

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

Notification of an Other Appeal by Honduras  
under Article 16.4 and Article 17 of the Understanding on Rules  
and Procedures Governing the Settlement of Disputes (DSU),  
and under Rule 23(1) of the Working Procedures for Appellate Review

The following notification, dated 7 February 2005, from the Delegation of Honduras, is being circulated to Members.

Pursuant to Rule 23 of the Appellate Body's Working Procedures for Appellate Review, Honduras hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report *Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes*, WT/DS302/R, (the "Panel Report") and certain legal interpretations developed by the Panel in that Report.

Honduras seeks appellate review of:

- a) the Panel's findings and conclusion set out in paragraphs 7.291-7.294 that there are tax liabilities in addition to the Selective Consumption Tax that the bond requirement secures;
- b) the Panel's findings and conclusion, set out in paragraphs 7.297-7.301 of the Panel Report, that it was not demonstrated that the fixed amount of the bond accords to imported cigarettes treatment less favourable than that accorded to domestic cigarettes;
- c) the Panel's findings and conclusion, set out in paragraphs 7.306-7.308 of the Panel Report, that the difference in timing of the payment of the Selective Consumption Tax between domestic producers and importers in connection with the bond is not a matter within the Panel's terms of reference; and
- d) the Panel's conclusion, set out in paragraphs 7.310-7.311, that Honduras had failed to establish that the bond requirement accords less favourable treatment to imported cigarettes than that accorded to the like domestic products.

The above findings and conclusions are based on the following legal errors:

- the Panel did not make an objective assessment of the matter before it, namely, Honduras's challenge to the bond requirement on its face, because it examined the "application" of the bond requirement, contrary to Article 11 of the *Understanding on*

*Rules and Procedures Governing the Settlement of Disputes* ("DSU") (paras. 7.291 – 7.294 of the Panel Report);

- the Panel erred in examining the market conditions in the Dominican Republic in order to determine the consistency of the bond requirement with Article III:4 of the *General Agreement on Tariffs and Trade 1994* ("GATT") (paras. 7.297 – 7.301 of the Panel Report);
- the Panel's error was compounded by the fact that the Panel made unsubstantiated assumptions with respect to the per-unit cost of the bond fee for importers, did not determine the per-unit cost of the bond fee for domestic producers and did not make the comparison between the per-unit costs for importers and domestic producers (paras. 7.297 – 7.301 of the Panel Report);
- the Panel erred in its finding that a difference in costs for importers of posting the bond do not alter the conditions of competition in the Dominican Republic's market and, therefore, do not create less favourable treatment for imported products within the meaning of Article III:4 of the GATT (paras. 7.297 – 7.301 of the Panel Report);
- the Panel failed to make a finding that importers face an additional burden compared to domestic producers, even though only importers have to post the bond and pay the Selective Consumption Tax upon importation, which is contrary to the requirement of Article III:4 of the GATT, (paras. 7.292 – 7.294 of the Panel Report); and
- the Panel erred in characterising the difference in timing of the payment of the Selective Consumption Tax in connection with the posting of the bond as a separate claim which was not within the terms of reference of the Panel (paras. 7.306 – 7.308 of the Panel Report).

Honduras requests the Appellate Body to reverse or modify, where appropriate, the findings or conclusions of the Panel. The provisions of the WTO Agreement that Honduras considers the Panel to have erroneously interpreted or applied are Article III:4 of the GATT and Article 11 of the DSU.

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