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**1 ARTICLE 18**

**1.1 Text of Article 18**

**Article 18**

*Undertakings*

18.1 Proceedings may<sup>49</sup> be suspended or terminated without the imposition of provisional measures or countervailing duties upon receipt of satisfactory voluntary undertakings under which:

*(footnote original)*<sup>49</sup> The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of undertakings, except as provided in paragraph 4.

(a) the government of the exporting Member agrees to eliminate or limit the subsidy or take other measures concerning its effects; or

(b) the exporter agrees to revise its prices so that the investigating authorities are satisfied that the injurious effect of the subsidy is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the amount of the subsidy. It is desirable that the price increases be less than the amount of the subsidy if such increases would be adequate to remove the injury to the domestic industry.

18.2 Undertakings shall not be sought or accepted unless the authorities of the importing Member have made a preliminary affirmative determination of subsidization and injury caused by such subsidization and, in case of undertakings from exporters, have obtained the consent of the exporting Member.

18.3 Undertakings offered need not be accepted if the authorities of the importing Member consider their acceptance impractical, for example if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. Should the case arise and where practicable, the authorities shall provide to the exporter the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

18.4 If an undertaking is accepted, the investigation of subsidization and injury shall nevertheless be completed if the exporting Member so desires or the importing Member so decides. In such a case, if a negative determination of subsidization or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of an undertaking. In such cases, the authorities concerned may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement. In the event that an affirmative determination of subsidization and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Agreement.

18.5 Price undertakings may be suggested by the authorities of the importing Member, but no exporter shall be forced to enter into such undertakings. The fact that governments or exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are

free to determine that a threat of injury is more likely to be realized if the subsidized imports continue.

18.6 Authorities of an importing Member may require any government or exporter from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such an undertaking, and to permit verification of pertinent data. In case of violation of an undertaking, the authorities of the importing Member may take, under this Agreement in conformity with its provisions, expeditious actions which may constitute immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with this Agreement on products entered for consumption not more than 90 days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

## 1.2 Anti-Dumping Agreement

1. As the text of Article 18 of the SCM Agreement parallels the text of Article 8 of the Anti-Dumping Agreement, see also the Section on that Article of the Anti-Dumping Agreement.

## 1.3 General

1. The Panel in *US – Offset Act (Byrd Amendment)* considered the extent of the obligation under Article 8.3 of the Anti-Dumping Agreement and Article 18.3 of the SCM Agreement concerning price undertakings. According to the Panel, under Article 8:

"AD Article 8 and SCM 18 provide that when offered, the investigating authority need not accept the undertaking if it considers it impractical or if for other reasons it does not want to accept the undertaking. The decision to accept an undertaking or not under the Agreements is one the investigating authority is to take, and it may reject an undertaking for various reasons, including reasons of general policy. The fact that domestic producers may or may not be influenced by the CDSOA to suggest to the authority not to accept the undertaking, does not affect the possibility for interested parties concerned to offer an undertaking or for that undertaking to be accepted, in light of the non-decisive role of the domestic industry in this process.

In addition we note that the text of AD Article 8.3 and SCM Article 18.3 does not require the authority to examine objectively any undertaking offered. Rather, it stresses that undertakings offered need not be accepted and that the reasons for rejecting an undertaking may be manifold and include reasons of general policy. In our view, the CDSOA cannot be found to impede the objective examination of the appropriateness of accepting an undertaking, in the absence of any such obligation under AD Article 8 and SCM 18."<sup>1</sup>

2. In *EC – Fasteners (China)*, the Panel observed that "[u]nder Article 8 of the AD Agreement, undertakings to revise prices or cease exports at dumped prices can be accepted only from individual exporters, following at least a preliminary determination of dumping".<sup>2</sup> The Panel then noted that:

"This is in contrast to the parallel provision of the SCM Agreement, Article 18, which specifically provides for the acceptance of undertakings from the government of the exporting Member to eliminate or limit the subsidy, or take other measures concerning its effects. In our view, this difference reflects the fact that subsidization is a matter of government action, while dumping is, in general, a consequence of pricing decisions by commercial enterprises."<sup>3</sup>

Current as of: December 2020

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<sup>1</sup> Panel Report, *US – Offset Act (Byrd Amendment)*, paras. 7.80-7.81.

<sup>2</sup> Panel Report, *EC – Fasteners (China)*, para. 7.103.

<sup>3</sup> Panel Report, *EC – Fasteners (China)*, fn 279.