Disputes, Art. 3.2.

⁸ See Anti-Dumping Agreement, Art. 5.6.

⁹ Indonesia First Written Submission, para. 126.

with respect to the determination of the investigating authority to continue an investigation following the withdrawal of an application.

12. There is no basis for Indonesia to assert that Article 5.6 applies to such a situation as the text simply does not set out the rule Indonesia asserts. The Commission’s decision to proceed with the already initiated anti-dumping investigation of fatty acid from Indonesia, despite withdrawal of the application for relief, is therefore not inconsistent with Article 5.6 and, at minimum, based on a permissible interpretation of the Anti-Dumping Agreement.

III. Claims Relating to Article 5.4 of the Anti-Dumping Agreement

13. Article 5.4 describes the domestic industry support necessary for an investigating authority to initiate an investigation on the basis of written application.

14. Nowhere in the plain language of Article 5.4 does it state that the standing requirement of this provision applies at any time other than initiation.¹⁰ Article 5.4 does *not* include an ongoing obligation applicable to the subsequent investigation. Nor does Article 5.4 – or any other provision of the Anti-Dumping Agreement – create an obligation to reconsider the standing requirement where the application for relief is withdrawn following initiation.¹¹

15. There is thus no basis in the text for Indonesia to assert that Article 5.4 obligates the investigating authority to reconsider and terminate an already initiated anti-dumping investigation where the written application for relief has been withdrawn. The Commission’s

¹⁰ Anti-Dumping Agreement, Art. 5.4; *see Mexico – Steel Pipes and Tubes*, para. 7.347 (“In our view, Article 5.4 pertains exclusively to initiation, and there is no on-going obligation to monitor domestic industry support once an investigation has been initiated under the *Anti-Dumping Agreement*”).

¹¹ *See* Anti-Dumping Agreement, Art. 5.4.

determination not to reconsider the industry support requirement of Article 5.4 *after* initiation of the investigation is therefore not inconsistent with Article 5.4 and, at a minimum, based on a permissible interpretation of the Anti-Dumping Agreement.

IV. Conclusion

16. This concludes the U.S. oral statement. The United States would like to thank the Panel for its consideration of our views and looks forward to responding to the Panel's questions.