



European Union – Countervailing and Anti-Dumping Duties on Stainless Steel Cold-Rolled Flat Products from Indonesia [WT/DS616/R]

I. BACKGROUND

On October 02, 2025, the World Trade Organization (“WTO”) Panel issued its Report in a case brought by Indonesia¹ challenging the European Union’s (“European Union” / “EU”) imposition of Countervailing Duties (“CVD”) and Anti-Dumping Duties (“ADD”) on Stainless Steel Cold-Rolled Flat Products (“SSCRFP”).

The Report is particularly significant because it arises against the backdrop of growing concerns around WTO-consistency of countervailing “transnational subsidies” *i.e.*, subsidies provided by one government to entities or projects located in another country. Such arrangements have raised complex questions under WTO rules, particularly whether a WTO Member (“Member”) can countervail a subsidy granted by a government to producers outside its own territory.

In the CVD investigation, the Commission attributed to the Government of Indonesia the financial contributions that Chinese authorities had provided to an Indonesian producer. It reasoned that Indonesia had “induced” those contributions, thereby treating China’s actions as its own for purposes of establishing a financial contribution under the SCM Agreement.

Although the Panel did not rule on this broader issue of whether transnational subsidies are countervailable under the Agreement on Subsidies and Countervailing Measures (“SCM Agreement”), it did address a related but narrower question, namely, whether a financial contribution made by one government (in this case, China) to an enterprise in another country (an Indonesian producer) could be *attributed* to the government of that other country (Indonesia) on the basis that it had induced or adopted such contributions, for purposes of Article 1.1(a)(1) of the SCM Agreement.

This note examines the Panel’s findings on this issue and its broader implications for the treatment of transnational subsidies under the WTO laws.

II. MEASURES AT ISSUE

Indonesia argued that the European Commission’s (“Commission”) investigation and resulting measures were inconsistent with multiple provisions of the SCM Agreement, Anti-Dumping Agreement (“Anti-Dumping Agreement” / “ADA”), and the General Agreement on Tariffs and Trade (“GATT 1994”).

While Indonesia raised a range of substantive and procedural issues, this note focuses exclusively on the Panel’s ruling on attribution, specifically, whether the Commission was justified in treating financial contributions from Chinese entities as subsidies granted by the Government of Indonesia (“GOID”) under the SCM Agreement.

III. ATTRIBUTION OF CHINESE FINANCIAL CONTRIBUTIONS UNDER ARTICLE 1.1(A)(1) OF THE SCM AGREEMENT

Background. In the CVD investigation, the Commission attributed to the GOID financial contributions that certain Chinese grantors provided to an Indonesian exporting producer, the IRNC Group², which received these benefits in Indonesia through their parent companies in China.³ The Commission reached this attribution decision after concluding

¹ Argentina, Australia, Brazil, Canada, China, Egypt, India, Japan, the Republic of Korea, the Russian Federation, Singapore, Chinese Taipei, Thailand, Türkiye, Ukraine, the United Kingdom, and the United States notified their interest in participating in the Panel proceedings as third parties.

² PT Indonesia Ruipu Nickel and Chrome Alloy (“IRNC”) and its related companies.

³ Panel Report, European Union – Countervailing and Anti-Dumping Duties on Stainless Steel Cold-Rolled Flat Products from Indonesia [WT/DS616/R], Paragraph, 7.27.

that the GOID had “induced”⁴ the Government of China (“GOC”) to provide the financial contributions at issue and had “acknowledged and adopted” those financial contributions as its own. Thus, it attributed the conduct of GOC to GOID for the purpose of determining financial contribution within the SCM.

Arguments. Indonesia claimed that Article 1.1(a)(1) provides a closed list of entities whose conduct may be attributed to a government,⁵ and does not provide any basis for attributing the actions of one WTO Member to another.⁶ Moreover, under Article 1.1(a)(1), the list of entities whose action can be attributable to a government should be considered as a closed list, which means that any other action apart from those which are listed in subparagraphs (i) to (iv)⁷ cannot be attributed to the government. The EU responded that the phrase “by a government” in chapeau of Article 1 allows for attribution of one government’s actions to another, and while it contains a closed list of *transactions*, it does not create a closed list of entities.

