

***TÜRKİYE — MEASURES CONCERNING ELECTRIC VEHICLES
AND OTHER TYPES OF VEHICLES FROM CHINA***

(DS629)

**THIRD PARTY SUBMISSION
OF THE UNITED STATES OF AMERICA**

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TABLE OF REPORTS

Short Title	Full Case Title and Citation
<i>Brazil – Retreaded Tyres (Panel)</i>	Panel Report, <i>Brazil – Measures Affecting Imports of Retreaded Tyres</i> , WT/DS332/R, adopted 17 December 2007, as modified by Appellate Body Report WT/DS332/AB/R
<i>US – Gasoline (AB)</i>	Appellate Body Report, <i>United States – Standards for Reformulated and Conventional Gasoline</i> , WT/DS2/AB/R, adopted 20 May 1996
<i>US – Shrimp (Article 21.5 – Malaysia) (Panel)</i>	Panel Report, <i>United States – Import Prohibition of Certain Shrimp and Shrimp Products – Recourse to Article 21.5 of the DSU by Malaysia</i> , WT/DS58/RW, adopted 21 November 2001, upheld by Appellate Body Report WT/DS58/AB/RW

TABLE OF EXHIBITS

EXHIBIT	DESCRIPTION
US-1	<i>New Shorter Oxford English Dictionary</i> (4 th Edition) (1993)

I. INTRODUCTION

1. The United States welcomes the opportunity to present its views on this dispute. In this third-party submission, the United States provides its view of the proper legal interpretation of Article XX of the *General Agreement on Tariffs and Trade 1994* (the “GATT 1994”).

II. CLAIMS AT ISSUE

2. China challenges three categories of Türkiye’s measures: additional duties on electric vehicles (“EVs”) from China, additional duties on certain other vehicles from China, and an import permit licensing scheme (the “IPLS”) applying to the importation of EVs and externally rechargeable hybrid vehicles from certain countries, including China.¹

3. According to China, Chinese EVs imported into Türkiye are subject to additional duties of 40 percent.² Separately, according to China, Türkiye applies additional duties of the higher of 40 percent or 7,000 USD per unit on plug-in hybrid vehicles from China, and the higher of 50 percent or 9,500 USD per unit on non-plug-in hybrid vehicles and certain internal combustion engine vehicles from China.³ Türkiye also maintains a set of conditions for obtaining import permit licenses, which are required for the importation of EVs and externally rechargeable hybrid vehicles from China as well as from certain other non-EU countries that do not have an FTA with Türkiye.⁴

4. China argues that these measures are inconsistent with Türkiye’s WTO obligations under Articles I:1, II:1(a) and (b), III:4, X:3(a), and XI:1 of the GATT 1994 and Article 2.1 of the Agreement on Trade-Related Investment Measures (the “TRIMS Agreement”).⁵

5. Türkiye disagrees that the measures are inconsistent with Türkiye’s WTO obligations, and argues that, with respect to Article I:1 and Article II:1(a) and (b) of the GATT 1994, Türkiye’s additional duties are justified under GATT Article XX(b) and (g).⁶ Türkiye also disagrees that the IPLS is inconsistent with Articles I:1, III:4, X:3(a), or XI:1 of the GATT 1994 or Article 2.1 of the TRIMs Agreement, and argues in the alternative that the measure is justified under GATT Article XX(d).⁷

6. The United States provides its view of the proper legal interpretation of Article XX below, beginning with the two justifications raised by Türkiye concerning the additional duties (*i.e.*, Article XX(b) and (g)) followed by the justification raised concerning the IPLS (*i.e.*, Article XX(d)).

¹ See China’s First Written Submission, para. 17.

² See China’s First Written Submission, paras. 18-41, 87.

³ See China’s First Written Submission, paras. 68-86.

⁴ See China’s First Written Submission, paras. 43-67; *see also* Türkiye’s First Written Submission, paras. 3.5-3.7 (clarifying that the IPLS is “an enforcement scheme for a range of internal regulations that, for the most part, have long been applicable to importers and imported products by virtue of legal acts that predate the IPLS.”).

⁵ See China’s First Written Submission, para. 6.

⁶ See Türkiye’s First Written Submission, para. 2.27.

