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absence of contact details for such interested parties implied that the authority was not able to comply with its notification obligation:

> "We accept that there may be circumstances in which an investigating authority may not have sufficient information to allow it to notify all interested parties known to have an interest in an investigation. In this sense, the fact that an exporter is 'known' by the investigating authority to have an interest in an investigation does not necessarily mean that sufficient details concerning the exporter are 'known' to the investigating authority such that it may make the Article 12.1 notificati

"Article 12.1.1(iv) merely requires that the notice of initiation contain 'a *summary* of the factors on which the *allegation* of injury is based' (emphasis added). It does not require a summary of the *conclusion* of the investigating authority regarding the definition of the relevant domestic industry. Nor does it require a summary of the factors and analysis on which the investigating authority based that conclusion. Still less does it require a summary of the factors and analysis on which the investigating authority based its conclusion regarding exclusion of some producers from consideration as the relevant domestic industry. In other words, in our view, Article 12.1.1 cannot reasonably be read to require that the notice of initiation contain an explanation of the factors underlying, or the investigating authority's conclusion regarding, the definition of the relevant domestic industry."[6]

9. The Panel in *Mexico – Corn Syrup* noted that:

"[A] notice of preliminary or final determination must set forth explanatio

13. The Panel in *EC – Bed Linen* concluded that "[w]e do not believe that Article 12.2.2 requires a Member to explain, in the notice of final determination, aspects of its decision to initiate the investigation in the first place."[10]

14. The Panel in *US – Softwood Lumber VI* saw no point in finding violations of Article 12.2.2 of the Anti-Dumping Agreement or Article 22.5 of the SCM Agreement:

> "Article 22.5 of the SCM Agreement, and Article 22.4 referred to therein, are similar, and the minor textual differences are not relevant to this dispute.
>
> As with its other overarching claims, Canada does not make specific arguments with respect to these claims. Rather, as Canada clarified in response to the Panel's questions, Canada's claims under these provisions are procedural, dealing with the content of the notices, and not with the substantive elements of the underlying USITC determination. Canada specified that the asserted requirement for a 'reasoned and adequate explanations' of the USITC's determination, which it alleges was not provided in this case, did not derive from Articles 12.2.2 and 22.5, but rather from the substantive obligations of Article 3 of the AD Agreement and Article 15 of the SCM Agreement. In our view, Canada's claims under Articles 12.2.2 of the AD Agreement and 22.5 of the SCM Agreement are thus dependent on the disposition of the specific claims of violation.
>
> In evaluating these claims, we note that our conclusions with respect to each of the alleged substantive violations asserted by Canada rest on our examination of the USITC's published determination, which constitutes the notices provided by the United States under Article 12.2.2 of the AD Agreement and Article 22.5 of the SCM Agreement with respect to the injury determination in this case. No additional materials have been cited to us with respect to the determination for consideration in determining whether or not the USITC's determination are consistent with the relevant provisions of the Agreements. Thus, if we find no violation with respect to a particular specific claim, such a conclusion must rest on the USITC's published determination. In this circumstance, it is clear to us that no violation of Articles 12.2.2 and 22.5 could be found to exist in this case, where it is not disputed that the USITC determination accurately reflects the analysis and determination in the investigations. On the other hand, if we find a violation of a specific substantive requirement, the question of whether the notice of the determination is 'sufficient' under Article 12.2.2 of the AD Agreement or Article 22.5 of the SCM Agreement is, in our view, immaterial.
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15. The Panel in *EC – Tube or Pipe Fittings* considered that the findings and conclusions on issues of fact and law which are to be included in the public notices, or separate report, are those considered "material" by the investigating authority:

> "We understand a 'material' issue to be an issue that has arisen in the course of the investigation that must necessarily be resolved in order for the investigating authorities to be able to reach their determination. We observe that the list of topics in Article 12.2.1 is limited to matters associated with the d

> "[W]here there is a substantive inconsistency with the provisions of the AD Agreement, it is neither necessary nor appropriate to consider whether there is a violation of Article 12, as the question of whether the notice of a decision that is inconsistent with a substantive requirement of the AD Agreement is 'sufficient' under Article 12.2.2 is, in our view, immaterial."[15]

19. In *China – GOES*, the Appellate Body stated that the scope of the public notice obligation under Article 12.2.2 should be determined in light of the substantive determinations that an investigating authority has to make in order to impose a definitive anti-dumping measure:

> "Relevant to this dispute is the requirement in Articles 12.2.2 and 22.5 that a public notice contain 'all relevant information' on 'matters of fact' 'which have led to the imposition of final measures'. With regard to 'matters of fact', these provisions do not require authorities to disclose *all* the factual information that is before them, but rather those facts that allow an understanding of the factual basis that led to the imposition of final measures. The inclusion of this information should therefore give a reasoned account of the factual support for an authority's decision to impose final measures. Moreover, we note re3( )u8F0 g0 G[(i)]95res3(e3ct)-MCID note re3( )u8þ2.2

