



10 February 2017

(17-0847)

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Original: Spanish

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

RECOURSE TO ARTICLE 22.2 OF THE DSU BY PANAMA

The following communication, dated 9 February 2017, from the delegation of Panama to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

Pursuant to Article 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Panama requests authorization from the Dispute Settlement Body (DSB) to suspend the application to Colombia of concessions or other obligations in the amount of US\$210,000,000 (two hundred and ten million United States dollars). This level of suspension is equivalent to the level of nullification or impairment of benefits accruing to Panama, resulting from Colombia's failure, as of 22 January 2017, to bring its measure into conformity with WTO law, in particular with the General Agreement on Tariffs and Trade 1994 (GATT 1994), and its failure otherwise to comply with the recommendations and rulings of the DSB in *Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear*.

Failure by Colombia to comply with the recommendations and rulings of the DSB

On 25 September 2013, the DSB established a panel at the request of Panama to examine the compound tariff imposed by Colombia on imports of textile and footwear products. In examining this matter, both the Panel and the Appellate Body found that the measure violated the GATT. On 22 June 2016, the DSB adopted the report of the Panel, as modified by the Appellate Body, recommending that Colombia bring the measure at issue into conformity with the GATT (WT/DS461/AB/R, paragraph 6.12; WT/DS461/R, paragraph 8.10). A WTO-appointed arbitrator subsequently determined that the "reasonable period of time" for Colombia to implement the DSB recommendations and rulings would expire on 22 January 2017.

On 2 November 2016, Colombia adopted two decrees that affect the tariff and customs regime for the importation of textiles and footwear. In Panama's view, however, these legislative acts, far from bringing the measure into conformity with Colombia's WTO obligations, perpetuate the nullification and impairment of benefits accruing to Panama directly or indirectly under the GATT 1994.

Recourse by Panama to Article 22.2 of the DSU

Article 22.1 of the DSU provides that "full implementation" of the recommendations and rulings of the DSB is the preferred conclusion to a dispute. In the event that implementation is not achieved within the established "reasonable period of time", the parties to a dispute may attempt to negotiate mutually acceptable compensation, or the prevailing party may be authorized by the DSB to suspend concessions and obligations. Article 22.2 of the DSB provides that if no satisfactory compensation has been agreed within 20 days after the date of expiry of the "reasonable period of time", a prevailing party may request authorization from the DSB to suspend the application of concessions and obligations to the party that has failed to implement the DSB recommendations and rulings. Article 22.6 requires the DSB to grant such authorization within 30 days of the expiry of that period, unless there is consensus to reject the request.

Colombia's failure to bring its measure into conformity with its WTO obligations by complying with the recommendations and rulings of the DSB in this matter results in a loss for Panama of US\$210,000,000 (two hundred and ten million United States dollars) worth of exports of textile and footwear products. In accordance with the schedule established in Article 22.2 of the DSU, Panama requests authorization from the DSB, at its meeting of 20 February 2017, to suspend the application to Colombia of concessions or other obligations covering trade in the amount of US\$210,000,000 (two hundred and ten million United States dollars).

In considering what concessions or other obligations to suspend, Panama applied the principles and procedures set forth in Article 22.3 of the DSU, and makes this request pursuant to Article 22.3(c). The request is based on the fact that for Panama, the suspension of concessions or other obligations only with respect to the goods sector would be problematic. In Panama's view, a measure of this kind would affect sensitive sectors of the Panamanian economy that need Colombian imports, including the energy, agriculture, health and construction sectors, which account for a considerable share of Panama's gross domestic product.

Considering that the circumstances are sufficiently serious, and that it is not practicable or effective to suspend concessions or other obligations with respect to the goods sector only, Panama requests authorization by the DSB to suspend concessions or other obligations under the Multilateral Agreements on Trade in Goods, the General Agreement on Trade in Services, and the Agreement on Trade-Related Aspects of Intellectual Property Rights.

As required by Article 22.4 of the DSU, the level of suspension proposed is equivalent on an annual basis to the nullification or impairment of benefits accruing to Panama, resulting from Colombia's failure to comply with the DSB's recommendations and rulings.

Panama asks that this request for authorization to suspend concessions or other obligations be included in the agenda of the meeting scheduled for 20 February 2017.
