

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

Request for Consultations by Honduras

The following communication, dated 8 October 2003, from the Permanent Mission of Honduras to the Permanent Mission of the Dominican Republic and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request the Dominican Republic to consult with Honduras pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes and Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (GATT) on the following matters:

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 the Tax Code of the Dominican Republic, Article 3 of the Regulations Governing the Application of Title IV of the Tax Code (the Regulations), Article I of the General Norm 02-96 and the Single Article of Decree 315-03. 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 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 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

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this requirement entail costs and administrative burdens hindering the importation of cigarettes and are therefore in the view of Honduras inconsistent with the second sentence of Article II:1(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 of 2 per cent of the CIF value of the imported goods in accordance with Decrees 646-03 and 693-03. Honduras considers that the surcharge constitutes a charge imposed on or in connection with importation inconsistent with the second sentence of Article II:1(b) of the GATT.

6. The Dominican Republic levies a foreign exchange fee of 4.75 per cent of the value of the imported merchandise levied in accordance with the resolutions of the Monetary Board dated 24 January 1991, 27 September 2001 and 20 August 2002. Honduras considers that this fee constitutes a charge imposed on or in connection with importation inconsistent with the second sentence of Article II:1(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.

I propose that the consultations be held in Geneva on a date agreed between our missions. I look forward to receiving your reply to this request.