Transnational Subsidy. The Panel started its examination by identifying the scope of the dispute. The Panel emphasized that the question of whether transnational subsidies may be countervailed under the SCM Agreement was not placed before them, as neither party had raised that claim.⁸ The Panel decided to limit the inquiry to whether the specific means that the Commission adopted to attribute to the GOID the financial contributions in this dispute, *i.e.*, inducement, is or is not permitted by Article 1.1(a)(1).

Government-to-government inducement. The Panel observed that the chapeau of Article 1 reads “financial contribution by a government or any public body within the territory of a Member” which is immediately followed by “*i.e. where*”, which introduces subparagraphs (i) to (iv). The use of “*i.e.*” indicates an exhaustive, not illustrative, list of government actions that can constitute a financial contribution – namely, (i) direct transfers of funds or liabilities, (ii) government revenue foregone, (iii) provision or purchase of goods or services, and (iv) entrustment or direction of a private body to perform one of these functions. The Panel held that Article 1.1(a)(1) exhaustively defines financial contribution through subparagraphs (i) to (iv).⁹

The Panel stated that Article 1 contains a single list instead of two separate lists as highlighted by the EU.¹⁰ The list provides for actions which constitute financial contribution by a government and also the circumstances in which the conduct of entities other than the government can be considered as a conduct of a WTO Member itself.¹¹ Therefore, if

⁴ Panel Report, European Union – Countervailing and Anti-Dumping Duties on Stainless Steel Cold-Rolled Flat Products from Indonesia [WT/DS616/R], Paragraph, 7.46 – “The Commission’s attribution decision was its finding that the GOID had ‘proactively sought’ or ‘induced’ the GOC to provide the financial contributions in question. In this respect we note that, in its final determination, the Commission concluded that “[t]he fact that Indonesia proactively sought the preferential financing from China” as part of their bilateral cooperation “confirm[ed] that the preferential support granted by the GOC should be attributed to the GOID”. The Commission noted that “[t]his underpins the conclusion that Indonesia acknowledged and adopted Chinese preferential financing as its own”. The European Union confirmed before the Panel Body that the Commission used the terms “proactively sought” and “induced” interchangeably insofar as “‘induced’ is understood as [having] ‘persuaded’ or ‘decisively influenced’ the GOC’s conduct so that there is genuine causal effect relationship between the GOID’s action seeking the GOC’s financial support and the provision of such a financial support by the GOC.”

⁵ Panel Report, European Union – Countervailing and Anti-Dumping Duties on Stainless Steel Cold-Rolled Flat Products from Indonesia [WT/DS616/R], Paragraph, 7.55.

⁶ Panel Report, European Union – Countervailing and Anti-Dumping Duties on Stainless Steel Cold-Rolled Flat Products from Indonesia [WT/DS616/R], Paragraph, 7.54.

⁷ (i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees); (ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits); (iii) a government provides goods or services other than general infrastructure, or purchases goods; (iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments.

⁸ Panel Report, European Union – Countervailing and Anti-Dumping Duties on Stainless Steel Cold-Rolled Flat Products from Indonesia [WT/DS616/R], Para. 7.29 & 7.30

⁹ Panel Report, European Union – Countervailing and Anti-Dumping Duties on Stainless Steel Cold-Rolled Flat Products from Indonesia [WT/DS616/R], Para. 7.66 & 7.67

¹⁰ Panel Report, European Union – Countervailing and Anti-Dumping Duties on Stainless Steel Cold-Rolled Flat Products from Indonesia [WT/DS616/R], Paragraph, 7.80.

¹¹ Panel Report, European Union – Countervailing and Anti-Dumping Duties on Stainless Steel Cold-Rolled Flat Products from Indonesia [WT/DS616/R], Paragraph, 7.80.

the government conduct does not fall within any of the subparagraphs (i) to (iv), then it cannot constitute a financial contribution.

Thus, the Panel held that the conduct whereby the government of one WTO Member ‘induces’ the government of another WTO Member *i.e.*, government-to-government inducement, does not constitute a financial contribution as it does not fall within subparagraphs (i) to (iv).

