

1.1 Text of Article 13..... 1
1.2 Article 13.1..... 1

Article 13

Consultations

13.1 As soon as possible after an application under Article 11 is accepted, and in any event before the initiation of any investigation, Members the products of which may be subject to such investigation shall be invited for consultations with the aim of clarifying the situation as to the matters referred to in paragraph 2 of Article 11 and arriving at a mutually agreed solution.

13.2 Furthermore, throughout the period of investigation, Members the products of which are the subject of the investigation shall be afforded a reasonable opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution.⁴⁴

(footnote original)⁴⁴ It is particularly important, in accordance with the provisions of this para.3 (y)1232 4703.3 (of1g)-105 (a)-7 (l)C Dw 2.i3.3 (u)1 (is)tC Dw 2iooC Dw 23.3 (a)3 (of)f7 (v)123 establish the basis for proceeding under the provisions of Part II, III or X.

13.3 Without prejudice to the obligation to afford reasonable opportunity for consultation, these provisions regarding consultations are not intended to prevent the authorities of a Member from proceeding expeditiously with regard to initiating the investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with the provisions o

...

Accordingly, we understand Articles 21.1 and 21.2 of the SCM Agreement to permit investigating authorities to examine new subsidy allegations in the conduct of an administrative review. Such examination, while subject, *mutatis mutandis*, to the public notice requirements set out in Article 22 of the SCM Agreement, would not be subject to the obligations set out in Articles 11 and 13 of the SCM Agreement."¹

2. In *Mexico – Olive Oil*, the European Communities argued that Mexico had acted inconsistently with Article 13.1 because it did not hold consultations between the date it sent the invitation to consult and the date of initiation of the investigation. The Panel rejected the European Communities' argument on the basis that Article 13.1 merely provides that the exporting Member "shall be invited for consultations". The Panel stated that "the provision makes no explicit reference to consultations being held, referring instead to an invitation to consult".² According to the Panel, "the ordinary meaning of the obligation on the importing Member that is considering initiating a countervailing duty investigation is to ask the Member, the products of which may be subject to that investigation (the exporting Member), to consultations. It then falls to the latter Member to decide whether or not to accept the invitation".³ The Panel continued:

4 (d (ber)4.3 (t)Tja45 (n-D 68-1.9 (c)20.4 ec)188 (i)-2 (de w)89uedde w oon009 Tw TT0 (-1.3e-2.3 (