GUATEMALA – CEMENT II1
(DS156)

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1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue**: Guatemala’s anti-dumping investigation on certain imports.
- **Product at issue**: Grey Portland cement from Mexico.

2. SUMMARY OF KEY PANEL FINDINGS2

- **ADA Art. 5.3 (initiation of investigation – application) and 5.8 (initiation of investigation – insufficient evidence)**: The Panel found that Guatemala violated Art. 5.3 because the application for the initiation of anti-dumping investigation did not have sufficient evidence of dumping, threat of injury and causal link to justify the initiation of the investigation. The Panel noted that the evidentiary standards of Art. 2 (dumping) and of Art. 3.7 (threat of injury) are relevant to an investigating authorities’ consideration under Art. 5.3. Given that it had already found that there was insufficient evidence to justify initiation under Art. 5.3, the Panel concluded that Guatemala also violated Art. 5.8 by failing to reject such an application.

- **ADA Art. 6.1.2 and 6.4 (evidence – access)**: The Panel found the following violations by Guatemala in relation to evidentiary treatment: (i) Art. 6.1.2 and 6.4 by failing to grant Mexico “regular and routine” access to certain evidence; (ii) Art. 6.1.2 by failing to make evidence available “promptly” (20-day delay); and (iii) Art. 6.4 for failing to provide timely opportunities to see evidence.

- **ADA Art. 6.5 (evidence – confidential information)**: Regarding the confidential treatment given to the petitioner’s submissions, the Panel found an Art. 6.5 violation because there was no record of “good cause” shown by the petitioner and the petitioner did not seem to have requested confidential treatment for the information.

- **ADA Art. 6.9 (evidence – essential facts)**: The Panel found that Guatemala violated Art. 6.9 by failing to inform the parties of the “essential facts” under consideration for its definitive anti-dumping measure.

- **ADA Art. 6.8 and Annex II (evidence – facts available)**: Having found that a Mexican exporter’s refusal to permit verification was reasonable and that “best information available” (“BIA”) should not be used when information is verifiable and can be used in the investigation without undue difficulties, the Panel concluded that Guatemala violated Art. 6.8 by unreasonably using BIA.

- **ADA Art. 3.4 (injury determination – injury factors)**: The Panel found that Guatemala violated Art. 3.4 because it failed to evaluate some injury factors (i.e. return on investments and ability to raise capital) listed in Art. 3.4.

- **DSU Art. 19.1 (Panel and Appellate Body recommendations – suggestion on implementation)**: In light of the pervasiveness and fundamental nature of the violations found in this case, the Panel, under Art. 19.1, specifically recommended that Guatemala revoke its anti-dumping measure. However, Mexico’s request for refund of the anti-dumping duties collected in the past was declined on the grounds that this was a systemic issue beyond the reach of the Panel’s consideration in this case.

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1 Guatemala – Definitive Anti-dumping Measures on Grey Portland Cement from Mexico (The Appellate Body dismissed, based on procedural grounds, Guatemala – Cement I, which dealt with essentially the same measure and claims as those in this case.)

2 Other issues addressed: ADA Arts. 2, 5.5, 5.7, 6.1, 6.2, 6.1.3, 12 (public notice); extension of POI (ADA Arts. 6.1, 6.2 and Annex II(1)); inclusion of non-governmental experts on verification team (ADA Art. 6.7 and Annex I); confidential information (Art. 6); injury and causation (Art. 3); “no prejudice” defence (panel – DSU Art. 3.8); panel composition; standard of review (ADA Art. 17.6 (i)); “harmless error” doctrine.