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## **1 ARTICLE 1**

### **1.1 Text of Article 1**

*Members hereby agree as follows:*

#### **Article 1**

##### *Principles*

An anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated<sup>1</sup> and conducted in accordance with the provisions of this Agreement. The following provisions govern the application of Article VI of GATT 1994 in so far as action is taken under anti-dumping legislation or regulations.

*(footnote original)*<sup>1</sup> The term "initiated" as used in this Agreement means the procedural action by which a Member formally commences an investigation as provided in Article 5.

### **1.2 General**

#### **1.2.1 "anti-dumping measure"**

1. The Appellate Body in *US – 1916 Act* rejected the argument that, based on the history of Article 1, "the phrase 'anti-dumping measure' refers *only* to definitive anti-dumping duties, price undertakings and provisional measures".<sup>1</sup> The Appellate Body stated that "the ordinary meaning of the phrase 'anti-dumping measure' seems to encompass all measures taken against dumping. We do not see in the words 'an anti-dumping measure' any explicit limitation to particular types of measures".<sup>2</sup>

#### **1.2.2 "initiated and conducted in accordance with the provisions of this Agreement"**

2. Regarding a claim raised under Article 1, the Panel in *US – 1916 Act (EC)* noted that "if we find a violation of other provisions of the *Anti-Dumping Agreement*, it will be demonstrated that the anti-dumping investigation ... is not 'initiated and conducted in accordance with the provisions of this Agreement' and a breach of Article 1 will be established".<sup>3</sup>

3. The Panel in *EC – Tube or Pipe Fittings* rejected the assertion that in case of a devaluation in the fourth quarter of the period of investigation, Article 1 of the Anti-Dumping Agreement and Article VI of the GATT 1994 require the investigating authority to base its determination only on the period following the devaluation to examine whether there was present dumping causing injury. The Panel stated that "Article 1 of the *Anti-Dumping Agreement* does not require an investigating authority to re-assess its own determination made on the basis of an examination of data pertaining to the IP prior to the imposition of an anti-dumping measure in the light of an event that occurred during the IP".<sup>4</sup>

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<sup>1</sup> Appellate Body Report, *US – 1916 Act*, para. 119.

<sup>2</sup> Appellate Body Report, *US – 1916 Act*, para. 119.

<sup>3</sup> Panel Report, *US – 1916 Act (EC)*, para. 6.208.

<sup>4</sup> Panel Report, *EC – Tube or Pipe Fittings*, para. 7.107.

### 1.2.3 Relationship with other provisions

4. In *EC – Bed Linen*, the Panel touched on the relationship between Articles 1 and 15 in interpreting Article 15.<sup>5</sup>

5. In *Guatemala – Cement II*, the Panel found that Guatemala's anti-dumping duty was inconsistent with Articles 3, 5, 6, 7, 12, and paragraph 2 of Annex I of the Anti-Dumping Agreement. The Panel then opined that Mexico's claims under other articles of the Anti-Dumping Agreement, including Article 1, were "dependent claims, in the sense that they depend entirely on findings that Guatemala has violated other provisions of the *Anti-Dumping Agreement*. There would be no basis to Mexico's claims under Articles 1, 9 and 18 of the *Anti-Dumping Agreement*, and Article VI of the GATT 1994, if Guatemala were not found to have violated other provisions of the *Anti-Dumping Agreement*."<sup>6</sup> In light of this dependent nature of Mexico's claim, the Panel considered it not necessary to address these claims.

6. The relationship between Article 1 and other provisions of the Anti-Dumping Agreement was discussed in *Guatemala – Cement II* and *US – Stainless Steel (Korea)*. See paragraphs 5-8 below.

7. In *China – GOES*, the Panel held that to the extent the United States demonstrated that China had acted inconsistently with the Anti-Dumping Agreement, China also violated Article 1 of the same Agreement.<sup>7</sup>

8. In *US – Stainless Steel (Korea)*, addressing Korea's claim that "because certain provisions of the *AD Agreement* have been violated, Article VI of the GATT 1994 and Article 1 of the *AD Agreement* are consequently violated"<sup>8</sup>, the Panel also stated: "[b]ecause of their dependent nature, we can perceive of no useful purpose that would be served by ruling on these claims. Accordingly, we do not consider it necessary to address them."<sup>9</sup>

9. In *China – AD on Stainless Steel (Japan)*, the Panel exercised judicial economy with respect to Article 1 of the AD Agreement and Article VI:6(a) of the GATT 1994, noting that Japan's claims under these provisions were "entirely dependent" on the claims of violation under other provisions of the AD Agreement, and that making findings with respect to "purely consequential claims" would not contribute towards the positive resolution of the dispute at issue.<sup>10</sup>

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<sup>5</sup> Panel Report, *EC – Bed Linen*, paras. 6.231-6.232.

<sup>6</sup> Panel Report, *Guatemala – Cement II*, para. 8.296.

<sup>7</sup> Panel Report, *China – GOES*, para. 7.681. See also Panel Reports, *China – Autos (US)*, para. 7.368; *China – HP-SSST (Japan) / China – HP-SSST (EU)*, para. 7.336; *Canada – Welded Pipe*, para. 7.189; *Russia – Commercial Vehicles*, para. 7.280; *China – Broiler Products (Article 21.5 – US)*, para. 7.453.

<sup>8</sup> Panel Report, *US – Stainless Steel (Korea)*, para. 6.138.

<sup>9</sup> Panel Report, *US – Stainless Steel (Korea)*, para. 6.138.

<sup>10</sup> Panel Report, *China – AD on Stainless Steel (Japan)*, para. 7.408.