> Dumping Agreement. In the Panel's view, the final determination did not set forth 'all relevant information on matters of fact' or the 'findings é reached on all issues of fact' supporting the conclusion that unknown, indeed non-existent, exporters refused to provide necessary information or otherwise impeded the investigation.
>
> Further, the final determination does not set forth the relevant matters of fact, or the findings and conclusions reached on all issues of fact, leading to the conclusion the 64.8% was the appropriate anti-dumping margin for 'all other' exporters. Although the final determination states that best information available was used, including information submitted by the responding companies, it is now clear that MOFCOM applied *adverse* facts available to calculate the dumping margin. However, there is no indication of this in the final determination and it still remains unclear exactly what factual findings MOFCOM made to support a dumping of margin of 64.8%, which differs markedly from the rate calculated for the two respondent companies.
>
> Consequently, the Panel concludes that MOFCOM did not disclose in 'sufficient detail the findings and conclusions reached on all issues of fact' or 'all relevant information on matters of fact'. Therefore, we find that China acted inconsistently with Articles 12.2 and 12.2.2 of the Anti-Dumping Agreement."[18]

22. In *China – GOES*, the Panel underlined the difference between the disclosure obligation under Article 6.9 and the notice obligation under Article 12.2.2, and pointed out that Article 12.2.2 did not require a second disclosure of the same facts that had been disclosed pursuant to the obligation under Article 6.9:

> "However, in contrast to Articles 12.8 of the SCM Agreement and 6.9 of the Anti-Dumping Agreement, Articles 22.5 and 12.2.2 do not provide that they allow interested parties to 'defend their interests'. Rather, the title to Articles 22 of the SCM Agreement and 12 of the Anti-Dumping Agreement, indicate that they are directed at providing the public with notice of the outcome of an investigation and providing interested parties with an explanation for the outcome reached. Although the explanations may form the basis of a party's request for review of a determination, either in domestic judicial review proceedings or at the WTO, the Panel is not convinced that Articles 22.5 and 12.2.2 necessarily require a second disclosure, this time public, of the same detailed information, such as datasets, that may have required disclosure under Articles 12.8 of the SCM Agreement and 6.9 of the Anti-Dumping Agreement."[19]

23. The Panel in *China – X-Ray Equipment* held that "public" within the meaning of Article 12.2.2 is a broad concept, and underlined the importance of the Article 12.2.2 public notice obligation to interested parties when they were deciding whether to challenge an investigating authority's determination through domestic judicial review mechanisms or WTO dispute settlement:

> "The ability of the public to understand the findings and conclusions of the investigating authority is important, for the concept of 'public' is broad: it includes 'interested parties' within the meaning of Article 6.11 of the Anti-Dumping Agreement and, for example, consumer organizations that might be expected to have an interest in the imposition of anti-dumping measures. Article 13 of the Anti-Dumping Agreement provides for judicial review of the final determinations referred to in Article 12.2.2. In our view, the level of detail of the description of the authority's findings and conclusions must be sufficient to allow the abovementioned entities to assess the conformity of those findings and conclusions with domestic law, and avail themselves of the Article 13 judicial review mechanism where they consider it necessary. In a similar vein, we also consider that the level of detail should be sufficient to allow the relevant exporting Member to ascertain the conformity of the

29. The Panel in *EC – Bed Linen*, after finding a violation of Article 3.4 by the European Communities, found it "neither necessary nor appropriate" to make a finding with respect to a claim of inadequate notice under Article 12.2.2. The Panel held that while a notice may adequately explain the determination that was made, the adequacy of the notice is nevertheless meaningless where the determination was substantively inconsistent with the relevant legal obligations. Furthermore, even if the notice itself was inconsistent with the Anti-Dumping Agreement, such a finding "does not add anything to the finding of violation, the resolution of the dispute before us, or to the understanding of the obligations imposed by the *AD Agreement*."[25]

1.5.3 Article 5

30. The Panel in *Guatemala – Cement II* touched on the relationship between Articles 5.3 and 12.1. See paragraph 3 above.

31. The Panel in *Thailand – H-Beams* compared the notification requirements under Articles 5.5 and 12. See the Section on Article 5 of the Anti-Dumping Agreement.

1.5.4 Article 6

32. The Panel in *Argentina – Ceramic Tiles* referred to Articles 6.5 and Article 12 of the Anti-Dumping Agreement as support for its conclusion that an investigating authority may rely on confidential information in making determinations while respecting its obligation to protect the confidentiality of that information. See the Section on Article 6 of the Anti-Dumping Agreement.

1.5.5 Article 15

33. The Panel in *EC – Tube or Pipe Fittings* considered that while it would certainly be desirable for an investigating authority to set out the steps it has taken with a view to exploring the possibilities for constructive remedies, but that "such exploration is not a matter on which a factual or legal determination must necessarily be made since, at most, it might lead to the imposition of remedies other than anti-dumping duties".[26] The Panel concluded that the elements of Article 15 were not of a "material" nature and thus did not consider that "the European Communities erred by not treating these elements as "material " within the meaning of that term used in Article 12 and [we] thus do not view it as having erred by not having included these in its published final determination".[27]

1.5.6 Article 17

34. In *Thailand – H-Beams*, the Appellate Body referred to Article 12 in interpreting Articles 17.5 and 17.6. See the Section on Article 3 of the Anti-G1 TETQ0.0.92 re3mtTf1 0 0 1 171.98 322.61 Tm0