

PANAMA – TARIFF CLASSIFICATION OF CERTAIN MILK PRODUCTS

Request for Consultations by Mexico

The following communication, dated 16 March 2005, from the delegation of Mexico to the delegation of Panama and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

Mexico requests consultations with the Government of Panama pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes and Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994) in relation to the following measure adopted by Panama:

- Cabinet Decree No. 20 of 17 July 2002 creating new tariff items under the National Import Tariff, published in the *Gaceta Oficial de Panamá* (Official Journal) of 22 July 2002.

By this Decree, Panama eliminated from its National Import Tariff item 1901.10.10 (modified milk) to which, under its WTO Schedule of Concessions, a bound import tariff of 5 per cent applied. At the same time, it created two new tariff items: 1901.10.11 (infant milk formula) with an import tariff of 0 per cent, and 1901.10.19 (other) with an import tariff of 65 per cent.

In Mexico's view, the above measure may violate the obligations of Panama under the Marrakesh Agreement Establishing the WTO, including the agreements annexed thereto, and could lead to the nullification or impairment of benefits accruing directly or indirectly to Mexico under that Agreement. In particular, Mexico considers that the Panamanian measure could be inconsistent with the following provisions:

- Article II of the GATT 1994 and Article 4 of the Agreement on Agriculture because, *inter alia*, Panama is applying an import tariff to modified milk other than infant milk formula (under tariff item 1901.10.19) that is higher than the tariff bound in its Schedule of Concessions;
- Article XXVIII of the GATT 1994 because, *inter alia*, Panama unilaterally modified its Schedule of Concessions by making a change to its National Import Tariff without following the procedure for the modification of schedules stipulated in that article; and

- Article I of the GATT 1994 because, *inter alia*, Panama granted a tariff advantage to infant milk formula (under tariff item 1901.10.11) that it did not accord immediately and unconditionally to modified milk originating in Mexico.

Moreover, the application of this measure by Panama nullifies or impairs, within the meaning of Article XXIII(1)(b) of the GATT 1994, the tariff concessions granted by Panama to Mexico for modified milk (a bound tariff of 5 per cent) as a result of its accession to the WTO.

Mexico reserves the right to raise further factual and legal claims during the course of the consultations. It looks forward to receiving the Government of Panama's reply in order to set a mutually convenient date for the consultations.
