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1 ARTICLE 17

1.1 Text of Article 17

Article 17

Provisional Measures

- 17.1 Provisional measures may be applied only if:
- (a) an investigation has been initiated in accordance with the provisions of Article 11, a public notice has been given to that effect and interested Members and interested parties have been given adequate opportunities to submit information and make comments;
 - (b) a preliminary affirmative determination has been made that a subsidy exists and that there is injury to a domestic industry caused by subsidized imports; and
 - (c) the authorities concerned judge such measures necessary to prevent injury being caused during the investigation.
- 17.2 Provisional measures may take the form of provisional countervailing duties guaranteed by cash deposits or bonds equal to the amount of the provisionally calculated amount of subsidization.
- 17.3 Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.
- 17.4 The application of provisional measures shall be limited to as short a period as possible, not exceeding four months.
- 17.5 The relevant provisions of Article 19 shall be followed in the application of provisional measures.

1.2 Anti-Dumping Agreement

1. As the text of Article 17 of the SCM Agreement largely parallels the text of Article 7 of the Anti-Dumping Agreement, see also the Section on that Article of the Anti-Dumping Agreement.

1.3 General

1. In *US – Softwood Lumber III*, the Panel found that the provisional measures were in violation of Article 17.3 (and 17.4) because they were imposed less than 60 days after the date of initiation of the investigation and because they applied to imports for a period of more than four months. The Panel found that "Article 17.3 and 17.4 of the SCM Agreement are unambiguous, clearly specifying that provisional measures shall not be applied sooner than 60 days after initiation and their application shall be limited to maximum 4 months."¹ The Panel also explained that:

¹ Panel Report *US – Softwood Lumber III*, para. 7.100.

"[T]he starting-point for the application of provisional and final measures, Article 20 of the SCM Agreement establishes two exceptions to the general rule of non-retroactivity of final countervailing duties and no exceptions to the general rule of non-retroactivity of provisional measures. Nothing in Article 20 SCM Agreement provides an exception to the rules relating to the minimum period between initiation and application of provisional measures or the maximum period of application of such measures as provided for in Articles 17.3 and 17.4 SCM Agreement."²

2. The Panel in *US – Softwood Lumber III* rejected the argument that the period of application referred to in Article 17.4 is the period during which cash deposits or bonds are taken, rather than the period during which the affected imports enter for consumption. For the Panel, this interpretation would allow for significantly more than four months' worth of entries to be covered by a provisional measure. The Panel considered that such an interpretation would effectively nullify the disciplines of Article 17, particularly in light of the obligation contained in Article 20.1:

"We consider that the US argument that the period of application in Article 17.4 SCM Agreement refers to the period during which cash deposits or bonds are taken rather than the period during which the affected imports enter for consumption would have the effect of nullifying the provision, particularly in light of Article 20.1 SCM Agreement. We cannot accept such an interpretation which would reduce a provision of the treaty to redundancy or inutility.³ The US interpretation would allow significantly more than 4 months worth of entries to be covered by a provisional measure. For example, under this interpretation, a decision under Article 17.1 SCM Agreement could be taken after 60 days, following which the importing country would wait say 3 months before 'applying' the provisional measures for 4 months, including retroactively to imports entering after the date of the decision. In our view this would render meaningless the disciplines imposed by Article 17 SCM Agreement."⁴

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Current as of: December 2020

² Panel Report *US – Softwood Lumber III*, para. 7.100.

³ (*footnote original*) Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS/2/AB/R, adopted on 20 May 1996, p. 23.

⁴ Panel Report *US – Softwood Lumber III*, para. 7.102.