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1 ARTICLE 2

1.1 Text of Article 2

Article 2

Obligations of User Members

Non-discrimination

1. User Members shall ensure that preshipment inspection activities are carried out in a non-discriminatory manner, and that the procedures and criteria employed in the conduct of these activities are objective and are applied on an equal basis to all exporters affected by such activities. They shall ensure uniform performance of inspection by all the inspectors of the preshipment inspection entities contracted or mandated by them.

Governmental Requirements

2. User Members shall ensure that in the course of preshipment inspection activities relating to their laws, regulations and requirements, the provisions of paragraph 4 of Article III of GATT 1994 are respected to the extent that these are relevant.

Site of Inspection

3. User Members shall ensure that all preshipment inspection activities, including the issuance of a Clean Report of Findings or a note of non-issuance, are performed in the customs territory from which the goods are exported or, if the inspection cannot be carried out in that customs territory given the complex nature of the products involved, or if both parties agree, in the customs territory in which the goods are manufactured.

Standards

4. User Members shall ensure that quantity and quality inspections are performed in accordance with the standards defined by the seller and the buyer in the purchase agreement and that, in the absence of such standards, relevant international standards² apply.

(footnote original) ² An international standard is a standard adopted by a governmental or non-governmental body whose membership is open to all Members, one of whose recognized activities is in the field of standardization.

Transparency

5. User Members shall ensure that preshipment inspection activities are conducted in a transparent manner.

6. User Members shall ensure that, when initially contacted by exporters, preshipment inspection entities provide to the exporters a list of all the information which is necessary for the exporters to comply with inspection requirements. The preshipment inspection entities

shall provide the actual information when so requested by exporters. This information shall include a reference to the laws and regulations of user Members relating to preshipment inspection activities, and shall also include the procedures and criteria used for inspection and for price and currency exchange-rate verification purposes, the exporters' rights vis-à-vis the inspection entities, and the appeals procedures set up under paragraph 21. Additional procedural requirements or changes in existing procedures shall not be applied to a shipment unless the exporter concerned is informed of these changes at the time the inspection date is arranged. However, in emergency situations of the types addressed by Articles XX and XXI of GATT 1994, such additional requirements or changes may be applied to a shipment before the exporter has been informed. This assistance shall not, however, relieve exporters from their obligations in respect of compliance with the import regulations of the user Members.

7. User Members shall ensure that the information referred to in paragraph 6 is made available to exporters in a convenient manner, and that the preshipment inspection offices maintained by preshipment inspection entities serve as information points where this information is available.

8. User Members shall publish promptly all applicable laws and regulations relating to preshipment inspection activities in such a manner as to enable other governments and traders to become acquainted with them.

Protection of Confidential Business Information

9. User Members shall ensure that preshipment inspection entities treat all information received in the course of the preshipment inspection as business confidential to the extent that such information is not already published, generally available to third parties, or otherwise in the public domain. User Members shall ensure that preshipment inspection entities maintain procedures to this end.

10. User Members shall provide information to Members on request on the measures they are taking to give effect to paragraph 9. The provisions of this paragraph shall not require any Member to disclose confidential information the disclosure of which would jeopardize the effectiveness of the preshipment inspection programmes or would prejudice the legitimate commercial interest of particular enterprises, public or private.

11. User Members shall ensure that preshipment inspection entities do not divulge confidential business information to any third party, except that preshipment inspection entities may share this information with the government entities that have contracted or mandated them. User Members shall ensure that confidential business information which they receive from preshipment inspection entities contracted or mandated by them is adequately safeguarded. Preshipment inspection entities shall share confidential business information with the governments contracting or mandating them only to the extent that such information is customarily required for letters of credit or other forms of payment or for customs, import licensing or exchange control purposes.

12. User Members shall ensure that preshipment inspection entities do not request exporters to provide information regarding:

- (a) manufacturing data related to patented, licensed or undisclosed processes, or to processes for which a patent is pending;
- (b) unpublished technical data other than data necessary to demonstrate compliance with technical regulations or standards;
- (c) internal pricing, including manufacturing costs;
- (d) profit levels;
- (e) the terms of contracts between exporters and their suppliers unless it is not otherwise possible for the entity to conduct the inspection in question. In such cases, the entity shall only request the information necessary for this purpose.

