

GUATEMALA – CEMENT I¹

(DS60)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	Mexico	DSU Art. 6.2 ADA Art. 17.4 (Art. 5)	Establishment of Panel	20 March 1997
			Circulation of Panel Report	19 June 1998
Respondent	Guatemala		Circulation of AB Report	2 November 1998
			Adoption	25 November 1998

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Guatemala's anti-dumping investigation (both the initiation and various decisions and conduct of the Ministry).
- **Product at issue:** Grey Portland cement from Mexico.

2. SUMMARY OF KEY PANEL/AB FINDING

- **DSU Art. 6.2 and ADA Art. 17.4 (requirements of panel request):** The Appellate Body, reversing the Panel, concluded that Mexico had failed to identify in its panel request the “specific measures at issue” in accordance with DSU Art. 6.2 and ADA Art. 17.4, i.e. one of the three measures to be specified in a dispute involving anti-dumping investigations: (i) a definitive anti-dumping duty, (ii) the acceptance of a price undertaking, or (iii) a provisional anti-dumping measure.

According to the Appellate Body, the special dispute settlement rules in the ADA and the DSU provisions together create a “comprehensive, integrated dispute settlement system” rather than the former replacing the more general rules in the DSU as the Panel had erroneously found. The Appellate Body rejected the Panel's reasoning that the term “measure” under DSU Art. 6.2 should be interpreted broadly, and clarified that both identification of “measure” and identification of the alleged “violations” are separately required under DSU Art. 6.2.

Consequently, the Appellate Body found that the dispute was not properly before the Panel (i.e. there was no measure properly within the Panel's terms of reference), and, as such, dismissed the case without further reviewing any substantive issues.²

3. OTHER ISSUES

- **Status of panel's findings:** As a result of the Appellate Body's decision to dismiss the case as summarized above, the Panel's substantive findings (that Guatemala had violated the notification provisions in ADA Art. 5.5 and the substantive requirements for initiation of an anti-dumping investigation in ADA Art. 5.3) became moot.

¹ *Guatemala – Anti-Dumping Investigation Regarding Portland Cement from Mexico*

² After the Appellate Body dismissed this case, Mexico brought the case again (*Guatemala – Cement II*) with a new panel request in which Mexico specified the relevant measure at issue – i.e. the definitive anti-dumping duty. In *Guatemala – Cement II*, the Panel reached the same conclusions regarding initiation as the Panel in *Guatemala – Cement I*, and it also considered other issues raised by Mexico.