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1 ARTICLE 12

1.1 Text of Article 12

Article 12

1. A Member shall immediately notify the Committee on Safeguards upon:
 - (a) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;
 - (b) making a finding of serious injury or threat thereof caused by increased imports; and
 - (c) taking a decision to apply or extend a safeguard measure.

2. In making the notifications referred to in paragraphs 1(b) and 1(c), the Member proposing to apply or extend a safeguard measure shall provide the Committee on Safeguards with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, precise description of the product involved and the proposed measure, proposed date of introduction, expected duration and timetable for progressive liberalization. In the case of an extension of a measure, evidence that the industry concerned is adjusting shall also be provided. The Council for Trade in Goods or the Committee on Safeguards may request such additional information as they may consider necessary from the Member proposing to apply or extend the measure.

3. A Member proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with those Members having a substantial interest as exporters of the product concerned, with a view to, , reviewing the information provided under paragraph 2, exchanging views on the measure and

reaching an understanding on ways to achieve the objective set out in paragraph 1 of Article 8.

4. A Member shall make a notification to the Committee on Safeguards before

"We consider that the text of Article 12.1 SA is clear and requires no further interpretation. The ordinary meaning of the requirement for a Member to notify immediately its decisions or findings prohibits a Member from unduly delaying the notification of the decisions or findings mentioned in Article 12.1 (a) through (c) SA. Observance of this requirement is all the more important considering the nature of a safeguards investigation. A safeguard measure is imposed on imports of a product irrespective of its source and potentially affects all Members. All Members are therefore entitled to be kept informed, without delay, of the various steps of the investigation."⁸

7. The Appellate Body in _____ confirmed this approach and added that "immediate notification" is notification that allows the Committee on Safeguards as well as WTO Members the "fullest possible period" to consider and react to a safeguard investigation:

"As regards the meaning of the word 'immediately' in the chapeau to Article 12.1, we agree with the Panel that the ordinary meaning of the word 'implies a certain urgency'. The degree of urgency or immediacy required depends on a case-by-case assessment, account being taken of the administrative difficulties involved in preparing the notification, and also of the character of the information supplied. As previous panels have recognized, relevant factors in this regard may include the complexity of the notification and the need for translation into one of the WTO's official languages. Clearly, however, the amount of time taken to prepare the notification must, in all cases, be kept to a minimum, as the underlying obligation is to notify 'immediately'.

'Immediate' notification is that which allows the Committee on Safeguards, and Members, the _____ to reflect upon and react to an ongoing safeguard investigation. Anything less than 'immediate' notification curtails this period. We do not, therefore, agree ... that the requirement of ' _____ ' notification is satisfied as long as the Committee on Safeguards and Members of the WTO have _____ time to review that notification. In our view, whether a Member has made an 'immediate' notification does not depend on evidence as to how the Committee on Safeguards and individual Members of the WTO actually use that notification. Nor can the requirement of 'immediate' notification depend on an _____ assessment of whether individual Members suffered actual prejudice through an insufficiency in the notification period."⁹

1.3.3 Notification under Article 12.1(a)

8. The Panel in _____ noted the limited explicit requirements of Article 12.1(a) with respect to the content of notifications:

"Regarding the 'content' of notifications under Article 12.1, we note that with regard to the notification of the initiation of an investigation, the terms of Article 12.1(a) only refer to the obligation to notify 'initiating an investigatory process relating to serious injury or threat thereof and the reasons for it."¹⁰

9. The Panel in _____ rejected the argument that a notification should necessarily include a discussion of the reasons for the initiation of an investigation. _____

Safeguards itself. We note in the first instance that whatever the relationship between the requirements of Article 12.2 regarding the contents of notifications and the contents of the investigation reports published pursuant to Articles 3.1 and 4.2, this question is not relevant to Article 12.1(a) notifications, as Article 12.2 specifically and exclusively addresses 'notifications referred to in paragraphs [12.]1(b) and [12.]1(c)'.

"[A] delay of 40 days ... between the domestic publication of the injury finding and the date of that notification to the Committee on Safeguards ... does not satisfy the requirements for an immediate notification and therefore is in violation of Article 12.1 of the Agreement on Safeguards."¹⁹

15. The Panel in _____, in a finding upheld by the Appellate Body²⁰, found that:

"[A] delay of 26 days between the finding of serious injury and the notification thereof does not satisfy the requirement of immediate notification of Article 12.1(b) SA".²¹

16. In U _____, the Panel found that:

"Having found that in the circumstances of this case the event triggering the obligation under Article 12.1(b) occurred on 28 April 2012, we must assess whether Ukraine's notification under Article 12.1(b) of 21 March 2013 was 'immediate'. We recall that more than ten months passed after the competent authorities made the relevant finding and before submission of the notification to the Committee on Safeguards. Even factoring in the undisputed need for translation and the fact that the notification under Article 12.1(b) was more technical than the notification under Article 12.1(a), the notification is only four pages long and counts just over 1,800 words, its translation could not therefore have required several months. Ukraine has not made any argument to that effect. As Ukraine has not pointed to any other circumstances to be taken into consideration, it clear to us in view of the substantial delay that Ukraine in this instance did not proceed with the required degree of urgency and failed to keep the delay in notifying the Committee on Safeguards to a minimum. We therefore conclude that Ukraine did not notify the Committee on Safeguards immediately upon making the finding referred to in Article 12.1(b) and that it consequently acted inconsistently with Article 12.1(b)."²²