⁷ See Türkiye’s First Written Submission, paras. 3.68, 3.110, 3.119, 3.139, 3.151-3.152, 3.197-3.198.

III. INTERPRETATION OF ARTICLE XX(B) AND (G) OF THE GATT 1994

7. Türkiye argues that the additional duties are justified under Article XX(b) and (g) of the GATT 1994 because “they have the objective to protect the environment, and specifically, to foster the development and use of EVs and hybrid vehicles in Türkiye and thus to reduce the overall CO₂ emissions in the transport sector”.⁸

8. Article XX of the GATT 1994 provides that “nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures” in a number of circumstances, “[s]ubject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.” Put another way, Article XX sets out the circumstances in which measures that have been found to be inconsistent with another provision of the GATT 1994 will nevertheless be justified and therefore not be found inconsistent with a Member’s WTO obligations.

9. With respect to Article XX(b) and (g), the text in relevant part provides:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

[. . .]

(b) necessary to protect human, animal or plant life or health; [. . .]

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption; [. . .]

10. The chapeau and the subparagraphs are two independent but related requirements, both of which must be satisfied for a measure to be found justified under Article XX.

A. Whether the Measures Meet the Requirements Set Out in the Chapeau of Article XX

11. The chapeau of Article XX provides that (1) any measure purportedly justified under an Article XX subparagraph must not be applied in a manner which would constitute “arbitrary or unjustifiable discrimination between countries where the same conditions prevail”, and (2) the measure is not a “disguised restriction on trade”.

12. Türkiye argues that the additional duties on Chinese EVs are applied in a manner that is consistent with the chapeau of Article XX because they do not constitute arbitrary or

⁸ Türkiye’s First Written Submission, paras. 2.27, 2.68.

unjustifiable discrimination between countries where the same conditions prevail. According to Türkiye, “a perfectly reasonable ‘rationale’ [. . .] underpins Türkiye’s different treatment of China.”⁹ That rationale is that China cannot be considered a country “where the same conditions prevail” compared to Türkiye or other WTO Members given China’s dominance of the global EV market and supply chain in terms of EV production and market share as well as battery production.¹⁰

13. Furthermore, Türkiye observes that China’s “state-led economic system puts it in the unique position to take over the entire global market for electrical and hybrid cars,”¹¹ and points to China’s “consistent” use of “notable industrial policy efforts that target EV production, including for export,”¹² such as massive subsidies that have created excess capacity and distortions in global markets.¹³ According to Türkiye, the resulting “excessive import dependence on Chinese EVs” potentially creates vulnerabilities in supply chains and technological advancement and undermines Türkiye’s energy security and other strategic priorities.¹⁴ Given these circumstances, Türkiye argues the additional duties reflect a “particular concern about China”.¹⁵

14. If there are differences in the conditions that prevail in China, it may be entirely logical for Türkiye’s measures to take that into account. As a general matter, the United States recognizes that it may be necessary for a Member to take into account another Member’s adoption of anti-competitive, non-market-oriented policies and dominance of sectors critical to all Members’ economic futures. This may include, for example, that China’s non-market industrial policy measures have created excess capacity and distortions in global markets and resulted in China’s global dominance of the clean vehicle sector, creating dependencies and supply chain vulnerabilities.¹⁶ Such a distinction does not appear to be arbitrary.

15. The ordinary meaning of the term “arbitrary” includes “capricious, unpredictable, [or] inconsistent” manner,¹⁷ while “unjustifiable” is defined as “[n]ot justifiable, indefensible.”¹⁸ The ordinary meaning of the word “discrimination” includes “[t]he action or an act of discriminating or distinguishing; the fact or condition of being discriminated or distinguished; a distinction made.”¹⁹ The ordinary meaning of “discriminate” includes “[m]ake or recognize a distinction, esp. a fine one; provide or serve as a distinction; exercise discernment.”²⁰ The

⁹ Türkiye’s First Written Submission, para. 2.127.

¹⁰ Türkiye’s First Written Submission, para. 2.127.

¹¹ Türkiye’s First Written Submission, para. 2.128.

¹² Türkiye’s First Written Submission, para. 2.128.

¹³ Türkiye’s First Written Submission, para. 1.6.

