

**COLOMBIA – INDICATIVE PRICES AND RESTRICTIONS
ON PORTS OF ENTRY**

Request for the Establishment of a Panel by Panama

The following communication, dated 14 September 2007, from the delegation of Panama to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 12 July 2007, Panama requested consultations with Colombia pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") and Articles 19.1 and 19.2 of the *Agreement on Implementation of Article VII of the GATT 1994* ("Agreement on Customs Valuation") regarding certain Colombian customs measures on the importation of goods from Panama. The request was circulated on 17 July 2007 as document WT/DS366/1, G/L/824, G/VAL/D/9.¹

Panama and Colombia held consultations on the new measures on 31 July 2007. However, no mutually agreed solution was found.

Panama's concerns relate to the Colombian measures as described below.

INDICATIVE PRICES

Colombia establishes indicative prices to determine the value of products for the purpose of levying customs duties and internal taxes. These prices apply to specific goods from all countries except those with which Colombia has signed free trade agreements. These prices are established and applied in accordance with Resolutions No. 07509, No. 07510, No. 07511, No. 07512, No. 07513, and No. 07530 of 26 June 2007 of the Directorate of Taxes and National Customs ("DIAN"), as well as framework legislation such as Colombia's Customs Statute (Decree No. 2685 of 1999, in particular, Titles V and VI), Resolution No. 4240 of 2000 and Colombia's Tax Code (Decree No. 624 of 1989).

Colombia requires that importers of certain goods pay customs duties and other duties or charges and taxes based on the indicative prices, instead of on the valuation methods set out in

¹ On 20 July 2006, Panama had requested consultations with Colombia on similar customs measures (*Colombia – Certain Customs Measures on the Importation of Goods from Panama*, Request for Consultations, 25 July 2006, WT/DS348/1, G/L/782/, G/VAL/D/8). Panama and Colombia had fruitful consultations and were able to arrive at a mutually agreed solution which was notified by Panama pursuant to Article 3.6 of the DSU on 7 December 2006. The present request concerns new measures introduced by Colombia in June 2007 that have effects similar to those measures covered by the mutually agreed solution (Notification of a Mutually Agreed Solution, 7 December 2006, WT/DS348/10, G/L/782/Add.1, G/VAL/D/8/Add.1).

Article VII of the GATT 1994 and the Agreement on Customs Valuation. Panama is challenging the indicative price measures on an "as such" and "as applied" basis.

Under Article 128.5(e) of Colombia's Customs Statute and Article 172.7 of Resolution No. 4240 of 2000, an importer declaring a FOB value that is below the indicative price can obtain the release of merchandise only if it corrects its import declaration to reflect indicative prices and pays customs duties, other duties or charges and relevant taxes on the basis of those indicative prices. Article 115 of Colombia's Customs Statute further provides that if an importer fails to obtain release of the merchandise within the custody period, the merchandise shall be considered as legally abandoned and will eventually become the property of the State.

The operation of Colombia's import regime relating to indicative prices prevents an importer from using the transaction value. As a consequence, customs duties, other duties and charges and relevant taxes are determined on the basis of indicative prices rather than the transaction value. Panama considers that this is inconsistent with Articles 1 to 7 and 13 of the Agreement on Customs Valuation and the General Notes in its Annex 1, as well as Article VII and VIII:1(c) of the GATT 1994. Colombia does not comply with the valuations methods set out in the relevant provisions of the Agreement on Customs Valuation. Instead, Colombia relies on a system which is proscribed by Article 7 of the Agreement on Customs Valuation Agreement, in particular, Article 7.2(b) (the acceptance of the higher of two alternative values), Article 7.2(f) (minimum customs values) and Article 7.2(g) (arbitrary or fictitious values).

Moreover, the tax base for the relevant internal taxes, including the sales tax², on imported products is based on the indicative prices. In contrast, the tax base for the internal taxes, including sales tax, on the like domestic products is based on the transaction value.³ This difference in the determination of the tax base results in treatment less favourable to imports than that accorded to domestic like products, within the meaning of Article III:4 of the GATT 1994. In any case, the difference in the tax bases results in the imposition of a tax burden on imported products that is higher than that borne by the domestic like products, which is inconsistent with Article III:2 of the GATT 1994.

Colombia's customs laws and indicative prices are established and administered in a manner that is not "uniform, impartial and reasonable" and is inconsistent with its obligations under Article X:3(a) of the GATT 1994. In particular, there is no meaningful opportunity afforded to an importer to challenge the valuation of a product as determined by the use of indicative prices prior to the legal abandonment of that product.

RESTRICTIONS ON THE PORTS OF ENTRY INTO COLOMBIA

Resolution No. 07373 of 22 June 2007, as modified by Resolution No. 07673 of 28 June 2007 (the "ports of entry" measures) provides that all goods classifiable under Chapters 50 to 64 of Colombia's Customs Tariff (textile and footwear products) coming from Panama must be entered and imported into Colombia only through specified ports of entry. Such goods, including goods in transit from Panama, must be imported exclusively through the two designated ports: the Special Administration for Customs Service at Bogota and the Special Customs Administration at Barranquilla. This requirement does not apply to goods arriving in Colombia directly from third countries. Furthermore, the import declaration to be used for goods from Panama must be presented in advance of their arrival in Colombia, but not more than 15 days in advance.

² Article 459 of Colombia's Tax Code.

³ Article 447 of Colombia's Tax Code.

If an importer does not comply with these requirements, it will be subject to special procedures under Colombia's Customs Statute, including the detention of goods pursuant to Article 502 of the Statute. In addition, although an importer is normally allowed to correct any discrepancy between the information contained in the import declaration and the merchandise actually imported (through a legalization declaration without the payment of a special fee), with respect to the goods from Panama subject to these restrictions, this possibility is limited only to those cases where there are differences in the weight per square metre or the width of the imported cloth and these differences do not exceed 7% and 10%, respectively.

The ports of entry measures restrict the importation of goods from Panama into Colombia within the meaning of Article XI:1 of the GATT 1994. As they apply only to the importation of goods from Panama, they are inconsistent with the obligations in Article I:1 and Article XIII:1 of the GATT 1994. Furthermore, the ports of entry measures restrict the freedom of transit through the Colombian territory inconsistently with Article V:2 of the GATT 1994. Moreover, the restriction on the ports of entry provides to goods in transit from Panama to Colombia treatment less favourable than that accorded to products transported directly from their place of origin, which is contrary to Article V:6 of the GATT 1994.

Panama considers that the Colombian measures at issue nullify or impair the benefits accruing to Panama under the GATT 1994 and the Customs Valuation Agreement. Pursuant to Article 19.1 of the Agreement on Customs Valuation, and Article 6.2 of the DSU, Panama therefore requests the Dispute Settlement Body ("DSB") to establish a panel with standard terms of reference under Article 7.1 of the DSU in order to examine the matter and measures described above. This request also covers any amendments or extensions to these measures as well as any related acts, practices and implementing measures.

Panama asks that a Special Session of the DSB be convened at the first available date convenient to the Chairman of the DSB.