Additionally, the Panel also observed¹² that not every government intervention that might in economic theory be viewed as a subsidy with the potential to distort trade is a “subsidy” within the meaning of the SCM Agreement.¹³

IV. IMPLICATIONS OF THE PANEL’S FINDINGS

While the Panel’s observation was specific to the EU’s approach in this investigation, it did not resolve the broader question of whether the concept of subsidy under Article 1 of the SCM Agreement includes transnational subsidies, *i.e.*, subsidies provided by a government or public entity in one country that benefit producers or exporters in another country.¹⁴ This question remains unresolved and has significant implications for the treatment of cross-border subsidies under WTO law.

China’s Belt and Road Initiative (“BRI”) has brought renewed attention to the challenge of transnational subsidies, with various countries seeking to address these within the framework of existing WTO rules. For instance, the United States, on March 25, 2024, finalized a rule that withdraws the prior prohibition on countervailing transnational subsidies (subsidies provided by a government or public entity in one country that benefit producers or exporters in another country), enabling Commerce to investigate and countervail subsidies provided by a government to recipients in other countries.¹⁵

In contrast, the European Union has sought to countervail such support through “attribution” (as seen in the present case) treating foreign government contributions (such as those from China) as if they were subsidies of the host government. The Panel’s findings in this case, however, now make clear that this approach is inconsistent with WTO law, as the SCM Agreement does not allow the actions of one Member to be attributed to another. The Panel’s reasoning effectively limits the ability of investigating authorities to address cross-border state support through attribution-based approaches.

This finding further draws attention to the enforcement gap in the global subsidy discipline framework. The SCM Agreement was designed to regulate territorial subsidies *i.e.* those granted and benefiting entities within a single jurisdiction. They do not readily capture cross-border State financing, which is increasingly shaping global supply chains in sectors such as steel, EV batteries, and renewable energy.

For India, the Panel’s ruling has both systemic and practical implications. India’s countervailing duty regime, aligned with the SCM Agreement, currently provides no explicit basis to investigate or countervail subsidies granted by a foreign government to producers in a third country. As a result, India faces similar limitations in addressing potential distortions caused by transnational subsidies, particularly where imports into India may benefit from transnational subsidies arguably under programmes like the BRI.

¹² Reliance placed on Appellate Body in the case of US – Softwood Lumber IV

¹³ Panel Report, European Union – Countervailing and Anti-Dumping Duties on Stainless Steel Cold-Rolled Flat Products from Indonesia [WT/DS616/R], Paragraph, 7.96

Panel Report, European Union – Countervailing and Anti-Dumping Duties on Stainless Steel Cold-Rolled Flat Products from Indonesia [WT/DS616/R], Para. 7.96.

¹⁴ Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Laws, 89 FR 20766, March 25, 2024, available at - <https://www.federalregister.gov/documents/2024/03/25/2024-05509/regulations-improving-and-strengthening-the-enforcement-of-trade-remedies-through-the-administration?utm>.

¹⁵ Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Laws, 89 FR 20766, March 25, 2024, available at - <https://www.federalregister.gov/documents/2024/03/25/2024-05509/regulations-improving-and-strengthening-the-enforcement-of-trade-remedies-through-the-administration?utm>.

In essence, the DS616 ruling reinforces the textual limits of the SCM Agreement, while leaving unresolved how WTO law should address trade distortive effects of cross-border state financing.

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com or write to our authors:

Sanjay Notani, Partner – Email – SanjayNotani@elp-in.com

Parthsarathi Jha, Partner, Email – ParthJha@elp-in.com

Naghm Ghei, Associate Partner, Email – NaghmGhei@elp-in.com

Aishani Pachauri, Associate, Email – AishaniPachauri@elp-in.com

Disclaimer: The information contained in this document is intended for informational purposes only and does not constitute legal opinion or advice. This document is not intended to address the circumstances of any individual or corporate body. Readers should not act on the information provided herein without appropriate professional advice after a thorough examination of the facts and circumstances of a situation. There can be no assurance that the judicial/quasi-judicial authorities may not take a position contrary to the views mentioned herein.