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1 ARTICLE 16

1.1 Text of Article 16

Article 16

Definition of Domestic Industry

16.1 For the purposes of this Agreement, the term "domestic industry" shall, except as provided in paragraph 2, be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total production of those products in the country. ⁴⁸ Producers who are related to the exporters or importers or are themselves importers of the allegedly subsidized product or a like product from other countries, the term "domestic industry" may be interpreted as referring to the rest of the producers.

(footnote originam... (u) ... (s) 7.4(f) 94(o) ...)

major proportion of total production. Nevertheless, the determination that a group of producers represents a "major proportion" of total domestic output must necessarily be determined in relation to the producti

Neither do Articles 4.1 or 16.1 establish any procedures or methodology for the IA in defining the domestic industry. However

from the fact that the USITC did not incorporate into its definition of the domestic industry reference to the various market segments it later analysed."¹²

1.3.2 "producers"

7. In *Mexico – Olive Oil*, the Panel had to rule on the European Communities' claim that the definition of "domestic industry" in Article 16.1 of the SCM Agreement requires an enterprise or a group of enterprises to be producing actual output of the like product at the time of application and / or during the period of investigation, in order to be considered "producers" for the purpose of that provision. Turning to the dictionary definition of the term "producer", the Panel found that "the central element in these definitions is their focus on the *nature* of the activity undertaken – the bringing into existence or making of something. There is no suggestion in any of these definitions that being a producer is something that changes from one moment to the next depending on whether or not there is actual production of output at that moment."¹³ The Panel agreed with the approach taken by the Panel and Appellate Body in *US – Lamb* which, according to the *Mexico – Olive Oil* Panel, "focus[ed] on the essential nature of the business activities of a given enterprise as determinative of whether that enterprise could be considered a producer of the like product and thus be included in the domestic industry for that product."¹⁴ The Panel considered that a temporal approach to this issue, whereby enterprises might be excluded as domestic "producers" of the like product solely on the basis that they lack actual output at particular, defined moments, and regardless of the essential nature of their business aca o d

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within the definition, if they fall within one of the two listed exceptions. The domestic industry defined under those provisions forms the basis of an investigating authority's injury determination which is governed by Articles 3.1 and 15.1. Thus the two sets of provisions are inextricably linked."¹⁹

1.4.2 Article 15.1 of the SCM Agreement

10. As indicated above, the Panel in *China – Broiler Products* addressed two "sets" of claims under'27 (la)7 (im)5.7 (-0.007 11 (n)-3 (s)5 (f)g00.006 Tc 0.1096.)5.7 (-0.007 c 0.5 (f)g709 Tw(ArTd[(P)9 (a)7