

**CHAPTER 29**  
**INTERNATIONAL AGREEMENTS**

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**References:**

The Tariff Act of 1930, as amended

Section 516A – bi-national panel reviews under U.S. - Canada Agreement and the North American Free Trade Agreement (NAFTA)

Sections 751(c)(6)(C) and (D) - transition orders and the World Trade Organization (WTO)

Section 771(7)(F)(iii) - effect of dumping in third country markets

Sections 771(21)(22)(29)(30) and (31) - definitions of U.S.- Canada Agreement, NAFTA, WTO Agreement, WTO member, and General Agreement on Tariffs and Trade (GATT)

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SAA

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WTO Agreement

Annex 1A: Multilateral Agreements on Trade in Goods

**I. OVERVIEW OF THE WTO AGREEMENT AND THE GENERAL AGREEMENT ON TARIFFS AND TRADE**

The Department’s imposition of AD duties represents a measure against an internationally recognized unfair trade practice and is governed by internationally agreed upon principles, rules and procedures. Since the entry into force of the General Agreement on Tariffs and Trade (GATT) in 1948, these rules and procedures have been embodied in Article VI of the GATT (Article VI). The provisions of Article VI continue to form the basis of the international rules on the imposition of antidumping measures, but Article VI is now modified and interpreted by the WTO Agreement on Implementation of Article VI of GATT 1994, known as the AD Agreement. The AD Agreement, as well as the current version of the GATT (known as “GATT

1994”), are two of the multilateral agreements on trade in goods which are incorporated into the Agreement Establishing the World Trade Organization, commonly known as the WTO Agreement. The relationship between these agreements is discussed in further detail below.

As is the case throughout the WTO Agreement, Article VI and the AD Agreement each involve a balance of rights and obligations for every WTO Member. Neither the AD Agreement nor Article VI prohibits dumping. However, Article VI recognizes that injurious dumping is to be “condemned,” and may be countered, if dumped imports cause, or threaten to cause, material injury to, or materially retard the establishment of, an industry within the importing country. Article VI, as interpreted by the AD Agreement, therefore, allows for the imposition of AD duties if dumping, injury, and causation have been found.

Article VI and the AD Agreement address the principle of trade on the basis of fair competition, and set forth conditions under which AD duties may be imposed to reestablish a reasonable competitive balance in the face of dumped imports that injure a domestic industry. The rules are designed to allow WTO Members to offset the effects of unfair trade in their domestic markets while guarding against the use of AD measures as substitutes for tariff protection.

#### **A. GATT and WTO as Institutions**

The WTO is the inter-governmental organization with headquarters in Geneva, Switzerland that administers the WTO Agreement. The WTO is the successor organization to the GATT, which was an ad hoc organization formed to administer the General Agreement on Tariffs and Trade. Established in 1995, the WTO now has 151 Members with a number of countries in the accession process.

The WTO Agreement establishes six functions for the WTO:

1. To facilitate the implementation, administration and operation of the WTO Agreement.
2. To provide a forum for multilateral trade negotiations.
3. To administer the WTO Dispute Settlement Understanding which governs disputes arising out of the WTO Agreement.
4. To review and monitor the national trade policies of Member states.
5. To assist developing countries in trade policy issues, through technical assistance and training programs.
6. To cooperate with other international organizations to achieve greater coherence in global economic policy making.

## **B. The GATT and WTO Agreements**

The WTO Agreement is the successor to the GATT Agreement, which is now known as “GATT 1947.” U.S. adoption of the WTO Agreement was approved by Congress in the Uruguay Round Agreements Act (URAA). Unlike the GATT system, which it replaced, the WTO Agreement is a set of multilateral agreements that is a “single undertaking.” In other words, in order to receive the benefits under one of the agreements, a country must agree to be bound by the rights and obligations of all of the agreements. Countries are not obligated to have or enforce antidumping laws, but must follow the AD Agreement rules if they do. The individual agreements are included in annexes of the WTO Agreement. Thirteen multilateral agreements on trade in goods are included in Annex 1A, including the AD Agreement, the Agreement on Subsidies and Countervailing Measures and the Agreement on Agriculture. “GATT 1994” is also incorporated by reference into Annex 1A. “GATT 1994” consists of the text of “GATT 1947” as “rectified, amended or modified by the terms of legal instruments which entered into force before the date of entry into force of the WTO Agreement.” See GATT 1994 in Annex 1A of the WTO Agreement.

In addition to the multilateral agreements which relate to trade in goods included in Annex 1A, the WTO administers the General Agreement on Trade in Services (GATS) contained in Annex 1B and the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) in Annex 1C of the WTO Agreement. There are also four “plurilateral” agreements (the agreements on government procurement, civil aircraft, dairy and bovine meat), which Members can choose to sign or not sign.

The text of each of these multilateral and plurilateral agreements can be found on the WTO’s website ([www.wto.org](http://www.wto.org)).