13. The information referred to in paragraph 12, which preshipment inspection entities shall not otherwise request, may be released voluntarily by the exporter to illustrate a specific case.

Conflicts of Interest

14. User Members shall ensure that preshipment inspection entities, bearing in mind also the provisions on protection of confidential business information in paragraphs 9 through 13, maintain procedures to avoid conflicts of interest:

- (a) between preshipment inspection entities and any related entities of the preshipment inspection entities in question, including any entities in which the latter have a financial or commercial interest or any entities which have a financial interest in the preshipment inspection entities in question, and whose shipments the preshipment inspection entities are to inspect;
- (b) between preshipment inspection entities and any other entities, including other entities subject to preshipment inspection, with the exception of the government entities contracting or mandating the inspections;
- (c) with divisions of preshipment inspection entities engaged in activities other than those required to carry out the inspection process.

Delays

15. User Members shall ensure that preshipment inspection entities avoid unreasonable delays in inspection of shipments. User Members shall ensure that, once a preshipment inspection entity and an exporter agree on an inspection date, the preshipment inspection entity conducts the inspection on that date unless it is rescheduled on a mutually agreed basis between the exporter and the preshipment inspection entity, or the preshipment inspection entity is prevented from doing so by the exporter or by *force majeure*.³

(footnote original) ³ It is understood that, for the purposes of this Agreement, "*force majeure*" shall mean "irresistible compulsion or coercion, unforeseeable course of events excusing from fulfilment of contract".

16. User Members shall ensure that, following receipt of the final documents and completion of the inspection, preshipment inspection entities, within five working days, either issue a Clean Report of Findings or provide a detailed written explanation specifying the reasons for non-issuance. User Members shall ensure that, in the latter case, preshipment inspection entities give exporters the opportunity to present their views in writing and, if exporters so request, arrange for re-inspection at the earliest mutually convenient date.

17. User Members shall ensure that, whenever so requested by the exporters, preshipment inspection entities undertake, prior to the date of physical inspection, a preliminary verification of price and, where applicable, of currency exchange rate, on the basis of the contract between exporter and importer, the *pro forma* invoice and, where applicable, the application for import authorization. User Members shall ensure that a price or currency exchange rate that has been accepted by a preshipment inspection entity on the basis of such preliminary verification is not withdrawn, providing the goods conform to the import documentation and/or import licence. They shall ensure that, after a preliminary verification has taken place, preshipment inspection entities immediately inform exporters in writing either of their acceptance or of their detailed reasons for non-acceptance of the price and/or currency exchange rate.

18. User Members shall ensure that, in order to avoid delays in payment, preshipment inspection entities send to exporters or to designated representatives of the exporters a Clean Report of Findings as expeditiously as possible.

19. User Members shall ensure that, in the event of a clerical error in the Clean Report of Findings, preshipment inspection entities correct the error and forward the corrected information to the appropriate parties as expeditiously as possible.

Price Verification

20. User Members shall ensure that, in order to prevent over- and under-invoicing and fraud, preshipment inspection entities conduct price verification⁴ according to the following guidelines:

(footnote original) ⁴ The obligations of user Members with respect to the services of preshipment inspection entities in connection with customs valuation shall be the obligations which they have accepted in GATT 1994 and the other Multilateral Trade Agreements included in Annex 1A of the WTO Agreement.

