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

**NOTIFICATION OF AN APPEAL BY COLOMBIA  
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 communication, dated 22 January 2016, from the delegation of Colombia, is being circulated to Members.

1. Pursuant to Articles 16.4 and 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Rule 20 of the Working Procedures for Appellate Review (WT/AB/WP/6, 16 August 2010) ("Working Procedures"), Colombia hereby notifies the Dispute Settlement Body ("DSB") of its decision to appeal certain issues of law and legal interpretations in the Panel Report in *Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear* (WT/DS461) ("Panel Report").
2. Pursuant to Rules 20(1) and 21(1) of the Working Procedures, Colombia files this Notice of Appeal together with its Appellant's Submission with the Appellate Body Secretariat.
3. Pursuant to Rule 20(2)(d)(iii) of the Working Procedures, this Notice of Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to Colombia's ability to rely on other paragraphs of the Panel Report in its appeal.
4. Colombia seeks review by the Appellate Body of the following errors of law and legal interpretation by the Panel in its Report and requests the following findings by the Appellate Body.

**I. Review of the Panel's Findings under Article II of the GATT 1994 and Request for Completion**

5. The Panel erred in interpreting and applying Article II:1(b) of the GATT 1994 and failed to make an objective assessment of the matter under Article 11 of the DSU in finding that "the compound tariff, as regards the examples set out in paragraphs 7.164 and 7.180, exceeds the levels bound in Colombia's Schedule of Concessions and is therefore inconsistent with the obligation in Article II:1(b), first sentence, of the GATT 1994 not to impose on the import of products of other Members 'ordinary customs duties in excess of those set forth and provided' in Colombia's Schedule of Concessions".<sup>1</sup> The Panel erred because:

- it incorrectly concluded that it was not necessary to issue a finding on whether or not the obligations of Article II:1 of the GATT 1994 are applicable to illicit trade. In proceeding in this manner, the Panel failed to make an objective assessment of the matter under Article 11 of the DSU<sup>2</sup>;

<sup>1</sup> Panel Report, paras. 7.189, 7.192-7.194, and 8.2-8.4.

<sup>2</sup> Panel Report, paras. 7.108 and 8.1.

- it improperly exercised judicial economy and violated Colombia's due process rights. By exercising false judicial economy and failing to respect Colombia's due process rights, the Panel failed to make an objective assessment of the matter under Article 11 of the DSU<sup>3</sup>;
- it incorrectly found that Colombia's measure is "structured and designed to be applied to all imports of the products concerned, without distinguishing between 'licit' and 'illicit' trade" and that "no legal provision that bans the importation of goods whose declared prices are below the thresholds established in Decree No. 456 has been identified".<sup>4</sup> In making such findings, the Panel did not comply with Article 11 of the DSU. The Panel erred further because such findings did not provide a valid basis for the Panel's ultimate conclusion that it was not necessary for it to rule on whether Article II applied only to licit trade<sup>5</sup>;
- even on the assumption that Article II:1(b) were applicable to illicit trade, it erred in the interpretation and application of Article II:1(b), and under Article 11 of the DSU, in finding that it was not persuaded that Decree 456 "incorporates a legislative ceiling which prevents the compound tariff resulting in duties that exceed the levels bound in Colombia's Schedule of Concessions"<sup>6</sup>;
- it improperly relaxed the burden of proof for Panama in establishing a *prima facie* case under Article II.<sup>7</sup> In proceeding in this manner, the Panel failed to comply with Article 11 of the DSU.

6. For the reasons provided above, Colombia requests that the Appellate Body reverse the Panel's finding that "the compound tariff, as regards the examples set out in paragraphs 7.164 and 7.180, exceeds the levels bound in Colombia's Schedule of Concessions and is therefore inconsistent with the obligation in Article II:1(b), first sentence, of the GATT 1994 not to impose on the import of products of other Members' ordinary customs duties in excess of those set forth and provide' in Colombia's Schedule of Concessions".<sup>8</sup> The Panel's finding under Article II:1(a) is based entirely on its erroneous findings of inconsistency under Article II:1(b). Therefore, if the Appellate Body were to agree with Colombia's request to reverse the Panel's findings under Article II:1(b), Colombia requests that the Appellate Body also reverse the Panel's finding under Article II:1(a).<sup>9</sup> And, as a result of the above, the Appellate Body must also reverse the Panel's conclusions in paragraph 8.2, 8.3, and 8.4 of the Panel Report.

7. If, as requested by Colombia above, the Appellate Body reverses the Panel's finding that it was not necessary for the Panel to issue a finding on whether or not the obligations of Article II:1 of the GATT 1994 can be extended to illicit trade, Colombia requests the Appellate Body to complete the legal analysis under Articles II:1(a) and (b) and make the following findings:

- Articles II:1(a) and (b) do not apply to illicit trade; and,
- because imports priced below the thresholds established in Decree 456 are imported at artificially low prices that do not reflect market conditions, the compound tariffs established in Decree 456 do not violate Articles II:1(a) and (b) of the GATT 1994.

## **II. Review of the Panel's Findings under Article XX of the GATT 1994 and Request for Completion**

8. The Panel erred in the interpretation and application of Article XX of the GATT 1994 and failed to make an objective assessment of the matter under Article 11 of the DSU in finding that

<sup>3</sup> Panel Report, paras. 7.90, 7.108 and 8.1.

