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

### REQUEST FOR THE ESTABLISHMENT OF A PANEL BY PANAMA

The following communication, dated 19 August 2013, from the delegation of Panama to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 18 June 2013, Panama requested 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.

The consultations took place in Geneva on 24 July 2013. Unfortunately, these consultations failed to resolve the dispute. Consequently, pursuant to Articles 4.7 and 6 of the DSU and Article XXIII:2 of the GATT 1994, Panama requests the Dispute Settlement Body (DSB) to establish a panel in light of the measure and the legal complaint set out below.

#### I. 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. The compound tariff has the following characteristics:

- 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>;
- it is applied to the products classified in Chapters 61, 62, 63 and 64 ("affected products") of Colombia's Customs Tariff (Decree 4297/2011)<sup>2</sup>;
- with respect to the products classified in Chapters 61, 62 and 63 and under 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>;

<sup>1</sup> Articles 1 and 2 of Decree No. 0074/2013. The second preambular paragraph specifies 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 list of products covered by Colombia's Customs Tariff is contained in Decree of the President of the Republic No. 4297 of 26 December 2011 (Decree 4297/2011). According to the Customs Tariff nomenclature, Chapter 61 includes "articles of apparel and clothing accessories, knitted or crocheted"; Chapter 62 includes "articles of apparel and clothing accessories not knitted and crocheted"; Chapter 63 includes "other made up textile articles; sets; worn clothing and worn textile articles"; and Chapter 64 includes "footwear, gaiters and the like; parts of such articles".

<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; leggings and similar articles, and parts thereof".

- 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>;
- it is in force for a period of one year, starting on 1 March 2013<sup>6</sup>;
- it does not apply to imports originating in the countries with which Colombia has free trade agreements in force<sup>7</sup>;
- the specific levy of US\$5 per gross kilo/pair is included in the tax base for the value added tax (VAT)<sup>8</sup>;
- compliance is controlled in customs at the time of importation of the affected products, in accordance with 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" (Memorandum No. 000165).

Panama understands that this measure is contained in the following rules:

- (i) Decree 074/2013
- (ii) Decree 4297/2011 of 26 December 2011 as regards the definition of the products covered by the nomenclature of Chapters 61, 62, 63 and 64 of the Colombian Customs Tariff; and
- (iii) Memorandum No. 000165 as regards measures of compliance, customs control and administration under Decree 074/2013 and the compound tariff.

## II. LEGAL COMPLAINT

The measure at issue is inconsistent with Colombia's obligations under the *Agreement Establishing the World Trade Organization* (WTO Agreement). In particular, the measure displays the following inconsistencies:

- (i) The compound tariff imposed by Colombia is an ordinary customs duty. The application of that compound tariff to imports of the affected products results in the imposition of levies, the percentage equivalent of which is greater than the bound *ad valorem* tariff in Colombia's Schedule of Concessions. Consequently, in Panama's view, the measure in question is inconsistent with the first sentence of Article II:1(b) of the GATT 1994, since it subjects the affected products to ordinary customs duties in excess of the levels bound in Colombia's Schedule for such products.
- (ii) To the extent that the compound tariff imposed on the affected products exceeds the bound tariff levels established in Colombia's Schedule, Colombia accords to the commerce of other Members, in respect of the affected products, treatment less favourable than that provided for in its Schedule of Concessions, and therefore acts in a manner inconsistent with Article II:1(a) of the GATT 1994.
- (iii) If the specific levy of US\$5 per gross kilo/pair were to be characterized as a duty or charge other than an ordinary customs duty, Panama maintains that the measure in question appears to be inconsistent with the second sentence of Article II:1(b) of the GATT 1994, since it was not in force at 15 April 1994<sup>9</sup>, nor does it appear to have been required on that date by any mandatory provision of Colombian law. In addition, in this case, the measure appears to be inconsistent with paragraphs 1, 2, 3 and 4

<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. 0074/2013.

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

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

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

of the Understanding on the Interpretation of Article II:1(b) of the General Agreement on Tariffs and Trade 1994, since Colombia did not record this levy in its Schedule of Concessions.

- (iv) In the alternative, if the specific levy of US\$5 per gross kilo/pair were to be characterized as a duty or charge other than an import duty, which is imposed for services rendered upon importation, Panama maintains that the measure in question appears to be inconsistent with Article VIII:1(a) of the GATT 1994, since the specific levy of US\$5 per gross kilo/pair does not appear to be limited to the approximate cost of any type of services rendered and appears to represent an indirect protection to domestic products.
- (v) According to Memorandum No. 000165, the affected products are subject to a mandatory inclusion procedure at the time of their importation. In Panama's view, the administration of customs compliance and control of the compound tariff gives cause for serious concerns regarding its uniformity, impartiality and reasonableness within the meaning of Article X:3(a) of the GATT 1994.

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Panama has identified the rules which, in its view, underpin the measure in question.

Nevertheless, this list is without prejudice to any other rules, administrative or legal decisions, acts, practices, guidance or guidelines issued by Colombia that may be relevant in examining this dispute. Accordingly, the scope of this panel request covers all the aforementioned rules as well as any possible amendments, extensions or additions where applicable.

Given the inconsistencies described above, pursuant to Article 3.8 of the DSU, Panama considers that the measure at issue nullifies or impairs the advantages accruing to Panama under the provisions mentioned in this request.

Panama requests that, pursuant to Article 6 of the DSU, the DSB establish a panel to examine this matter. Panama further requests that the panel be given the standard terms of reference provided for in Article 7.1 of the DSU.

Panama asks that this request for the establishment of a panel be included in the agenda of the meeting scheduled for 30 August 2013.

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