

**PERU - TAXES ON CIGARETTES**

Request for the Establishment of a Panel by Chile

The following communication, dated 3 May 2001, from the Permanent Mission of Chile to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

I am writing to request the establishment of a panel against the Republic of Peru, in accordance with Articles 4 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), concerning the differential taxation of cigarettes under Supreme Decree No. 158-99-EF.

On 1 March 2001, Chile requested consultations with Peru with a view to reaching a mutually satisfactory solution to this matter. That request was circulated in document WT/DS227/1. The consultations, which were held in Lima, Peru, on 20 April 2001, enabled the parties to gain a better understanding of each other's positions, but unfortunately did not give rise to a mutually satisfactory solution.

Chile's claims are based on the discriminatory treatment established for the taxation of cigarettes under the Supreme Decree in question. Supreme Decree No. 158-99-EF of 25 September 1999 modified certain taxes and fixed amounts in the General Sales Tax and Selective Consumption Tax Law, including the taxes applicable to cigarettes. The new tax system for cigarettes provided in Article 2 of Supreme Decree No. 158-99-EF establishes a different specific tax for each of three categories of cigarettes, with rates ranging from S/0.025 to S/0.100 per unit. The difference in the amount of the tax is based on the number of countries in which the different commercial brands of cigarettes are marketed. Premium cigarettes made of bright tobacco are brands marketed internationally in more than three markets, and are subject to the highest tax rate. Standard cigarettes made of bright tobacco are the bright tobacco cigarettes not included in the previous category, in other words, brands marketed in not more than three markets. These are subject to a tax rate of S/0.050 per cigarette. Lastly, cigarettes made of dark tobacco are subject to the lowest tax rate.

Chile has argued and continues to maintain that this criterion constitutes discrimination against imported cigarettes, for example from Chile, which are subject to a higher tax because they are marketed in more than three markets. This state of affairs causes injury to Chilean exporters of cigarettes to Peru.

Chile considers that this differential tax treatment of cigarettes constitutes an infringement of the provisions of the General Agreement on Tariffs and Trade 1994, in particular, but not exclusively, Article III.2 including the interpretative note thereto in Annex I of the General Agreement.

Accordingly, the Republic of Chile requests the establishment of a panel with the standard terms of reference set out in Article 7 of the DSU. To that end, I should be grateful if this request could be included in the agenda for the next meeting of the Dispute Settlement Body.

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