¹⁴ Türkiye’s First Written Submission, para. 2.129.

¹⁵ See Türkiye’s First Written Submission, para. 1.6.

¹⁶ Türkiye’s First Written Submission, para. 1.6.

¹⁷ See *New Shorter Oxford English Dictionary* (4th Edition) (1993), vol. 1, p. 107 (US-1). See also *Brazil – Retreaded Tyres (Panel)*, para. 7.257 – 7.258; *US – Shrimp (Article 21.5 – Malaysia) (Panel)*, para. 5.241.

¹⁸ *New Shorter Oxford English Dictionary* (4th Edition) (1993), vol. 2, p. 3493 (US-1). See also *Brazil – Retreaded Tyres (Panel)*, paras. 7.259 – 7.260.

¹⁹ *New Shorter Oxford English Dictionary* (4th Edition) (1993), vol. 1, p. 689 (US-1).

²⁰ *New Shorter Oxford English Dictionary* (4th Edition) (1993), vol. 1, p. 689 (US-1).

ordinary meaning of “conditions” includes “[s]tate, or mode of being”; and “[n]ature, character, quality; a characteristic, an attribute.”²¹

16. Based on these ordinary meanings, the text in Article XX of the GATT 1994 may be understood as prohibiting an exercise of discernment or distinction as between countries that have the same state, mode of being, or nature; and only when exercise of discernment or distinction is unpredictable or indefensible. Accordingly, relevant in this dispute is whether distinctions that Türkiye has exercised with respect to China in the measures at issue are between countries that have the same state, mode of being or nature; and whether those distinctions are unpredictable or indefensible. If there are differences in the conditions that prevail in China, it may be entirely logical for Türkiye to exercise discernment or distinction with respect to China in the application of the measures at issue.

B. Whether the Measures are Necessary to Protect Human, Animal or Plant Life or Health

17. Under subparagraph (b) of Article XX, the relevant question is whether the additional duties (1) were adopted or enforced to “protect human, animal or plant life or health”; and (2) are “necessary” to achieve that objective.

18. With respect to whether the additional duties are “necessary” to achieve the objective at issue (*i.e.*, to protect human, animal, or plant life or health), the ordinary meaning of “necessary” includes “[t]hat which is indispensable, an essential, a requisite”; and “[t]hat cannot be dispensed with or done without; requisite, essential, needful.”²² “Requisite”, in turn, means “[r]equired by circumstances; appropriate; necessary for a purpose, indispensable.”²³ Therefore, for Article XX(b), a measure must be indispensable, essential, or requisite to serve the objective—in this case, to protect human, animal, or plant life or health.

C. Whether the Measures Are Relating to the Conservation of Exhaustible Natural Resources If Such Measures are Made Effective in Conjunction with Restrictions on Domestic Production or Consumption

19. Under subparagraph (g) of Article XX, the relevant question is whether the measures (1) “relat[e] to the conservation of exhaustible natural resources”, and (2) are “made effective in conjunction with restrictions on domestic production or consumption.”

1. “Relating to the conservation of exhaustible natural resources”

20. For a measure to “relate to” conservation, it must bear a relationship to the goal of conservation. Türkiye argues that it has demonstrated the relationship between the additional duties and its policies designed to preserve exhaustible natural resources, in particular clean air.²⁴

²¹ *New Shorter Oxford English Dictionary* (4th Edition) (1993), vol. 1, p. 472 (US-1).

²² *New Shorter Oxford English Dictionary* (4th Edition) (1993), vol. 2, p. 1895 (US-1).

²³ *New Shorter Oxford English Dictionary* (4th Edition) (1993), vol. 2, p. 2557 (US-1).

²⁴ Türkiye’s First Written Submission, paras. 2.109–2.115.

21. “Conservation,” specifically in terms of natural resources, is defined as “[t]he preservation of the environment, esp. of natural resources.”²⁵ More generally, “conservation” is defined as “[t]he action of keeping from harm, decay, loss, or waste; careful preservation.”²⁶ The verb “conserve” is defined as “[k]eep from harm, decay, loss, or waste, esp. with a view to later use; preserve with care.”²⁷ The noun “preservation” is defined as “[t]he action of preserving or protecting something; the fact of being preserved”²⁸, and the verb “preserve” is defined as “[k]eep safe from harm, injury; take care of, protect.”²⁹

22. The term “care,” central to both “conservation” and “preservation,” is defined as “[c]harge, protective oversight, guardianship.”³⁰ Accordingly, “conservation of exhaustible natural resources,” as it is used in GATT Article XX(g), may be understood to mean keeping exhaustible natural resources from harm, loss, or waste through protective oversight.