- (a) preshipment inspection entities shall only reject a contract price agreed between an exporter and an importer if they can demonstrate that their findings of an unsatisfactory price are based on a verification process which is in conformity with the criteria set out in subparagraphs (b) through (e);
- (b) the preshipment inspection entity shall base its price comparison for the verification of the export price on the price(s) of identical or similar goods offered for export from the same country of exportation at or about the same time, under competitive and comparable conditions of sale, in conformity with customary commercial practices and net of any applicable standard discounts. Such comparison shall be based on the following:
 - (i) only prices providing a valid basis of comparison shall be used, taking into account the relevant economic factors pertaining to the country of importation and a country or countries used for price comparison;
 - (ii) the preshipment inspection entity shall not rely upon the price of goods offered for export to different countries of importation to arbitrarily impose the lowest price upon the shipment;
 - (iii) the preshipment inspection entity shall take into account the specific elements listed in subparagraph (c);
 - (iv) at any stage in the process described above, the preshipment inspection entity shall provide the exporter with an opportunity to explain the price;
- (c) when conducting price verification, preshipment inspection entities shall make appropriate allowances for the terms of the sales contract and generally applicable adjusting factors pertaining to the transaction; these factors shall include but not be limited to the commercial level and quantity of the sale, delivery periods and conditions, price escalation clauses, quality specifications, special design features, special shipping or packing specifications, order size, spot sales, seasonal influences, licence or other intellectual property fees, and services rendered as part of the contract if these are not customarily invoiced separately; they shall also include certain elements relating to the exporter's price, such as the contractual relationship between the exporter and importer;
- (d) the verification of transportation charges shall relate only to the agreed price of the mode of transport in the country of exportation as indicated in the sales contract;
- (e) the following shall not be used for price verification purposes:
 - (i) the selling price in the country of importation of goods produced in such country;
 - (ii) the price of goods for export from a country other than the country of exportation;

- (iii) the cost of production;
- (iv) arbitrary or fictitious prices or values.

Appeals Procedures

21. User Members shall ensure that preshipment inspection entities establish procedures to receive, consider and render decisions concerning grievances raised by exporters, and that information concerning such procedures is made available to exporters in accordance with the provisions of paragraphs 6 and 7. User Members shall ensure that the procedures are developed and maintained in accordance with the following guidelines:

- (a) preshipment inspection entities shall designate one or more officials who shall be available during normal business hours in each city or port in which they maintain a preshipment inspection administrative office to receive, consider and render decisions on exporters' appeals or grievances;
- (b) exporters shall provide in writing to the designated official(s) the facts concerning the specific transaction in question, the nature of the grievance and a suggested solution;
- (c) the designated official(s) shall afford sympathetic consideration to exporters' grievances and shall render a decision as soon as possible after receipt of the documentation referred to in subparagraph (b).

Derogation

22. By derogation to the provisions of Article 2, user Members shall provide that, with the exception of part shipments, shipments whose value is less than a minimum value applicable to such shipments as defined by the user Member shall not be inspected, except in exceptional circumstances. This minimum value shall form part of the information furnished to exporters under the provisions of paragraph 6.

1.2 Uniform Application of PSI

1. The final report on the first review of the PSI Agreement in 1999 included a proposal for a model contract between governments and PSI companies, and noted that the Working Party that conducted the review "broadly supported the aim of the contract on the understanding that it was of a non-binding nature, and that in no way could it affect the rights and obligations of Members under the Agreement. ... the Working Party accepted that governments, in drawing up their own contracts, would also ensure compatibility with the PSI Agreement."¹

1.3 Transparency

2. The Recommendations for immediate action in the PSI Working Party's first report in 1997 included:

"User Members should ensure that PSI entities are encouraged to establish local focal points in countries where they do not have physical, on-site representation. The establishment of websites by IFIA and by PSI entities with on-line services would enhance efficiency of PSI operations in such areas as procedures, methods, inspection criteria, responses to inquiries, and dissemination of other usable, essential information by importers and exporters. In addition to providing hard copies, PSI entities should be encouraged to communicate Clean Reports of Findings (CRFs) to importers and exporters through electronic means."²

¹ [G/L/300](#), para. 11.

² [G/L/214](#), adopted on 10 December 1997, section B, para. 3.

1.4 Protection of Confidential Business Information

3. The Recommendations for immediate action in the PSI Working Party's first report in 1997 also included:

"In furtherance of Articles 2.9-2.13, user Members shall ensure that contracts with PSI entities or national implementing legislation or administrative regulations specify procedures to be undertaken by such entities to limit the confidential business information they seek from exporters to that provided for under the Agreement and to ensure that any such information obtained by PSI entities is not used for any other purpose than PSI activities for the user Members, as defined in Article 1.3. Any breach of the rule of confidentiality by the PSI entity is an action that may be brought against the PSI entity in the appropriate judicial or administrative forum of the user Member."³

