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1 ANNEX I

1.1 Text of Annex I

ANNEX I

PROCEDURES FOR ON-THE-SPOT INVESTIGATIONS PURSUANT TO PARAGRAPH 7 OF ARTICLE 6

1. Upon initiation of an investigation, the authorities of the exporting Member and the firms known to be concerned should be informed of the intention to carry out on-the-spot investigations.
2. If in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the firms and the authorities of the exporting Member should be so informed. Such non-governmental experts should be subject to effective sanctions for breach of confidentiality requirements.
3. It should be standard practice to obtain explicit agreement of the firms concerned in the exporting Member before the visit is finally scheduled.
4. As soon as the agreement of the firms concerned has been obtained, the investigating authorities should notify the authorities of the exporting Member of the names and addresses of the firms to be visited and the dates agreed.
5. Sufficient advance notice should be given to the firms in question before the visit is made.
6. Visits to explain the questionnaire should only be made at the request of an exporting firm. Such a visit may only be made if (a) the authorities of the importing Member notify the representatives of the Member in question and (b) the latter do not object to the visit.
7. As the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary and the government of the exporting Member is informed by the investigating authorities of the anticipated visit and does not object to it; further, it should be standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.
8. Enquiries or questions put by the authorities or firms of the exporting Members and essential to a successful on-the-spot investigation should, whenever possible, be answered before the visit is made.

1.2 On-the-spot verifications as an option

1. The Panel in *Argentina – Ceramic Tiles*, indicated in a footnote that, although common practice, there is no requirement to carry out on-the-spot verifications.¹

2. The Panel in *Dominican Republic – AD on Steel Bars (Costa Rica)* rejected the complainant's claim of violation of Article 6.7 and Annex I based on the argument that the verification visit in the underlying investigation was an "ideal opportunity" for the investigating authority to seek certain information to ensure fair comparison within the meaning of Article 2.4 of the Anti-Dumping Agreement.²

1.3 Requirement to "advise the firms concerned of ... the information to be verified"

3. In *Dominican Republic – AD on Steel Bars (Costa Rica)*, the Panel stated that paragraph 7 of Annex I imposes an obligation on investigating authorities because of the word "shall" found in Article 6.7.³

4. The Panel in *Dominican Republic – AD on Steel Bars (Costa Rica)* found that the investigating authority had complied with the requirement of paragraph 7 of Annex I by sending a letter to the foreign exporter indicating that "all documents concerning sales in the domestic market" would be verified. The Panel added that "Annex I, however, does not specify any obligation to advise the exporter in advance of the specific transactions to be verified."⁴

1.4 Participation of non-governmental experts in the on-the-spot verification

5. In *Guatemala – Cement II*, Mexico claimed that a verification visit by Guatemala's authority to the Mexican producer's site was inconsistent with Article 6.7 and Annex I(2), (3), (7) and (8) because the authority included three non-governmental experts, two of whom the respondent considered to have a conflict of interest because they also represented the US cement industry in a US anti-dumping investigation of cement from Mexico. The Panel stated its view that an impartial and objective investigating authority would not include non-governmental experts with a conflict of interest in its verification team, but found that none of the provisions cited by Mexico explicitly prohibited such conduct.⁵

1.5 Information verifiable on-the-spot

6. In *Guatemala – Cement II*, Mexico argued that in violation of Article 6.7 and paragraph 7 of Annex I, the Guatemalan authority sought to verify certain information not submitted by the Mexican producer under investigation because it pertained to the period of investigation newly added during the course of the investigation. The Panel rejected this argument. For details, see the Section on Article 6.7 of the Anti-Dumping Agreement.

1.6 Relationship with other provisions of the Anti-Dumping Agreement

7. In *Guatemala – Cement II*, the Panel found that the subject anti-dumping duty order of Guatemala 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 Articles 1, 9 and 18 of the Anti-Dumping Agreement, and Article VI of GATT 1994, were "dependent claims, in the sense that they depend entirely on findings that Guatemala has violated other provisions of the *AD Agreement*. There would be no basis to Mexico's claims under Articles 1, 9 and 18 of the *AD Agreement*, and Article VI of GATT 1994, if Guatemala were not found to have violated other provisions of the *AD Agreement*." In light of this dependent nature of Mexico's claim, the Panel considered it not necessary to address these claims.⁶

¹ Panel Report, *Argentina – Ceramic Tiles*, fn 65. See also Panel Report, *Egypt – Steel Rebar*, paras. 7.326-7.327.

² Panel Report, *Dominican Republic – AD on Steel Bars (Costa Rica)*, paras. 7.479-7.480.

³ Panel Report, *Dominican Republic – AD on Steel Bars (Costa Rica)*, para. 7.476.

⁴ Panel Report, *Dominican Republic – AD on Steel Bars (Costa Rica)*, para. 7.478.

⁵ Panel Report, *Guatemala – Cement II*, para. 8.189.

⁶ Panel Report, *Guatemala – Cement II*, para. 8.296.

8. With respect to the relationship of Annex I and Article 6.7, in *Egypt – Steel Rebar*, the Panel came to the same conclusion as with the relationship between Article 6.8 and Annex II, i.e. that Annex I is incorporated by reference into Article 6.7. See the Section on Article 6.7 of the Anti-Dumping Agreement.

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