2. “Made effective in conjunction with restrictions on domestic production or consumption”

23. In addition to “relating to the conservation of exhaustible natural resources,” in order to be justified under Article XX(g), a measure must also be “made effective in conjunction with restrictions on domestic production or consumption.” This second clause of Article XX(g) requires that “restrictions on domestic production or consumption” exist, and that the nonconforming measure at issue be “made effective in conjunction with” such restrictions.

Restrictions on Domestic Production or Consumption

24. The ordinary meaning of the term “restriction”, in its context, can capture a number of forms of measures. The pertinent definition of “restriction” in relation to the acts of production or consumption is “a limitation on action, a limiting condition or regulation”.³¹ In turn, the verb to “limit” is defined as: “appoint, fix definitely, specify,” and “[c]onfine within limits, set bounds to; restrict.”³² “Limit” is defined as a noun as: “a boundary or terminal point considered as confining or restricting,” and “[a]ny of the fixed points between which the possible or permitted extent, amount, duration, etc., of something is confined; a bound which may not be passed or beyond which something ceases to be possible or allowable.”³³

25. “Restrictions” on domestic production or consumption are, therefore, actions confining or fixing definitely the “extent, amount, duration, etc.” of domestic production or consumption that is permitted.

Made Effective in Conjunction with

²⁵ *New Shorter Oxford English Dictionary* (4th Edition) (1993), vol. 1, p. 485 (US-1).

²⁶ *New Shorter Oxford English Dictionary* (4th Edition) (1993), vol. 1, p. 485 (US-1).

²⁷ *New Shorter Oxford English Dictionary* (4th Edition) (1993), vol. 1, p. 485 (US-1).

²⁸ *New Shorter Oxford English Dictionary* (4th Edition) (1993), vol. 2, p. 2341 (US-1).

²⁹ *New Shorter Oxford English Dictionary* (4th Edition) (1993), vol. 2, p. 2342 (US-1).

³⁰ *New Shorter Oxford English Dictionary* (4th Edition) (1993), vol. 1, p. 338 (US-1).

³¹ *New Shorter Oxford English Dictionary* (4th Edition) (1993), vol. 2, p. 2569 (US-1).

³² *New Shorter Oxford English Dictionary* (4th Edition) (1993), vol. 1, p. 1591 (US-1).

³³ *New Shorter Oxford English Dictionary* (4th Edition) (1993), vol. 1, p. 1591 (US-1).

26. Past WTO reports have observed that the phrase “made effective in conjunction with” means to become operative, in force or effective in association with or in combination with.³⁴

27. Accordingly, “made effective in conjunction with restrictions on domestic production or consumption” may be understood to mean that the measures at issue must be operative, in force, or effective in combination with operative, in force, or effective actions or facts that confine or fix definitely the permitted extent, amount, duration, etc. of domestic production or consumption.

IV. INTERPRETATION OF ARTICLE XX(D) OF THE GATT 1994

28. Türkiye argues that the IPLS is justified under XX(d) of the GATT 1994 because it is “a measure that is necessary to enforce the Turkish Law on Consumer Protection”.³⁵

29. As explained above, GATT Article XX sets out the circumstances in which measures that have been found to be inconsistent with another provision of the GATT 1994 will nevertheless be justified and therefore not be found inconsistent with a Member’s WTO obligations. With respect to Article XX(d), the text in relevant part provides:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

[. . .]

(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices; [. . .]

A. Whether the Measure Meets the Requirements Set Out in the Chapeau of Article XX

30. As explained above, the chapeau of Article XX provides (1) that any measure purportedly justified under an Article XX subparagraph must not be applied in a manner which would constitute “arbitrary or unjustifiable discrimination between countries where the same conditions prevail”, and (2) that the measure is not a “disguised restriction on trade”.

