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

### REQUEST FOR CONSULTATIONS BY PANAMA

The following communication, dated 18 June 2013, from the delegation of Panama to the delegation of Colombia and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

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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) and Article XXII of the *General Agreement on Tariffs and Trade 1994* (GATT 1994) with respect to the imposition by Colombia of a compound tariff affecting the importation of textiles, apparel and footwear from Panama.

Pursuant to Article 4.4 of the DSU, I shall proceed to describe the reasons for this request, including identification of the measure at issue and an indication of the legal basis for the complaints.

#### 1 IDENTIFICATION OF THE MEASURE AT ISSUE

The measure at issue is a compound tariff that Colombia has imposed by Decree of the President of the Republic No. 074 of 23 January 2013 (Decree 074/2013) on the importation of certain textiles, apparel and footwear. It is Panama's understanding that the compound tariff has the following characteristics:

- (i) It is composed of an *ad valorem* levy, expressed as a percentage of the customs value of the goods, and a specific levy, expressed in units of currency per unit of measurement, applied simultaneously at the time of importation.<sup>1</sup>
- (ii) It is applied to the products classified in Chapters 61, 62, 63, and 64 ("affected products") of Colombia's Tariff Schedule.<sup>2</sup>

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<sup>1</sup> Articles 1 and 2 of Decree 074/2013. The second preambular clause points out that the measure takes the form of "mixed tariffs composed of an *ad valorem* tariff and a specific tariff applied simultaneously to imports of the [affected] products".

<sup>2</sup> The Tariff Schedule was adopted by Decree of the President of the Republic No. 4297 of 26 December 2011 (Decree 4297/2011). According to the Tariff Schedule nomenclature, Chapter 61 includes "articles of apparel and clothing accessories, knitted or crocheted"; Chapter 62 includes "articles of apparel and clothing accessories not knitted or crocheted"; Chapter 63 includes "other made up textile articles; sets; worn clothing and worn textile articles; rags"; and Chapter 64 includes "footwear, gaiters and the like; parts of such articles".

- (iii) With respect to the products classified in Chapters 61, 62 and 63 and heading 64.06<sup>3</sup>, the amount is equal to 10% of the customs value of the goods, plus five US dollars (US\$) per gross kilo.<sup>4</sup>
- (iv) With respect to the products classified in Chapter 64, with the exception of heading 64.06, the amount is equal to 10% of the customs value of the goods plus US\$5 per pair.<sup>5</sup>
- (v) It is in force for a period of one year, starting on 1 March 2013.<sup>6</sup>
- (vi) It does not apply to imports originating in the countries with which Colombia has free trade agreements in force.<sup>7</sup>
- (vii) The specific levy of US\$5 per gross kilo or per pair (as appropriate) is included in the tax base for the value added tax (VAT).<sup>8</sup>

Panama understands the measure at issue to be contained in: (i) Decree 074/2013; (ii) Decree 1497/2011 as regards the definition of the products covered by the nomenclature of Chapters 61, 62, 63 and 64 of the Tariff Schedule; (iii) Memorandum No. 000165 of 30 April 2013 from the Customs Management Department of the Directorate of National Taxes and Customs on "measures to control compliance with Decree 074 of 2013".

Panama hopes that Colombia will be able to provide a full and detailed explanation concerning the duration, scope and operation of the compound tariff. In order to facilitate this type of explanation, Panama specifies that it is requesting these consultations concerning the compound tariff as contemplated in the aforementioned legal instruments, as well as with respect to any other regulation, instruction, administrative or judicial practice, method of determination or calculation, or guideline amending, supplementing, complementing, developing, or in any case relating to the regulatory instruments expressly referred to in this request for consultations

## 2 LEGAL BASIS FOR THE COMPLAINT

In Panama's view, the compound tariff would appear to be inconsistent with Colombia's obligations under the Agreement Establishing the World Trade Organization (WTO Agreement), and in particular:

- (i) with the first sentence of Article II:1(b) of the GATT 1994, since the compound tariff is an ordinary customs duty whose application results in the imposition of levies in excess of those resulting from the application of the *ad valorem* tariff bound in Colombia's Schedule of Concessions;
- (ii) with Article II:1(a) of the GATT 1994, to the extent that, in the light of the above, the measure would appear to accord the affected imports treatment less favourable than that provided for in Colombia's Schedule of Concessions;

<sup>3</sup> According to Decree 4297/2011, heading 64.06 includes "parts of footwear (including uppers whether or not attached to soles other than outer soles); removable in-soles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof."

<sup>4</sup> Articles 1 and 2 of Decree 074/2013.

<sup>5</sup> Article 2 of Decree 074/2013.

<sup>6</sup> Article 3 of Decree 074/2013, in relation to Article 5 of Decree No. 074/2013.

<sup>7</sup> Paragraph 1 of Article 3 of Decree 074/2013.

<sup>8</sup> Paragraph 2 of Article 3 of Decree 074/2013.

- (iii) with the second sentence of Article II:1(b) of the GATT 1994 should the specific levy of US\$5 per gross kilo or per pair (as appropriate) be considered to be a duty or charge other than an ordinary customs duty, since it was not in force on 15 April 1994<sup>9</sup>, nor does it appear to have been required on that date by any mandatory provision of Colombian law; and in this case, with paragraphs 1, 2, 3 and 4 of the Understanding on the Interpretation of Article II:1(b) of the GATT 1994, since Colombia did not record this levy in its Schedule of Concessions;
- (iv) with Article VIII:1(a) of the GATT 1994, should the specific levy of US\$5 per gross kilo or per pair (as appropriate) be considered to be a duty or charge for services rendered upon importation, since there appears to be no link between the specific amount of US\$5 and the "approximate cost" of any service rendered.

Panama advises that these consultations might give rise to other matters having legal implications that are not expressly stated in this request but relate to other obligations of Colombia under the WTO Agreement, in particular obligations relating to the administration in a uniform, impartial and reasonable manner of measures that affect international trade in goods, as set forth in Article X:3(a) of the GATT 1994. With a view to facilitating a wide ranging exchange of views, Panama notes that, if such were to be the case, these matters would also be covered by the scope of this request for consultations.

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I look forward to your reply to this request for consultations. I propose that they be held in Geneva within the time-frame set forth in the DSU for that purpose.

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<sup>9</sup> Relevant date for recording the "other duties and charges" under paragraph 2 of the Understanding on the Interpretation of Article II:1(b) of the General Agreement on Tariffs and Trade 1994.