<sup>4</sup> Panel Report, para. 8.1. See also para. 7.106.

<sup>5</sup> Panel Report, paras. 7.105-7.108 and 8.1.

<sup>6</sup> Panel Report, paras. 7.186, 7.189, 7.192-7.194, and 8.2-8.4.

<sup>7</sup> Panel Report, paras. 7.189, 7.192-7.194, and 8.2-8.4.

<sup>8</sup> Panel Report, paras. 7.189, 7.192-7.194, and 8.2-8.4.

<sup>9</sup> Panel Report, paras. 7.192 and 7.194.

Colombia has failed to demonstrate that its measure is justified under Article XX(a) and (d) of the GATT 1994.<sup>10</sup> The Panel erred because:

- it incorrectly interpreted and applied the terms "to protect public morals" in subparagraph (a) and failed to make an objective assessment of the matter under Article 11 of the DSU when it found that Colombia has failed to demonstrate that the compound tariff is a measure to protect public morals,<sup>11</sup> specifically:
  - it erroneously imported elements of the "necessity" test to the assessment of whether Decree 456 is a measure "to protect public morals;"
  - even in the event that it was appropriate for the Panel to examine the contribution of the measure, it developed and imposed an overly demanding standard of "to protect" that is inconsistent with Article XX(a);
  - it required Colombia to demonstrate that Decree 456 addressed the money laundering problem in its entirety as opposed to addressing the particular aspect of money laundering targeted by Decree 456;
  - it failed to properly assess statistical evidence provided by Colombia demonstrating the existence of undervaluation and money laundering and thereby acted inconsistently with Article 11 of the DSU;
  - it misapplied "to protect" with regard to the text of the measure, the existence of exclusions, the period of validity, the legal consequences of importing goods at prices below the thresholds, and in regard to additional evidence.
- it incorrectly interpreted and applied the "necessity" requirement under subparagraph (a) and failed to make an objective assessment of the matter under Article 11 of the DSU in finding that Colombia has not demonstrated the contribution of the compound tariff to the alleged objective of combating money laundering<sup>12</sup> and that Colombia has not demonstrated that its compound tariff is necessary to combat money laundering.<sup>13</sup> The Panel's errors include:
  - an erroneous assessment of the contribution of Decree 456 to the fight against money laundering and, in particular, to the use of imports of apparel at artificially low prices to launder money<sup>14</sup>;
  - its failure to undertake a proper weighing and balancing of the factors involved in the analysis of "necessity"; and
  - failing to comply with its obligations under Article 11 of the DSU by disregarding qualitative and quantitative evidence that amply demonstrated the contribution of Decree 456 to the fighting money laundering through imports of apparel and footwear at artificially low prices<sup>15</sup>;
- it incorrectly interpreted and applied subparagraph (d) of Article XX because the Panel's findings under subparagraph (d) are entirely based on its erroneous findings under subparagraph (a)<sup>16</sup>;
- it incorrectly interpreted and applied the chapeau of Article XX and failed to make an objective assessment of the matter under Article 11 of the DSU in finding that "because of the various exclusions from the application of the measure for imports originating in countries with which Colombia has trade agreements in force, for imports into

<sup>10</sup> Panel Report, paras. 7.592 and 8.5-8.7.

<sup>11</sup> Panel Report, paras. 7.331-7.401 and 8.5.

<sup>12</sup> Panel Report, paras. 7.409-7.445, 7.470, 7.471 and 8.5.

<sup>13</sup> Panel Report, paras. 7.445, 7.470-7.471 and 8.5.

<sup>14</sup> Panel Report, paras. 7.409-7.437.

<sup>15</sup> Panel Report, paras. 7.354-7.355 and 7.414-7.430.

<sup>16</sup> Panel Report, paras. 7.513-7.537 and 8.6.

Colombia's Special Customs Regime Zones and for imports under the 'Plan Vallejo', even assuming that Colombia had succeeded in showing that its measure was provisionally justified under Article XX(a) or Article XX(d) of the GATT 1994, the compound tariff is not applied in a manner such that it meets the requirements of the chapeau of Article XX of the GATT 1994".<sup>17</sup> The Panel also erred under Articles 6.2 in finding that Colombia's arguments concerning Article XXIV were not within its terms of reference.

9. For the reasons provided above, Colombia requests that the Appellate Body reverse paragraphs 7.592 and 8.5-8.7 of the Panel Report, which find that Colombia has failed to demonstrate that its measure is justified under Article XX of the GATT 1994.<sup>18</sup> Colombia additionally requests that the Appellate Body complete the analysis and find that Colombia's measure is justified under Articles XX(a) and (d) of the GATT 1994.

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<sup>17</sup> Panel Report, paras. 7.550-7.591.

<sup>18</sup> Colombia also requests that the Appellate Body reverse the Panel's intermediate findings under subparagraphs (a), (d), and the chapeau of Article XX, including the findings in paragraphs 7.401, 7.445, 7.470-7.471, 7.532, 7.536-7.537, 7.569, 7.580, and 7.590-7.59.