

IN THE WORLD TRADE ORGANISATION

WT/DS437

**United States – Countervailing Duty measures on Certain Products from
China**

Oral Statement

by

Norway as a Third Party

Geneva

30 April 2013

I. INTRODUCTION

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 some interpretative issues raised by the US and China. Norway focused on the criteria for defining a “public body” under Article 1.1(a)(1) of the Agreement on Subsidies and Countervailing Measures (the “SCM Agreement”). Norway maintained that a public body must be an entity that possesses, exercises or is vested with the authority to perform governmental functions, when providing the financial contribution in question. This requires a factual analysis of the functions the particular entity performs, where government ownership is not dispositive in itself.
3. Today, Norway would like to address two additional elements in the interpretation of “public body” and the relevance of the International Law Commission’s (ILC) Articles on *Responsibility of States for Internationally Wrongful Acts*.
4. First, we note that a question has been raised regarding the interpretation of the criteria laid down by the Appellate Body in *US –Anti-Dumping and Countervailing Duties*. In this case, the Appellate Body stated that a public body must be “an entity that possesses, exercises or is vested with governmental authority”. In our view, the different ways in which an entity may come to have governmental authority are multiple. The criteria laid down by the Appellate Body; to possess, exercise or be vested with, do not necessarily represent a preemptive listing of the ways in which an entity may come to have governmental authority.
5. Indeed, in *US –Anti-Dumping and Countervailing Duties*, the Appellate Body itself underscored this, as it stated that:

“There are many different ways in which government in the narrow sense could provide entities with authority. Accordingly, different types of evidence may be relevant to showing that such authority has been bestowed upon a particular entity.”¹

¹ *US –Anti-Dumping and Countervailing Duties*, para. 318

6. Here, the Appellate Body itself uses yet other words to describe the action of giving governmental authority to an entity; *inter alia* “provide ... with” and “bestowed upon”. This illustrates that the labeling is only a tool to help determine when an entity has governmental authority. This assessment requires a factual analysis of the functions the particular entity performs. Where the entity does not perform governmental functions, it is not a “public body”.
7. Furthermore, concern has been expressed that the focus on the idea of entities being vested with governmental authority, may transpose the test for “entrustment or direction” onto the definition of “public body”. In our view this would not be the case. Rather than moving this test into the public body definition, we see a distinction between the definition of a public body on the one hand and the action this body performs when it is entrusting or directing a private body on the other. This follows from the very wording of Article 1.1(a)(1)(iv) of the SCM Agreement. The reference to governmental authority being “vested” or in other ways given to an entity, should thus not be seen as interfering with the entity’s subsequent entrustment or direction of a private body.
8. Finally, we would like to briefly address the reference to the ILC Articles on *Responsibility of States for Internationally Wrongful Acts*. In *US –Anti-Dumping and Countervailing Duties*, the Appellate Body found that Article 5 of the ILC Articles supported the analysis of “public body” in the SCM Agreement.² Norway shares this assessment, and we are of the view that this should also be taken into account when interpreting Article 1.1(a)(1) of the SCM Agreement.
9. Mr. Chairman, distinguished Members of the Panel, this concludes Norway’s statement today.

Thank you for your attention.

² *US –Anti-Dumping and Countervailing Duties*, para. 311.