4. In the Working Party's final report, in connection with a discussion on the use of price databases by customs administrations as part of risk management and assessment, the Working Party noted that "Where relevant, confidential business information in such databases should be protected."⁴

1.5 Delays

5. The Recommendations for immediate action in the PSI Working Party's first report in 1997 also included:

"User Members shall ensure that PSI entities issue CRFs to importers and exporters immediately on receipt of the final documents and completion of inspection. As foreseen in Article 2.16, in no case must the issuance of a CRF exceed 5 working days after an inspection. In the event that a CRF has not been issued, the user Member shall ensure that the PSI entity issues a detailed written explanation specifying the reasons for non-issuance."⁵

1.6 Conflicts of Interest

6. The Recommendations for immediate action in the PSI Working Party's first report in 1997 also included:

"User Members shall ensure that contracts with PSI entities or national implementing legislation or administrative regulations provide for fee structures that do not create incentives for potential conflicts of interest in any way that may be inconsistent with the objectives of the Agreement. Additionally, contracts with PSI entities or national implementing legislation or administrative regulations shall specify that PSI entities should not inspect transactions involving products in which a PSI entity or its related company may have a commercial interest."⁶

1.7 Price Verification; Relationship between PSI and Customs Valuation

7. The Recommendations for immediate action in the PSI Working Party's first report in 1997 also included:

"Price verification by PSI entities for customs purposes shall be limited to provision of technical advice to facilitate the determination of customs value by the user Member. In this regard, the ultimate responsibility for customs valuation and revenue collection rests with user Members. All activities of PSI entities should be monitored by user Members who should be encouraged to reflect this in national legislation or administrative regulations.

³ [G/L/214](#), section B, para. 5.

⁴ [G/L/300](#), para. 18.

⁵ [G/L/214](#), section B, para. 7.

⁶ [G/L/214](#), section B, para. 6.

In order to ensure compliance with the requirements of Articles 2.5 to 2.8 on transparency, Article 2.1 on non-discrimination and Article 2.20 on price verification, a user Member should require PSI entities to:

- (i) make publicly available a single set of price verification criteria; and
- (ii) inform exporters and importers of the applicable valuation methodology.

Price verification criteria should include the customs valuation methodology, as specified in user Members' national legislation or administrative regulations, used when providing technical advice on customs valuation. In this regard, user Members should encourage PSI entities to utilize electronic means for purposes of providing required information to exporters and importers.

User Members shall ensure that requests for information do not go beyond Articles 2.12 and 2.20 of the Agreement on Preshipment Inspection. Reciprocally, exporter Members should inform user Members when they become aware that PSI entities' requests for information go beyond these Articles.

In conformity with Article 2.21, a user Member shall ensure that the PSI entity, when responding to a dispute on price verification, provides a detailed written explanation within 10 days of receipt of the complaint, setting forth the basis of its opinion of value by reference to the specific applicable elements of the price verification criteria."⁷

8. In the Working Party's final report, in connection with a discussion on the use of price databases by customs administrations as part of risk management and assessment:

"The Working Party agreed that price databases must not be used to determine minimum prices, or applied in a way that is inconsistent with the Agreement on Implementation of Article VII of the GATT 1994 (commonly referred to as the Agreement on Customs Valuation) and in particular the provision contained in Article 7.1 thereof."⁸

9. In 2006, a panel conducting an Independent Review Procedure under Article 4 of the PSI Agreement considered a dispute concerning whether the value of certain services invoiced by an exporter in connection with the export of goods should be included in the customs value of those goods. The panel noted:

"Since 31 May 2002, Mauritania has been under an obligation to apply the provisions of the Agreement on Customs Valuation. The SGS [a preshipment inspection company], as an agent of the Mauritanian authorities and by virtue of footnote 4 to Article 2, paragraph 20, of the Agreement on Preshipment Inspection, is also under an obligation to comply with the WTO Agreement on Customs Valuation."⁹

10. The panel in that case applied provisions of the Agreement on Customs Valuation and guidance from the Technical Committee on Customs Valuation to the facts at issue.

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⁷ [G/L/214](#), section B, para. 1.

⁸ [G/L/300](#), para. 19.

⁹ [G/PSI/IE/R/2](#), para. 23.