

**COLOMBIA – INDICATIVE PRICES AND RESTRICTIONS
ON PORTS OF ENTRY**

Request for Consultations by Panama

The following communication, dated 12 July 2007, from the delegation of Panama to the delegation of Colombia and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with Colombia, pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") and Article 19.1 and 19.2 of the *Agreement on Implementation of Article VII of the GATT 1994* ("Agreement on Customs Valuation") with respect to newly enacted Colombian customs regulations on the importation of certain goods from Panama.

By way of background, on 20 July 2006, Panama requested consultations with Colombia on the indicative prices for customs valuation purposes for certain goods that originate in and/or are imported from Panama that resulted in the determination and payment of customs duties and other duties or charges and taxes based on those prices, and not on the valuation methods set out in the Agreement on Customs Valuation. Panama considered that the import regime based on indicative prices was inconsistent with Colombia's obligations under Articles 1 to 7 and 13 of the Agreement on Customs Valuation and the General Notes in its Annex I, as well as under Articles XI:1, XIII:1, II:1(a), II:1(b), X:1, X:3(a) and I:1 of the GATT 1994.

Furthermore, Panama also requested consultations with Colombia on the requirement that all goods coming from Panama falling under Chapters 50 to 64 of Colombia's Customs Tariff (textile and footwear products) had to enter Colombia only through two designated ports: the Special Administration for Customs Service at El Dorado Airport and the Special Customs Administration at Barranquilla (the "restrictions on the ports of entry"). Panama considered that this restriction on the ports of entry was inconsistent with Colombia's obligations under Articles XI:1, XIII:1, V:6 and I:1 of the GATT 1994. This request was circulated to Members on 25 July 2006 as document WT/DS348/1, G/L/782, G/VAL/D/8.

Following fruitful consultations on this matter, Panama and Colombia reached an agreement that involved Colombia's repeal on 1 November 2006 of the resolutions cited in the request for consultations. Accordingly, pursuant to Article 3.6 of the DSU, on 1 December 2006, Panama notified the Dispute Settlement Body that Panama and Colombia had reached a mutually agreed solution on the issues raised by Panama in its request for consultations.

To Panama's consternation and surprise, however, 8 months after Colombia repealed these resolutions in accordance with the terms of the mutually agreed solution, Colombia has now reintroduced similar requirements with respect to indicative prices and restrictions on the ports of entry.

I. INDICATIVE PRICES

Indicative prices apply to specific goods from all countries except those with which Colombia has signed free trade agreements. The National Directorate of Taxes and National Customs ("DIAN") resolutions establishing the mechanism of indicative prices are Resolutions No. 07509, No. 07510, No. 07511, No. 07512, No. 07513, as well as No. 07530 of 26 June 2007, and any other related acts, amendments, or extensions – including related legislative acts such as Colombia's Customs Code (Decree No. 2685 of 1999) in particular Titles V and VI, its Regulations (Resolution No. 4240 of 2000) and Colombia's Tax Code (Decreto 624 de 1999) – or any related practices.

Colombia requires that importers of specific goods pay customs duties and other duties or charges and taxes based on the indicative prices, rather than on the valuation methods set out in Article VII of the GATT 1994 and the Agreement on Customs Valuation. Panama is challenging the indicative price measures on an "as such" and "as applied" basis.

Under Article 128.5(e) of Colombia's Customs Code and Article 172.7 of its Regulations, an importer declaring a FOB value that is below the indicative price can only obtain the release of its merchandise if it corrects its import declaration to reflect indicative prices and pays customs duties and other duties or charges on the basis of the indicative prices. Article 115 of Colombia's Customs Code further provides that if an importer refuses to correct its declaration in this manner and thus fails to obtain the release of the merchandise within the custody period, the merchandise shall be considered as legally abandoned.

The effect of these provisions is that an importer cannot declare the transaction value but must instead declare the indicative price as the customs value. As a consequence, duties and charges are assessed on the basis of indicative prices rather than the transaction value. Panama considers that this is inconsistent with Articles 1 to 7 and 13 of the Agreement on Customs Valuation and the General Notes in its Annex 1, as well as Article VII of the GATT 1994.

Colombia's imposition of indicative prices as the basis for the calculation of customs duties is likely to result in various instances in the imposition of customs duties in excess of the bound rates of duty specified in Colombia's schedule. Panama considers that this imposition of duties in excess of bound rates would be inconsistent with Colombia's obligations under Article II:1(a) and (b) of the GATT 1994.

Moreover, the tax base for the sales tax on imported products is based on the indicative price.¹ In contrast, the tax base for the sales tax on the like domestic products is based on the transaction value.² The difference in tax bases results in the imposition of a sales tax burden on imported products higher than that borne by the domestic like products, which is inconsistent with Article III:2 of the GATT 1994. In the alternative, this difference results in treatment less favourable to imports than that accorded to domestic like products, within the meaning of Article III:4 of the GATT 1994.

¹ Article 459 of Colombia's Tax Code.

² Article 447 of Colombia's Tax Code.

Colombia has not published the methodology for the establishment of the indicative prices. Panama considers that this is inconsistent with Colombia's obligations under Article X:1 of the GATT 1994. Moreover, Colombia's administration of its customs laws and the indicative prices is conducted in a manner that is inconsistent with its obligations under Article X:3(a) of the GATT 1994.

II. RESTRICTIONS ON THE PORTS OF ENTRY INTO COLOMBIA

Resolution No. 07373 of 22 June 2007 provides that all goods classifiable in Chapters 50 to 64 of the Customs Tariff coming from the Free Zone of Colon in Panama shall be entered and imported exclusively through the jurisdictions of the Special Customs Administration of Bogota and the Barranquilla Customs Office. This requirement does not apply to goods arriving directly from third countries. The regulation provides that with respect to these goods, the authorization of the customs transit procedure will not be appropriate. Furthermore, the import declaration applicable to these imports shall be presented prior to their arrival in the national customs territory but not more than 15 days in advance. If an importer does not comply with these requirements, it is subject to special procedures under Colombia's Customs Code, including the detention of goods pursuant to Article 502 of that Code. In addition, while an importer is normally allowed to correct any discrepancy between the declaration and the merchandise actually imported (through a legalization declaration without the payment of a rescue fee), the regulation limits this possibility only to situations where there are differences in the weight per square metre or the width of the cloth and these do not exceed 7% and 10%, respectively.

Panama considers that these restrictions, imposed pursuant to the Resolution No. 07373 as well as any other related acts, amendments, extensions, including the relevant provisions of Colombia's Customs Code and its Regulations, or any related practices, are inconsistent with Colombia's obligations pursuant to Articles XI:1, XIII:1, V:2, V:6 and I:1 of the GATT 1994.

Given that the measures at issue are adversely affecting the entry of Panamanian goods into Colombia during the busiest period of end-of-year sales, Panama requests to hold consultations within the time-frame set out in Article 4.8 of the DSU for cases of urgency, that is, within 10 days of receipt of this request for consultations.

My authorities look forward to receiving your reply to this request. I propose that the date and venue of the consultations be agreed between our missions.
