

**DOMINICAN REPUBLIC – MEASURES AFFECTING THE IMPORTATION
AND INTERNAL SALE OF CIGARETTES**

Request for the Establishment of a Panel by Honduras

The following communication, dated 8 December 2003, from the Delegation of Honduras to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 8 October 2003, Honduras requested consultations with the Dominican Republic pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (the GATT) concerning certain measures by the Dominican Republic affecting the importation and internal sale of cigarettes. This request was circulated to Members on 13 October 2003 in Document WT/DS302/1, G/L/645. The Dominican Republic and Honduras held consultations in Geneva on 4 November 2003 with a view to reaching a mutually satisfactory solution to this issue. Unfortunately, the consultations failed to settle the dispute.

The specific measures at issue which are of concern to Honduras are the following:

1. The Dominican Republic applies special rules, procedures and administrative practices to determine the value of imported cigarettes for the purpose of applying the Selective Consumption Tax in accordance with Article 367 of its Tax Code, Article 3 of Decree 79-03 - Regulations Governing the Application of Title IV of the Tax Code (the Regulations), and Article I of General Rule 02-96. In certain instances the value of imported cigarettes is considered to be equal to the value of the "nearest similar" product in the domestic market. Honduras considers that these special rules, procedures and administrative practices discriminate against imported cigarettes and therefore violate Article III:2 and Article III:4 of the GATT. Honduras further considers that the failure to establish and apply transparent and generally applicable criteria for determining the value of imported cigarettes, in particular the failure to establish and apply such criteria for the identification of the "nearest similar" product in the domestic market, cannot be reconciled with the requirements set out in Article X:3(a) of the GATT.
2. The Dominican Republic does not publish the surveys conducted by the Central Bank that are to be used according to Article 367 of the Tax Code and Article 3 of the Regulations to determine the value of cigarettes for the purpose of applying the Selective Consumption Tax. Honduras considers that the failure to publish the surveys is inconsistent with Article X:1 of the GATT.
3. The Dominican Republic accords conditions of competition to imported cigarettes that are less favourable than those accorded to domestic cigarettes by requiring, pursuant to Article 37 of the Regulations, Articles 1-3 of Decree 130-02 and Article 3 of Law 858 as amended or corrected by

Laws 190 and 368, that stamps be affixed to cigarette packages in the territory of the Dominican Republic. Honduras considers that this requirement and the related administrative practices violate Article III:4 of the GATT.

4. The Dominican Republic requires importers of cigarettes to post a bond pursuant to Article 14 of the Regulations. This requirement and the laws, regulations and practices implementing this requirement entail costs and administrative burdens hindering the importation of cigarettes and are therefore in the view of Honduras inconsistent with Article II:1(a) and (b) and Article XI:1 of the GATT, or - if they were deemed to be internal measures - inconsistent with Article III:2 and Article III:4 of the GATT.

5. The Dominican Republic levies a transitional surcharge for economic stabilization in accordance with Decrees 646-03 and 693-03, a surcharge which currently amounts to 2 per cent of the c.i.f. value of the imported goods. Honduras considers that the surcharge constitutes a charge imposed on or in connection with importation inconsistent with Article II:1(a) and (b) of the GATT.

6. The Dominican Republic levies a foreign exchange fee in accordance with the Seventeenth Resolution of the Monetary Board dated 24 January 1991 as amended, *inter alia*, by the First Resolution of 27 September 2001, the First Resolution of 20 August 2002, and the First Resolution of 22 October 2003. The fee is currently 10 per cent "calculated on the value of the imports". Honduras considers that this fee constitutes a charge imposed on or in connection with importation which does not meet the requirements laid down in Article II:1(a) and (b) of the GATT. Honduras also considers that the fee constitutes an exchange action frustrating the intent of the provisions of the GATT and that it is therefore inconsistent with Article XV:4 of the GATT.

In view of the above considerations, and in conformity with Articles 4.7 and 6 of the DSU and Article XXIII:2 of the GATT, Honduras hereby requests the Dispute Settlement Body to establish a Panel to examine the matters set forth above.
