

IN THE WORLD TRADE ORGANISATION

WT/DS425

**China – Definitive Anti-Dumping Duties on X-Ray Security Inspection
Equipment from the European Union**

Oral Statement

by

Norway as a Third Party

Geneva

30 May 2012

Mr. Chairman, Members of the Panel,

1. Norway welcomes this opportunity to present its views on the issues raised in these panel proceedings.
2. In its written statement, Norway addressed a number of interpretative issues raised by the EU and China. Norway focused on the non-confidential summarisation of confidential information, the disclosure of essential facts forming the basis of certain determinations, the disclosure of all non-confidential information relevant for interested parties to defend their interests and the provision of full opportunity for the defence of interested parties' rights. With regard to these issues, I shall refer you to the arguments in our written submission.
3. Today, Norway would like to address one additional issue raised by the EU and China in their written submissions; the standard of review. More precisely, the EU's claim that China violated Article 12.2.2 of the *Anti-Dumping Agreement* because the investigating authority failed to provide an adequate explanation for some of its determinations, as well as references to the matters of fact and law and reasons which led to arguments being accepted or rejected.¹ Norway will not address the issue of whether China has fulfilled the obligations set out in Article 12.2.2 in this case, but will highlight certain arguments that may be of importance to the Panel when interpreting the relevant Article.
4. Under the provisions of Article 12.2 and Article 12.2.2 of the *Anti-Dumping Agreement*, the investigating authority is given a comprehensive obligation to provide a transparent statement of the reasons for the imposition of definitive anti-dumping duties. Thus, the authority must set forth the relevant facts in the record, and must explain "in sufficient detail", as set out in Article 12.2, the factual and legal determinations made on the basis of the evidence in the record that led to the imposition of duties.
5. Articles 12.2 and 12.2.2 therefore serve the same function as similar provisions in other covered agreements relating to trade remedy measures, namely, Article 3.1 of the *Agreement on Safeguards* and Articles 22.3 and 22.5 of the *Agreement on Subsidies and Countervailing Measures*. The Appellate Body and panels have consistently ruled that these provisions require the investigating authorities to provide a *reasoned and adequate explanation*, among others, of how the evidence in the record supports the authority's

¹ The EU's First Written Submission, para. 128.

determination.² The authority’s explanation must demonstrate in a “clear and unambiguous” manner that the substantive conditions for imposition of trade remedy measures have been satisfied.³ The authority must provide “sufficient background and reasons for that determination, such that its reasons for concluding as it did can be discerned and are understood”.⁴

6. Furthermore, the Appellate Body has emphasised that “the evidentiary path that led to the inferences and overall conclusions of the investigating authority must be clearly discernible in the reasoning and explanations found in its report”.⁵
7. In sum, the investigating authority must provide an explanation that does not leave the reader guessing why the authority made its determinations. If an authority fails to explain itself adequately, it cannot demonstrate that it has respected the substantive requirements of the *Anti-Dumping Agreement* governing those determinations.
8. In conclusion, Norway submits that the Appellate Body – with regard to the standard of review – has stated that a panel must examine whether the authority has provided a “reasoned and adequate explanation” of “how individual pieces of evidence can be reasonably relied on in support of particular inferences, and how the evidence in the record supports its factual findings”.⁶

Mr. Chairman, distinguished Members of the Panel,

9. This concludes Norway’s statement today. Thank you for your attention.

² Appellate Body Report, *US – Softwood Lumber VI (Article 21.5 - Canada)*, para. 99.

³ Appellate Body Report, *US – Line Pipe*, para 217.

⁴ Panel Report, *EU – Footwear*, para.7.844.

⁵ Appellate Body Report, *US – Softwood Lumber (Article 21.5 – Canada)*, para. 97.

⁶ Appellate Body Report, *US – Softwood Lumber (Article 21.5 – Canada)*, para. 99.