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1 ARTICLE 22

1.1 Text of A

⁵³, adequate information on the following:
 be given.(1)TJ213 2 0 T4.65387 0 Td ()Tj EMC /P <</MCID290 >>BDC 7.846 -12180 Td ()Tj EMC /P <</MCID390 >>BD
⁵³ Where authorities provide information and explanations under the
 provisions of this Article

sub-

conclusions that should reasonably have been reached for a given substantive claim. Further, the obligation relates to the "issues of fact and law considered material by the investigating authorities". This indicates that the disclosure obligation relates to those issues that an investigating authority subjectively considers material. Therefore, in our view, Article 22.3 is a procedural provision that does not discipline the substantive adequacy of an investigating authority's reasoning. If this were not the case, claims under Article 22.3 may be difficult to distinguish from substantive claims relating to preliminary and final determinations. ³

1.4.2 Relationship with Articles 22.4 and 22.5

5. The Panel in *China – Broiler Products* observed that "the provisions [of Article 22] are inter-related such that compliance with ... Article 22.3 is in part determined by compliance with Articles 22.4 or 22.5." ⁴

6. The Panel in *China – Broiler Products* examined the relationship between Articles 22.3 and 22.5:

"Article 22.3 of the SCM Agreement requires that a public notice be given of any preliminary or final determination, which sets forth, or otherwise makes available through a separate report, in sufficient detail the findings and conclusions reached on all issues of fact and law considered material. Article 22.5 elaborates this requirement by establishing, inter alia

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.

As was pointed out by the Panel in EC – Bed Linen :

'A notice may adequately explain the determination that was made, but if the determination was substantively inconsistent with the relevant legal obligations, the adequacy of the notice is meaningless. Further, in our view, it is meaningless to consider whether the notice of a decision that is substantively inconsistent with the requirements of the AD Agreement is, as a separate matter, insufficient under Article 12.2. A finding that the notice of an inconsistent action is inadequate 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'.⁶

We share the views of the EC – Bed Linen Panel in this respect, and adopt them as our own. In this regard, we note Canada's statement that 'as a practical matter, Canada recognizes that it would be unusual for an injury determination to either satisfy the obligations in Articles 3 and 15 but not Articles 12.2.2 and 22.5 or vice versa' . Canada has made no arguments to suggest that this is such an unusual case. Therefore, we will

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