

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

Notification of an Appeal by the Dominican Republic  
under Article 16.4 and Article 17 of the Understanding on Rules  
and Procedures Governing the Settlement of Disputes (DSU),  
and under Rule 20(1) of the Working Procedures for Appellate Review

The following notification, dated 24 January 2005 , from the Delegation of the Dominican Republic, is being circulated to Members.

Pursuant to Articles 16.4 and 17.4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 20 of the Working Procedures for Appellate Review, the Dominican Republic appeals certain issues of law and legal interpretation in the Panel Report in *Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes* (WT/DS302/R).

1. The Dominican Republic believes that the Panel committed legal error in paragraphs 7.232, 7.233, and 8.1(e) of the Panel Report, by concluding that the Dominican Republic's "tax stamp requirement" (Article 37 of Decree 79-03 of 4 February 2003 and Decree 130-02 of 11 February 2002) is not justified under Article XX(d) of the GATT 1994.
  - a. The Panel erred in interpreting and applying the term "necessary" in Article XX(d). In this regard, the Dominican Republic intends to make arguments relating to the Panel's reasoning in, *inter alia*, paragraphs 7.213-7.230 of the Panel Report.
  - b. The Panel failed to make an objective assessment of the facts of the case, inconsistent with its duty under Article 11 of the DSU, by exceeding the bounds of its discretion in examining evidence submitted by the Dominican Republic regarding tax evasion, smuggling, and forgery of tax stamps. The Panel also failed to make an objective assessment of the facts regarding the lack of reasonably available alternative instruments. In this regard, the Dominican Republic intends to make arguments relating to the Panel's reasoning in, *inter alia*, paragraphs 7.221-7.226 and 7.228-7.229 of the Panel Report.
2. In the event that the Appellate Body reverses the Panel's conclusion that the tax stamp requirement is not justified under paragraph (d) of Article XX of the GATT 1994, the Dominican Republic requests that the Appellate Body complete the legal analysis under Article XX of the GATT 1994.

The provisions of the covered agreements that the Dominican Republic considers to have been erroneously interpreted or applied by the Panel include Article XX(d) of the GATT 1994 and Article 11 of the DSU.