## **C. The relationship between GATT 1994 and the Antidumping Agreement**

The antidumping provisions of Article VI are not replaced by the AD Agreement. Rather, Article VI is implemented and interpreted by the AD Agreement. Article 18.1 of the AD Agreement provides that “no specific action against dumping of exports from another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement.” The relationship between the GATT 1994 and the AD Agreement or other agreements included in Annex 1A of the WTO Agreement was clarified in the “General interpretative note to Annex 1A.” Under these rules, in the event of a conflict between a provision of the GATT 1994 and the AD Agreement, the terms of the AD Agreement “shall prevail to the extent of the conflict.”

## **D. The WTO Dispute Settlement Understanding**

One of the most significant changes brought about by the WTO Agreement over the GATT 1947 was the creation of a binding dispute settlement mechanism. Under the prior system, there was

no binding method of enforcing the decisions of the GATT panels that heard disputes between trading partners. Article 2 of the WTO Dispute Settlement Understanding (DSU) establishes the Dispute Settlement Body (DSB), which is composed of representatives from all the Member states and has the “authority to establish panels, adopt panel and Appellate Body Reports, maintain surveillance and implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreements.”

The first stage of the dispute settlement process calls for consultations between the governments involved. If the consultation process does not lead to a mutually acceptable solution, the complaining party may request that a panel be formed to resolve the dispute. Generally, a party must wait 60 days after the request for consultations is made before requesting the formation of a panel. Usually, the panel will complete its work within six to nine months. The panel decision can then be appealed to the Appellate Body. The Appellate Body will generally reach a decision in 60 to 90 days.

If a party does not comply with the recommendations of the DSB (e.g., by modifying its measure or amending its law), the WTO Member that filed the complaint with the DSB may retaliate by suspending trade concessions equivalent to the trade benefit it has lost. Since the inception of the DSU process, the United States has been a complaining party, a defending party, and an interested third-party participant in a number of panel proceedings.

The WTO dispute settlement procedures apply to the AD Agreement. The AD Agreement contains a special standard of review to be applied by WTO panels in resolving AD disputes. Specifically, Article 17.6 of the AD Agreement requires panels to uphold authorities’ determinations if:

- (i) establishment of the facts was proper and if the evaluation of those facts was unbiased and objective, even though the panel might have reached a different conclusion, and
- (ii) the panel finds that a relevant provision of the AD Agreement admits of more than one permissible interpretation, and the authorities’ interpretation rests upon one of those permissible interpretations.

In addition, panels are instructed to examine a case based on the facts made available to the authorities (the Department and the International Trade Commission (ITC)) in the proceeding at issue. Thus, a panel proceeding is not the place to introduce new facts.

Dispute settlement procedures can be used to resolve disputes among governments concerning the operation of domestic laws and their consistency with the AD Agreement. In other words, a WTO panel can only determine whether a country’s laws and the manner in which those laws are implemented are consistent with the AD Agreement. The WTO dispute settlement process does not decide whether dumping or injury is occurring.

### **E. The relationship between the WTO Agreement and U.S. Law**

At the conclusion of various rounds of GATT trade agreement negotiations, the United States agreed to make changes to its laws, as needed, to conform with the agreements that were concluded. These changes were implemented through legislation, such as the URAA, and through subsequent amendments to administrative regulations. As a matter of U.S. law, the URAA defines the relationship between the WTO Agreement and U.S. law. Specifically, section 102(a)(1) of the URAA provides: “No provision of any of the Uruguay Rounds Agreements, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect.” In other words, as a matter of U.S. law, U.S. laws prevail even if they are inconsistent with a provision of the AD Agreement. In Department proceedings, parties may make legal arguments premised upon alleged inconsistencies between U.S. law and the WTO Agreement. As a general matter, in our administrative determinations, we do not engage in interpretation of WTO provisions because our determinations must be based on U.S. law and our own regulations and precedent.

## **II. THE ANTIDUMPING AGREEMENT**

The AD Agreement was developed during the Uruguay Round of multilateral trade negotiations (1986-1993) under the GATT. Together with the rest of the WTO Agreement, it entered into force on January 1, 1995, replacing a similar agreement negotiated in 1979 as part of the Tokyo Round of multilateral trade negotiations.

The AD Agreement picks up where Article VI leaves off, specifying the basis for the imposition, collection and duration of AD duties and allowing for negotiated agreements, called price undertakings, between relevant parties. (These undertakings are known under U.S. law as suspension agreements.) The AD Agreement defines such terms as dumping and injury, and outlines the procedures to be followed during an AD investigation. Most notably, the AD Agreement requires that both dumping and injury investigations be conducted simultaneously and, except in special circumstances, be completed within one year. The AD Agreement also details petition requirements, describes rules of evidence, provides for public notice of the determinations of the investigating authority, requires that evidence of a non-confidential nature be made available to interested parties, and specifies the conditions under which investigations may be suspended or terminated.

