1 ARTICLE 23

1.1 Text of Article 23

Article 23

Judicial Review

Each Member whose national legislation contains provisions on countervailing duty measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 21. Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question, and shall provide all interested parties who participated in the administrative proceeding and are directly and individually affected by the administrative actions with access to review.

1.2 Anti-Dumping Agreement

1. As the text of Article 23 of the SCM Agreement largely parallels the text of Article 13 of the Anti-Dumping Agreement, see also the Section on that Article of the Anti-Dumping Agreement.

1.3 General

2. In US – Countervailing and Anti-Dumping Measures (China), the Panel, in the process of interpreting and applying Article X:3(b) of the GATT 1994, stated that:

"Article 23 of the SCM Agreement explicitly guarantees access to judicial review to 'all interested parties who participated in the administrative proceeding and are directly and individually affected by the outcome'. The neutral wording of Article 23 confirms that such interested parties may well include domestic interested parties who would seek to challenge a decision by an administrative agency that is beneficial to the exporters in a particular case."\(^1\)

3. The Panel in Mexico – Olive Oil noted that certain provisions of the SCM Agreement leave considerable discretion to Members to define their own procedures:

"We also note that other provisions in the SCM Agreement leave considerable discretion to Members to define their own procedures; e.g. Articles 12, 14 and 23. This leads us to believe that, in general, unless a specific procedure is set forth in the Agreement the precise procedures for how investigating authorities will implement those obligations are left to the Members to decide."\(^2\)

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\(^{1}\) Panel Report, US – Countervailing and Anti-Dumping Measures (China), fn. 454.

\(^{2}\) Panel Report, Mexico – Olive Oil, fn. 63.