

**CONDUCT OF VERIFICATIONS (ADA ARTICLE 6.7 &  
ANNEX I AND ASCM ARTICLE 12.6 & ANNEX VI)**

Communication from the United States

The following communication, dated 13 September 2004, is being circulated at the request of the Delegation of the United States.

The submitting delegation has requested that this paper, which was submitted to the Rules Negotiating Group as an informal document (JOB(04)/119), also be circulated as a formal document.

The United States raised in an earlier paper (TN/RL/W/35) the need for clarifications and improvements to Article 6.7 and Annex I of the Antidumping Agreement (ADA) and Article 12.6 and Annex VI of the Agreement on Subsidies and Countervailing Measures (ASCM) with respect to on-the-spot investigations (also referred to by some Members as "verifications"). While the Agreements contain language providing some guidance as to when and how Members are to conduct on-site verifications, the United States believes the Agreements can be improved to provide greater clarity on this important topic.

Although on-site verification is not required under the Agreements, ADA Article 6.7 and ASCM Article 12.6 provide for on-site verifications by the investigating authority, subject to certain notification and consent requirements. On-site verification is an important investigative tool that is beneficial to both the investigating authority and the respondent exporters/producers. On-site verification provides an important means for the investigating authority to confirm the accuracy of much of the information submitted by an exporter/producer.<sup>1</sup> Verification also provides the exporter/producer with an important opportunity to confirm the accuracy of its submissions and clear up any questions or confusion that the investigating authority may have. To effectively achieve these goals, however, a verification must be conducted properly. Without appropriate verification procedures, the process will not aid the investigating authority or the exporter/producer, and may even be counterproductive.

ADA Annex I and ASCM Annex VI contain some general provisions concerning verification procedures, but they do not provide sufficient guidance. This is an important area in the Agreements that should be clarified. Specifically, the United States suggests the following clarifications:

- **Verification Outline:** The Agreements require that an investigating authority provide the firms to be verified and the exporting Member with adequate notice of intent to verify, and to advise the firm as to the "general nature" of the information to be verified and further

<sup>1</sup> Article 6.6 of the ADA and Article 12.5 of the ASCM state that investigating authorities shall satisfy themselves as to the accuracy of the information provided by interested parties.

information that needs to be provided.<sup>2</sup> However, to afford the firm adequate opportunity to prepare for verification, an investigating authority should provide more than just a description of the "general nature" of the information to be verified. Investigating authorities should be required to provide the firm, prior to verification, a detailed outline that identifies the topics that will be covered at verification and describes the types of supporting documentation that will be reviewed. The investigating authority should also be required to provide additional clarification or explanation of the verification outline upon request by the firm. Because a detailed outline of the verification process will ensure adequate opportunity for the firm to prepare, it will enhance the efficiency and effectiveness of the verification and minimize the adverse consequences that may flow from error and confusion.

- **Verification Reports.** ADA Article 6.7 and ASCM Article 12.6 require the investigating authority to make the results of verification "available," or disclose the results pursuant to ADA Article 6.9/ASCM Article 12.8, to the verified firm, and state that the authority may make the results available to the applicants. In the absence of more detailed requirements concerning verification results, Members' practices vary widely. Given the importance of the verification process, the United States believes that the Agreements should explicitly require the investigating authority to issue a written verification report, with any confidential information contained in the report treated in accordance with the provisions contained in Articles 6.5 and 12.4 of the ADA and ASCM, respectively. The verification report should provide sufficient detail to give interested parties a full understanding of the issues and findings addressed during verification, in order to allow them to defend their interests fully. Moreover, knowledge of the results of verification may be essential for an interested party to adequately defend its interests. The United States therefore believes that the Agreements should require that the verification report (or a non-confidential version, as appropriate) is made available to *all* interested parties, within a reasonable time sufficient to provide an adequate opportunity to defend their interests.

Adding more detail to the procedural requirements in ADA Annex I(7) and ASCM Annex VI(7) will promote a more common approach to verification. In addition, however, the Members should explore the possibility of standardizing verification outlines and the structure of verification reports, as suggested in our earlier paper (TN/RL/W/35). This would help to ensure that Members are conducting similar verifications that are designed to obtain the necessary information required to conduct properly a thorough investigation.

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<sup>2</sup> ADA Annex I(7); ASCM Annex VI(7).