
**Dispute Settlement Body
19 December 2003**

MINUTES OF MEETING

Held in the Centre William Rappard
on 19 December 2003

Chairman: Mr. Shotaro Oshima (Japan)

1. Dominican Republic – Measures affecting the importation and internal sale of cigarettes

(a) Request for the establishment of a panel by Honduras (WT/DS302/5)

1. The Chairman drew attention to the communication from Honduras contained in document WT/DS302/5.

2. The representative of Honduras said that, in spite of numerous efforts to reach a mutually acceptable solution, his country had no alternative but to request the DSB to establish a panel in order to assert its rights with regard to the importation and internal sale of cigarettes of Honduran origin in the Dominican Republic. As stated in its panel request, circulated in document WT/DS302/5, Honduras considered that the measures at issue in this dispute were clearly inconsistent with a number of basic provisions of the GATT 1994 and had upset the balance of rights and obligations between the Dominican Republic and various WTO Members, Honduras in particular. Without wishing to repeat what had already been stated in detail in its request for the establishment of a panel, Honduras stressed that the measures taken by the Dominican Republic had clearly resulted in the nullification or impairment of benefits for imports of cigarettes of Honduran origin. In the view of Honduras, these measures: (i) discriminated against like domestic and imported cigarettes through the Selective Consumption Tax, in violation of Article III:2 and III:4 as well as Article X:3(a) of the GATT; (ii) failed to provide governments and traders with transparency and predictability regarding commercial tax requirements affecting the marketability sale of cigarettes in the Dominican Republic, in violation of Article X:1 of the GATT; (iii) discriminated against like domestic and imported cigarettes as regards the stamp requirement only in the territory of the Dominican Republic, in violation of Article III:4 of the GATT; (iv) by requiring the posting of bonds for the importation of cigarettes, imposed access barriers to the Dominican market, in violation of Article II:1(a) and (b) and Article XI:1 of the GATT, or alternatively, discriminated against imported cigarettes, in violation of Article III:2 and III:4 of the GATT; and (v) imposed duties or charges different from ordinary customs duties that did not comply with the requirements of Article II:1(a) and (b) of the GATT, and in one case, a charge that was inconsistent with Article XV:4 of the GATT. These measures distorted the conditions of competition for cigarettes of Honduran origin in the Dominican Republic and altered his country's competitive advantages in the area of cigarette production and exports. In view of the above considerations, Honduras hoped that the DSB would agree to its request for the establishment of a panel to examine this matter, with standard terms of reference as set forth in Article 7.1 of the DSU.

3. The representative of the Dominican Republic said that her Government regretted the decision of Honduras to request the establishment of a panel to examine the matter referred to in its request. The Dominican Republic considered that the complaint of Honduras was without foundation in fact or law. In particular, the Dominican Republic wished to repeat what it had stated in the consultations with Honduras held on 4 November 2003, namely, that the measures at issue in the complaint of Honduras were consistent with the provisions and principles of the GATT. Honduras had offered nothing but general assertions suggesting the contrary. The way in which the Dominican Republic determined the value of imported cigarettes for the purpose of applying the Selective Consumption Tax did not give rise to any discrimination between imported cigarettes and domestically produced cigarettes. The Dominican Republic did not afford any protection, in fact or in law, to domestically produced cigarettes. Nor did it grant less favourable treatment to cigarettes imported from Honduras or any other WTO Member. It was, therefore, incorrect to assert that the provisions of the Tax Code of the Dominican Republic, of Decree 79-03 and of General Rule 02-96, violated the most-favoured-nation obligation set forth in Article III:2 and III:4 of the GATT. Honduras had offered nothing, but general assertions to prove the contrary. The Dominican Republic applied its laws, regulations, judicial decisions and administrative provisions concerning the determination of the value of imported cigarettes for the purposes of applying the Selective Consumption Tax in a uniform, impartial and reasonable manner. There were no grounds for asserting that the Dominican Republic violated its obligations under Article X:3 of the GATT. Contrary to what Honduras claimed, the stamp requirements in the Dominican Republic did not establish less favourable conditions of competition for imported cigarettes. All cigarette packages, whatever their origin or place of production, had to comply with the stamp requirement. This requirement was also applied by other WTO Members. Consequently, the statement by Honduras to the effect that Decree 79-03 and Laws 858, 190 and 368 with reference to the stamp requirement violated Article III:4 of the GATT was incorrect. The Dominican Republic, exercising its sovereign right to ensure compliance with fiscal obligations, required that a bond be posted to cover fiscal risk. The bond was required of both the importer and the domestic producer. It was an internal measure which did not give rise to any discrimination between the importer and the domestic producer. In this respect, it was no different from similar measures applied by other WTO Members seeking to ensure compliance with the fiscal obligations of tax payers. The bond requirement did not violate Article III, let alone Articles II and XI of the GATT.

4. The 2 per cent transitional surcharge and the foreign exchange fee of 22 October 2003 were consistent with the Dominican Republic's Schedule of Concessions and with Article II of the GATT. The characterization by Honduras of the foreign exchange fee was incorrect. This measure was not inconsistent with Article XV of the GATT – it was an appropriate response to the country's current macro-economic situation and was consistent with the requirements and guidelines of the International Monetary Fund. Finally, aside from her Government's serious objection to such characterization of her country's legislation and practices in respect of the importation and sale of cigarettes, the Dominican Republic considered that the request of Honduras failed to meet the requirements of Article 6.2 of the DSU. Honduras failed to identify properly the specific measures at issue, with the result that it did not present the problem clearly. This created, for Honduras, a situation of defencelessness. Her country urged Honduras to identify clearly each of the specific measures which it considered to be in violation of the GATT provisions. If Honduras did not make its request more specific in this or another DSB meeting, her delegation would reserve the right to raise this matter in the corresponding panel proceedings so that the panel could rule on this matter accordingly. For these and other reasons, the Dominican Republic could not accept the request by Honduras and, therefore, opposed the establishment of a panel at the present meeting.

5. The representative of Honduras said that, with respect to the procedures, his delegation had noted the statement made by the Dominican Republic. His country disagreed with the Dominican Republic's interpretation of the request by Honduras for the establishment of a panel. It considered that the request presented the problem sufficiently clearly, in accordance with Article 6.2 of the DSU,

and hence it would enable the panel to carry out its functions in a satisfactory manner. His delegation had also taken note of what had been stated by the Dominican Republic with regard to the substance. In his country's view, the violation by the Dominican Republic of a number of basic provisions of the WTO Agreement, and in particular the GATT, was evident. Thus, Honduras disagreed with the views expressed by the Dominican Republic. It considered that, in any case, the establishment of the panel would help to clarify these controversial issues, and it would ultimately be up to the panel to rule on the claims of both parties.

6. The DSB took note of the statements and agreed to revert to this matter.
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