The AD Agreement permits “provisional measures” (*i.e.*, suspension of liquidation, provisional imposition of duties, and the collection of a security in the form of a cash deposit or a bond) to be imposed to offset the injurious effect of dumping during the investigation period. These measures may be taken no sooner than 60 days after initiation of the case and only after affirmative preliminary determinations of dumping and injury and, in most cases, may be imposed for no longer than four months. Under certain circumstances, the AD Agreement also permits the levying of definitive duties on imports entered not more than 90 days prior to application of provisional measures. The U.S. analogue for this measure is the critical circumstances provision

under our AD law.

Following final determinations of dumping and injury, the AD Agreement permits the collection of AD duties from the date provisional measures were applied but only for certain conditions of injury. Here the AD Agreement distinguishes between actual injury, threat of injury and material retardation of the establishment of an industry, and caps assessment at the rate found in the preliminary determination for entries made before the final determination.

The AD Agreement also stipulates that AD duties shall remain in force only as long as, and to the extent necessary, to counteract dumping that is causing injury. In addition, the AD Agreement stipulates that the investigating authorities shall review the need for continuing duties, where warranted, upon their initiative or if an interested party submits positive evidence substantiating the need for review. In U.S. law, these types of reviews are known as “changed circumstances reviews.” Finally, orders are also reviewed, both by the Department and the ITC, after the order has been in place for five years to determine whether revocation of the order, or termination of the suspended investigation, would be likely to lead to continuation or recurrence of dumping and injury. These so-called “sunset” reviews provide a mechanism for revoking orders that are no longer necessary to protect the domestic industry from dumping and injury.

### **III. ENFORCEMENT AND COMPLIANCE’S ROLE IN TRADE NEGOTIATIONS**

Representatives from E&C, including the Assistant Secretary and personnel from the Office of Policy and the Office of the Chief Counsel, comprise a delegation responsible for leading negotiations on antidumping rules for the U.S. government during the WTO’s rounds of multilateral trade talks (e.g., the Doha Round), as well as other bilateral and multilateral trade talks. Additionally, the same delegation from E&C participates in meetings of the Committee on AD Practices, a working group formed and administered by the WTO. The Committee’s job is to ensure the transparency and consistency of Members’ practices by requiring full notification of AD actions and regularly reviewing each Member’s AD laws and regulations.

E&C is, therefore, integrally involved in the provision of information and explanations in fulfillment of these notification and surveillance requirements.

### **IV. THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)**

NAFTA is a regional agreement which entered into force on January 1, 1994, between the governments of Canada, Mexico, and the United States implementing a free trade area. As set forth in Chapter 1, Article 102, NAFTA’s six objectives are as follows:

1. To eliminate barriers to trade and facilitate the cross-border movement of goods and services among member countries.
2. To promote conditions of fair competition.

3. To increase substantially investment opportunities among member countries.
4. To provide adequate and effective protection and enforcement of intellectual property rights.
5. To create effective procedures for the implementation and application of this agreement, for its joint administration, and for dispute resolution.
6. To establish a framework for further trilateral, regional, and multilateral cooperation to expand and enhance the benefits of the free trade area.

Chapter 19 of NAFTA concerns review and dispute settlement related to AD and CVD determinations. Under Chapter 19 of the NAFTA, an interested party may request that a binational panel review a NAFTA country's final determination in an AD or CVD administrative proceeding that involves imports from another NAFTA country. In the United States this can replace review by the Court of International Trade.

The bi-national panels consist of five individuals drawn from a roster, established by the three countries and composed of judges or former judges "to the extent practicable" and trade experts. Each panel must include at least one lawyer because the chair must be a lawyer. Each government involved in a dispute can select two panelists and together select the fifth panelist. The agreement also provides for selection of the fifth panelist by lot if the two governments cannot reach a consensus on the fifth panelist.

The panels are supposed to determine whether a determination by an administering authority was in accordance with the AD or CVD law of the importing country. In other words, a panel reviewing a U.S. action against imports from Mexico or Canada will determine whether the actions taken by the Department or the ITC, as appropriate, were consistent with U.S. law. The panel review process is designed to take no more than 315 days.

The NAFTA does not provide private parties with the right to appeal the decision of a panel. However, a government, which is a party to a dispute, can request that a panel decision be reviewed by an extraordinary challenge committee. The agreement provides three grounds upon which the request for an extraordinary challenge can be based. The three grounds are: (1) a member of the panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct; (2) the panel seriously departed from a fundamental rule of procedure; or (3) the panel manifestly exceeded its powers, authority or jurisdiction set out in Chapter 19 of the NAFTA, for example by failing to apply the appropriate standard of review. Finally, the action which serves as the basis of the request must materially affect the panel's decision and threaten the integrity of the bi-national review process.