

**MEXICO – TAX MEASURES ON SOFT DRINKS
AND OTHER BEVERAGES**

Request for the Establishment of a Panel by the United States

The following communication, dated 10 June 2004, from the delegation of the United States to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

The United States considers that certain tax measures of the Government of Mexico on soft drinks and other beverages as well as on syrups, concentrates, powders, essences or extracts that can be diluted to produce such products (hereinafter "beverages and syrups") that use any sweetener other than cane sugar are inconsistent with Mexico's commitments and obligations under the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"). Those measures include:

- (1) Law on the Special Tax on Production and Services (*Ley del Impuesto Especial sobre Producción y Servicios* or "IEPS") published on 1 January 2002 and its subsequent amendments published on 30 December 2002 and 31 December 2003¹; and
- (2) any related or implementing measures, including the *Reglamento de la Ley del Impuesto Especial sobre Producción y Servicios* published on 15 May 1990, the *Resolucion Miscelanea Fiscal Para 2004* (Title 6) published on 30 April 2004, and the *Resolucion Miscelanea Fiscal Para 2003* (Title 6) published on 31 March 2003 which identify, *inter alia*, details on the scope, calculation, payment and bookkeeping and recording requirements of the IEPS.

Mexico's tax measures impose a 20 per cent tax on beverages and syrups that use sweeteners other than cane sugar. Mexico's tax measures also impose a 20 per cent tax on services related to the transfer of beverages and syrups, including the commissioning, mediation, agency, representation, brokerage, consignment and distribution of such products. Beverages and syrups sweetened only with cane sugar, and services related to their transfer, are not subject to these measures.

Mexico's tax measures also impose several bookkeeping and reporting requirements on beverages and syrups, and services related to the transfer of such products, that are not similarly imposed on beverages and syrups sweetened only with cane sugar, or on services related to the transfer of beverages and syrups sweetened only with cane sugar.

¹ *Ley del Impuesto Especial sobre Producción y Servicios* (1 Jan. 2002); *Se Reforman Y Adicionan Diversas Disposiciones de la Ley del Impuesto Especial sobre Producción y Servicios*, (30 Dec. 2002); *Se Reforman, Adicionan y Derogan Diversas Disposiciones de la Ley Del Impuesto Al Valor Agregado, de la Ley Del Impuesto Sobre La Renta, de la Ley Del Impuesto Especial Sobre Producción y Servicios, de la Ley Del Impuesto Sobre Tenencia o Uso De Vehículos, de la Ley Federal Del Impuesto Sobre Automóviles Nuevos y de la Ley Federal De Derechos* (31 Dec. 2003); *Ley del Impuesto Especial sobre Producción y Servicios* (31 Dec. 2003).

The United States considers that Mexico's tax measures discriminate against imported sweeteners other than cane sugar (including high-fructose corn syrup ("HFCS")), and imported beverages and syrups made with such sweeteners, because Mexico's tax measures do not apply to cane sugar, or beverages and syrups made solely with cane sugar. The United States considers imported sweeteners other than cane sugar, and imported beverages and syrups made with such sweeteners, including HFCS and beverages and syrups made with HFCS, to be like and directly competitive or substitutable with Mexican cane sugar and beverages and syrups made with Mexican cane sugar.

The United States considers that Mexico's tax measures are inconsistent with Mexico's obligations under Article III of the GATT 1994. In particular, Mexico's tax measures appear to be inconsistent with Article III:2, first and second sentences, and Article III:4 of the GATT 1994.

On 16 March 2004, the United States requested consultations with the Government of Mexico pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Article XXII:1 of the GATT 1994 concerning Mexico's tax measures on beverages and syrups, and services related to the transfer of such products. The United States held consultations with Mexico on these measures in Geneva on 13 May 2004. Unfortunately, these consultations did not resolve the dispute.

Accordingly, the United States respectfully requests the Dispute Settlement Body to establish a panel pursuant to Article 6 of the DSU to examine this matter with standard terms of reference as set out in Article 7.1 of the DSU.