17. In _____, as regards whether the United States' original injury notification was sufficiently "immediate", the Panel found that:

"[T]aking into account the United States' explanation regarding the process involved in preparation of the notification, we are not persuaded that the United States' notification within seven days of the USITC commissioner's public vote was not 'immediate' under Article 12.1(b)."²³

18. Regarding whether the United States' supplemental injury notification waingJ-0.007 .3 (di)i3 Tdfote7 0

requirements for an 'immediate' notification and therefore is in violation of Article 12.1 of the Agreement on Safeguards " ²⁵

20. With respect to notification of a final decision to take a safeguard measure, the Panel in stated:

"[W]e note that Korea notified on 24 March 1997 that on 1 March 1997 a final decision had been taken to impose a quota as a safeguard measure. We fail to see how this can be viewed as an immediate notification. As far as it covers Korea's final decision

that "this notification contains sufficient information on what Korea considered to be evidence of injury caused by increased imports" and concluded that the measure was consistent with Article 12.2.³⁵ The Appellate Body reversed this finding³⁶, stating that:

"[I]tems listed ... as mandatory components of 'all pertinent information', constitute a minimum notification requirement that must be met if a notification is to comply with the requirements of Article 12.

We do not agree with the Panel that 'evidence of serious injury' in Article 12.2 is determined by what the notifying Member considers to be sufficient information. What constitutes 'evidence of serious injury' is spelled out in Article 4.2(a) of the

. . . .

Article 12.3, than they would otherwise be if the notification did not include all such elements. And, the Committee on Safeguards can more effectively carry out its surveillance function set out in Article 13 of the . At the same time, providing the requisite information to the Committee on Safeguards does not place an excessive burden on a Member proposing to apply a safeguard measure

otherwise pertinent under Article 12.2, may not be available at the time a Member makes its serious injury notification under Article 12.1(b), and may only become available when a Member subsequently decides to apply the safeguard measure. The fact that Article 12.2 does not require Members to provide all pertinent information in notifications under Article 12.1(b) alone suggests that Article 12.2 permits Members to provide the pertinent information identified in Article 12.2 in a staggered manner. Therefore, we do not consider that Article 12.2 precludes a Member from supplementing an initial notification under Article 12.1(b) with additional information. When a Member does make such a supplemental notification under Article 12.1(b), and the initial and supplemental notification collectively identify the pertinent information under Article 12.2, we do not consider that the Member could be said to have acted inconsistently with Article 12.2 because its initial notification, taken alone, does not set out all the pertinent information under Article 12.2. We accordingly are not persuaded by Korea's claim that DhT 0 Td[(iw -19.-c)7 (le)w 0.347 0 Td[(12.)8 ("11..9684 (

1.5 Article 12.3

1.5.1 "adequate opportunity for prior consultations"

33. The Panel in _____ rejected a claim that, by not providing "all pertinent information" in its notifications in advance of consultations, a Member had failed to provide "adequate opportunity for prior consultations" within the meaning of Article 12.3. The Panel had found the content of Korea's notifications in conformity with Article 12 (the Appellate Body subsequently reversed this latter finding, but did not address any of the following issues). The Panel then opined that consultations may be "adequate" even if prior notifications are incomplete, since one of the purposes of consultations is to review the content of the relevant notifications.⁴⁹ The Panel further noted that whether parties eventually reach a mutually agreed solution is not the only criterion for assessing the adequacy of consultations:

"In the present case we note that parties exchanged questions and answers. The
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provided under' Article 12.2, indicates that Article 12.2 identifies the information that is needed to enable meaningful consultations to occur under Article 12.3. Among the list of 'mandatory components' regarding information identified in Article 12.2 are: a precise description of the measure, and its date of introduction.

Thus, in our view, an exporting M2.547 Td[(Td1-2.3 (s)5 pr)4.3d [/8-0.011 1513-gt15t A

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2012. Ukraine had provided no notification to the WTO under Article 12.1(b) or (c) at the time.

the USITC stated in its report that the safeguard measures would not apply to Korea. Considering that Korea did not have the information regarding the application of the safeguard measure to its exports or the nature of the remedy as of 11 December 2017, consultations under Article 12.3 could not have covered this information. Moreover, the purpose of an Article 12.3 consultation is also to exchange views on the measure, and to reach an understanding on ways to achieve the objective set out in Article 8.1 of the Agreement on Safeguards. The objective of Article 8.1 is that a Member proposing to apply a safeguard measure shall endeavour to maintain a 'substantially equivalent level of concessions' and other obligations to that existing under GATT between it and 'the exporting Members which would be affected by such a measure' in accordance with Article 12.3. We do not consider that Korea could have had an adequate opportunity for prior consultations under Article 12.3, in the sense of exchanging views on the measure and achieving the objective