31. Türkiye argues that the IPLS does not constitute arbitrary or unjustifiable discrimination between countries where the same conditions prevail because “the alleged asymmetry of regulatory consequences between domestic and imported products, and domestic manufacturers

³⁴ *US – Gasoline (AB)*, pp. 20-21.

³⁵ Türkiye’s First Written Submission, paras. 3.197–3.198, 3.210.

and importers, lies only in the initial regulatory response”³⁶ and “is extremely minor”³⁷; and with respect to the distinction between imports and importers from FTA and customs union partners and other imports and importers, given the “formal and informal regulatory cooperation, mutual vetting, confidence-building measures, transparency and institutionalized mechanisms”³⁸ that exist with the former but not with the latter.

32. As explained above, based on the ordinary meanings of the terms “arbitrary”, “unjustifiable”, “discrimination”, and “conditions”, the text in Article XX of the GATT 1994 may be understood as prohibiting an exercise of discernment or distinction as between countries that have the same state, mode of being, or nature; and only when exercise of discernment or distinction is unpredictable or indefensible. Accordingly, relevant in this dispute is whether Türkiye has exercised distinctions between countries with respect to the measures at issue; whether those distinctions are between countries that have the same state, mode of being or nature; and whether the distinctions are unpredictable or indefensible.

B. Whether the Measure is Necessary to Secure Compliance with GATT-Consistent Laws or Regulations

33. Under subparagraph (d) of Article XX, the relevant question is whether the IPLS (1) was adopted or enforced to “secure compliance with ‘laws or regulations’ that are themselves consistent with the GATT 1994”; and (2) is “necessary” to secure such compliance.

34. With respect to whether the IPLS is “necessary” to secure compliance with GATT-consistent laws or regulations, as explained above, the ordinary meaning of “necessary” includes “[t]hat which is indispensable, an essential, a requisite”; and “[t]hat cannot be dispensed with or done without; requisite, essential, needful”.³⁹ “Requisite”, in turn, means “[r]equired by circumstances; appropriate; necessary for a purpose, indispensable.”⁴⁰ Therefore, for Article XX(d), a measure must be indispensable, essential, or requisite to serve the objective—in this case, to secure compliance with Türkiye’s identified laws or regulations.

35. Türkiye asserts that the IPLS is designed to secure compliance with its consumer protection law, specifically Articles 1 and 58 of the Turkish Law on Consumer Protection, which are GATT-consistent.⁴¹ The text in Article XX(d) necessitates identifying what constitutes “compliance” with Türkiye’s identified laws or regulations and how the challenged measures “secure” such compliance. Understanding which aspect of the “laws or regulations” is implicated will allow the Panel to assess whether those laws or regulations are in fact GATT-inconsistent. Once that has been established, the Panel must assess the relationship between the challenged measures and the laws or regulations with which those measures are designed to secure compliance. In particular, the Panel must assess how the challenged measures are indispensable, essential, or requisite to secure compliance with the identified laws or regulations.

³⁶ Türkiye’s First Written Submission, para. 3.247 (emphasis in original).

³⁷ Türkiye’s First Written Submission, para. 3.238.

³⁸ Türkiye’s First Written Submission, paras. 3.250.

³⁹ *New Shorter Oxford English Dictionary* (4th Edition) (1993), vol. 2, p. 1895 (US-1).

⁴⁰ *New Shorter Oxford English Dictionary* (4th Edition) (1993), vol. 2, p. 2557 (US-1).

⁴¹ Türkiye’s First Written Submission, para. 3.210–3.220.

36. Türkiye argues that the IPLS is necessary to achieve this objective because it not only contributes to “fostering consumer confidence in new technology vehicles and boost their experience in terms of after-sale services” and to “the fundamental objective of ensuring battery safety and their environmentally sound handling”; but also is “not unduly trade restrictive” because its requirements are longstanding, permit importation whenever the importer satisfies the relevant requirements, which is entirely within its own control, and are in line with regulatory requirements in other jurisdictions in the field of motor vehicle regulation.⁴²

V. CONCLUSION

37. The United States appreciates the opportunity to submit its views in connection with this dispute on the proper interpretation of relevant provisions of the GATT 1994.

⁴² Türkiye’s First Written Submission, paras. 3.224–3.226.