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**COLOMBIA – MEASURES RELATING TO THE IMPORTATION  
OF TEXTILES, APPAREL AND FOOTWEAR**

**RECOURSE TO ARTICLE 21.5 OF THE DSU BY COLOMBIA**

**REQUEST FOR THE ESTABLISHMENT OF A PANEL**

The following communication, dated 9 February 2017, from the delegation of Colombia to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

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On 22 June 2016, the Dispute Settlement Body (DSB) adopted the Appellate Body Report and the Panel Report (as modified by the Appellate Body) in the dispute *Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear* (DS461).

The DSB found, for imports of products classified in Chapters 61, 62, 63 and 64 (except for heading 64.06 but including tariff line 6406.10.00.00) of Colombia's Customs Tariff, that in the instances identified in the Panel Report, the compound tariff exceeded the bound tariff rate in Colombia's Schedule of Concessions, and was therefore inconsistent with Article II:1(a) and (b) of the GATT 1994.<sup>1</sup>

The DSB also found that although the measure at issue was "designed" to protect public morals in Colombia within the meaning of Article XX(a) of the GATT 1994, Colombia had failed to demonstrate that the compound tariff was a measure "necessary to protect public morals" within the meaning of Article XX(a) of the GATT 1994. Similarly, the DSB found that although the measure at issue was "designed" to secure compliance with laws or regulations which are not inconsistent with the GATT 1994, namely, Article 323 of Colombia's Criminal Code, within the meaning of Article XX(d) of the GATT 1994, Colombia had not demonstrated that the compound tariff was a measure "necessary to secure compliance with laws or regulations which are not inconsistent" with the GATT 1994, within the meaning of Article XX(d) of the GATT 1994.

As already communicated to the DSB<sup>2,3</sup> and as explained below, Colombia replaced the compound tariff with an *ad valorem* tariff that does not exceed Colombia's WTO bound tariffs, and in that sense, it has brought the measure subject to the DSB's recommendations into compliance with its WTO obligations. Panama does not agree with Colombia that Decree 1744 replacing the compound tariff is consistent with the covered agreements and brings Colombia into compliance with the GATT 1994. In the circumstances of this dispute, Colombia considers it appropriate to seek recourse to Article 21.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), including wherever possible resort to the original panel, to resolve the disagreement as to compliance.<sup>4</sup>

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<sup>1</sup> Minutes of the DSB Meeting held on 22 June 2016 (WT/DSB/M/380), para. 9.7; Appellate Body Report, *Colombia – Textiles*, paras. 6.3, 6.6, 6.7, 6.9 and 6.10.

<sup>2</sup> Communication from Colombia of 13 December 2016, circulated to the DSB on 15 December 2016 (WT/DS461/15).

<sup>3</sup> Statement by Colombia at the DSB Meeting of 16 December 2016.

<sup>4</sup> See, e.g., Appellate Body Report, *United States – Continued Suspension of Obligations in the EC – Hormones Dispute*, WT/DS320/AB/R, adopted on 14 November 2008, para. 353 ("US – Continued Suspension (AB)").

On 2 November 2016, the Colombian Government issued Decree 1744 of 2016 modifying the tariffs applicable to imports of products classified in Chapters 61, 62 and 63 of the Customs Tariff, and certain items in Chapter 64.

Decree 1744 sets an *ad valorem* MFN tariff of 40% for imports of products classified in Chapters 61 and 62 of the Customs Tariff of the Republic of Colombia when the declared FOB import price is less than or equal to ten (10) US dollars per gross kilogram. This tariff is equal to the bound tariff in Colombia's Schedule LXXVI, Part I – Most-Favoured-Nation Tariff, Section II – Other Products, annexed to the GATT 1994. In cases where the import price for these products exceeds ten (10) US dollars, the MFN tariff will be as provided in Decree 4927 of 2011 or any amending decree, containing the Customs Tariff of the Republic of Colombia, and as such neither of the two mentioned levies will exceed Colombia's bound tariffs.

As regards imports of products classified under tariff headings 6401, 6402, 6403, 6404 and 6405 of the Customs Tariff of the Republic of Colombia, an MFN tariff of 35% *ad valorem* is applied when the declared FOB import price is less than or equal to prices that vary between six (6) US dollars and ten (10) US dollars per pair, in accordance with the said Decree. For imports of products classified under subheading 6406.10.00.00, an MFN tariff of 35% *ad valorem* will be applied when the declared FOB price is less than or equal to five (5) US dollars per gross kilogram. These tariffs are equal to the tariff bound in Colombia's Schedule LXXVI, Part I – Most-Favoured-Nation Tariff, Section II – Other Products, annexed to the GATT 1994. In cases where the import price for these products exceeds the above-mentioned prices, the MFN tariff will be as provided in Decree 4927 of 2011 or any amending decree, and as such neither of the two mentioned levies will exceed Colombia's bound tariffs.

For imports of the other products that were covered by the compound tariffs introduced by Decree 456 of 2014, including the products classified in Chapter 63 of the Customs Tariff and those classified under the headings of Chapter 64 not mentioned above, the applicable tariff, as from 2 November, is the MFN *ad valorem* tariff set forth in Decree 4927 of 2011 or any amending decree, and as such it will not exceed Colombia's bound tariffs.

Colombia and Panama have held extensive consultations on this matter and on Decree 1744<sup>5</sup>, and Colombia remains ready to further discuss the matter with Panama.<sup>6</sup> However, Colombia understands that Panama does not agree that Decree 1744 replacing the compound tariff is consistent with the covered agreements and brings the compound tariff into conformity with the GATT 1994.<sup>7</sup> Panama has not sought the establishment of a compliance panel. On the contrary, today it directly requested the suspension of concessions to Colombia, in spite of the fact we had implemented a compliance measure which was notified to the DSB<sup>8</sup> and all Members effectively amending the measure at issue in this dispute, in conformity with the recommendations and rulings of the DSB and within the period set forth in the award of the arbitrator as the reasonable period of time for implementation. As noted, in the circumstances of this dispute, Colombia accordingly considers it appropriate to seek recourse to Article 21.5 of the DSU, including wherever possible resort to the original panel, to resolve the disagreement as to compliance.<sup>9</sup>

Therefore, as Colombia has brought the compound tariff subject to the DSB's recommendations into compliance with the GATT 1994, prompt findings by the DSB will assist the parties in securing a positive solution to the dispute.<sup>10</sup>

<sup>5</sup> For example, the meeting between the Vice-Ministers of Trade of Colombia and Panama held in Bogota on 8 February 2017, and the constant telephone communication at that level between the capitals.

<sup>6</sup> Today, the Ministers of Foreign Affairs and of Trade of the two countries are meeting in Cartagena to continue consultations on this matter.

<sup>7</sup> In a communication dated 20 January 2017 sent to the Permanent Mission of Colombia to the WTO, Panama stated that there were still concerns regarding Colombia's compliance with the DSB's recommendations and rulings and asked to enter into negotiations with Colombia with a view to developing mutually acceptable compensation pursuant to Article 22.2 of the DSU.

<sup>8</sup> Communication from Colombia dated 13 December 2016, circulated to the DSB on 15 December 2016 (WT/DS461/15).

<sup>9</sup> See, e.g., *US – Continued Suspension (AB)*, para. 353.

<sup>10</sup> Article 3.7 of the DSU ("The aim of the dispute settlement mechanism is to secure a positive solution to a dispute.")

In view of the above, I would be grateful if this request could be included in the DSB's agenda for examination on 20 February 2017.

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