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1 ARTICLE 32

1.1 Text of Article 32

Article 32

Other Final Provisions

32.1 No specific action against a subsidy of another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement. ⁵⁶

(footnote original) ⁵⁶ This paragraph is not intended to preclude action under other relevant provisions of GATT 1994, where appropriate.

32.2 Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

32.3 Subject to paragraph 4, the provisions of this Agreement shall apply to investigations, and reviews of existing measures, initiated pursuant to applications which have been made on or after the date of entry into force for a Member of the WTO Agreement.

32.4 For the purposes of paragraph 3 of Article 21, existing countervailing measures shall be deemed to be imposed on a date

32.6 Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

32.7 The Committee shall review annually the implementation and operation of this Agreement, taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

32.8 The Annexes to this Agreement constitute an integral part thereof.

1.2 General

1. The Appellate Body in *US – Countervailing and Anti-Dumping Measures (China)* found that Articles 32.1, 32.2, 32.5 and 32.6 of the SCM Agreement impose obligations on Members. The Appellate Body stated that:

"Article 32.1 mandates that actions against a subsidy of another Member may be taken only if it is 'in accordance with the provisions of GATT 1994'. Article 32.2 provides that reservations in respect of any of the provisions of the SCM Agreement may not be entered 'without the consent of the other Members'. Article 32.5 obligates Members to 'take all necessary steps' to ensure the conformity of its laws, regulations, and administrative procedures with the provisions of the SCM Agreement. Article 32.6 directs Members to inform the SCM Committee of 'any changes in its laws and regulations', as well as in the administration thereof, that are relevant to the SCM Agreement.

We observe that Article 32.1 is the only paragraph that provides an obligation with respect to the imposition of countervailing duties. Articles 32.2, 32.5, and 32.6 are not relevant in this dispute, as the obligations they impose concern reservations with, and the general implementation of, the SCM Agreement. Specifically, Article 32.2 is not pertinent, since the present dispute does not involve any reservations with respect to any of the provisions of the SCM Agreement. As regards Article 32.5, China does not allege that the United States failed to make its laws, regulations, and administrative procedures conform to the SCM Agreement. With respect to Article 32.6, China does not contend that the United States failed to inform the SCM Committee of any changes in its laws and regulations. On the basis of these considerations, we agree with the Panel that only Article 32.1 appears to be relevant in this dispute.

1.3.3 Relationship with other provisions of the SCM Agreement

1.3.3.1 Article 10

6. The Appellate Body in *US – Countervailing Measures (China)* explained that "the Appellate Body has treated claims under Articles 10 and 32.1 of the SCM Agreement as consequential claims in the sense that, where it has not been established that the essential elements of the subsidy within the meaning of Article 1 of the SCM Agreement are present, the right to impose a countervailing duty has not been established and, as a consequence, the countervailing duties imposed are inconsistent with Articles 10 and 32.1 of the SCM Agreement." ¹³

1.3.3.2 Article 14

7. In *US – Softwood Lumber (II)*, the Appellate Body reversed the Panel's decision that the United States had acted consistently with Article 32.1 of the SCM Agreement, although it concluded that it was unable to complete the legal analysis on whether the Department of Commerce's determination of benefit was consistent with Article 14(d) of the SCM Agreement. Neither did the Appellate Body make findings on whether the Department of Commerce's "determination of the existence and a

"Like the Panel, 'we are hesitant, in interpreting the WTO Agreement, to give great weight to the effect of decisions that had not yet been taken at the time the WTO Agreement was signed'. We agree with the Panel's statement that:

'The availability of Article VI of GATT 1994 as applicable law in this dispute is a matter to be determined on the basis of the WTO Agreement, rather than on the basis of a subsequent decision by the signatories of the Tokyo Round SCM Code taken at the invitation of the Preparatory Committee.'¹⁹

...

While we agree with the Panel

