WORLD TRADE ORGANIZATION

RESTRICTED

WT/DSB/M/240
23 November 2007

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Dispute Settlement Body
28 September 2007

MINUTES OF MEETING

Held in the Centre William Rappard
on 28 September 2007

Chairman: Mr. Bruce Gosper (Australia)

1. Colombia – Indicative prices and restrictions on ports of entry

(a) Request for the establishment of a panel by Panama (WT/DS366/6)

1. The Chairman drew attention to the communication from Panama contained in document WT/DS366/6, and invited the representative of Panama to speak.

2. The representative of Panama noted that his country's request for the establishment of a panel, concerning indicative prices and restrictions on ports of entry imposed by Colombia, with respect to the importation of goods from Panama, was the only item on the agenda of the present meeting. Since June 2005, Panama had been encountering serious problems of access to Colombia's market as a result of the entry into force of a series of customs measures affecting goods from, or originating in, Panama. This had had a negative impact on the country's export activities, particularly those conducted in its free trade area known as the Colon Free Zone. The Colon Free Zone, located at the Atlantic entrance of the Panama Canal, was considered the second largest free zone in the world and the largest in the Western Hemisphere. It was one of the world's most important and most dynamic trade hubs, accounting for more than 15 billion dollars of trade a year and generating an average of 11,000 direct jobs and 25,000 indirect jobs. It also accounted for some 8 per cent of the country's GDP and its commercial activities had helped to build up a solid relationship with more than 50 WTO supplier Members across the world. Ever since it had been created more than 55 years ago, the Colon Free Zone had acted as a focal point for the collection and distribution of goods from different suppliers throughout the world with, as a final destination, the major markets of Latin America.

3. As could be expected, Colombia's market was one of the main destinations for the Colon Free Zone, and had been from the outset; so that these measures had directly affected the legal certainty of the re-exportation activities of national and international suppliers with Colombia as a final destination. Panama had been trying to solve this problem for two years now. As of the middle of 2005, it had initiated diplomatic contacts with the Colombian authorities with a view to organizing talks in order to find a solution. At the same time, because these talks were stagnating, in early 2006 the delegation of Panama had begun to express and explain its concern regarding these customs measures before the WTO Committee on Customs Valuation and the Council for Trade in Goods. On 15 September 2006, the first round of consultations had taken place between Panama and Colombia at the WTO. On 31 October, following a fruitful exchange of views and considerable efforts by the authorities of the two countries, Colombia had agreed to put an end to the customs restrictions by repealing all of the resolutions containing restrictive measures against Panama. At the same time, as part of this arrangement, the customs authorities of the two countries had signed a Protocol of

Cooperation and Exchange of Customs Information, which had entered into force in November 2006 in the framework of the Multilateral Convention on Cooperation and Mutual Assistance between Customs Administrations of Latin America, Spain and Portugal, the purpose of which was to institutionalize mutual cooperation and assistance, mainly with a view to the prevention, investigation and repression of customs offences between Panama and Colombia.

4. Since the measures had been repealed, and following the conclusion of the Protocol, on 1 December 2006 Panama had notified the DSB that the parties had reached a mutually agreed solution under Article 3.6 of the DSU. In connection with the Convention on Customs Cooperation between Colombia and Panama, evaluation meetings had been held, and a number of conclusions had been reached, which his delegation wished to highlight now. At a first meeting on 12 February 2007, the Director of National Customs of Colombia and the Director of Customs of Panama had stated that "the two parties were pleased with the success of the Protocol in force since November 2006" and that "any measure of a restrictive nature was unnecessary, since the discussions between the parties had clarified the levels of compliance achieved by both Panama and Colombia through this Protocol" (see the introductory paragraph and paragraph 4 of the Records of the Evaluation of the Protocol of Cooperation and Exchange of Customs Information concluded on 12 February 2007, of which a copy had been made available to Members).

5. In April 2007, reaffirming these positive results, the Foreign Ministers of Colombia and Panama (in the framework of the Good Neighbourliness Commission), in the presence of the highest customs authorities from both countries, had noted that "the results obtained to date have permitted the DIAN (National Customs and Excise Directorate) and other supervisory bodies to carry out their investigations successfully, improve risk profiles and correct distortions in the national market ... " (Records of the Good Neighbourliness Commission, paragraph 3.1.1). And yet, eight months after the repeal of the measures, with a customs convention in force, and following two evaluation meetings that highlighted the success of the customs cooperation between Colombia and Panama – which had enabled Colombia to overcome the customs problems it was facing – Colombia had decided, entirely unexpectedly and unilaterally, to ignore the solution that had been mutually agreed with Panama in the WTO, and to reintroduce measures with similar effects to those initially challenged by Panama in 2006, which Colombia had eliminated. Highly concerned by this development, on 12 July 2007, Panama had once again requested consultations, which had produced no satisfactory solution. Consequently, Panama had no choice but to turn to the DSB for a decision that would enable it to resolve, once and for all, a situation that was seriously undermining the advantages for Panama of the GATT 1994 and of the Agreement on Customs Valuation and hence the competitiveness of its logistical re-exportation centre.

6. Finally, his delegation wished to explain very briefly the nature of the restrictions imposed by Colombia's customs authorities. Colombia had introduced a series of internal measures aimed at establishing what it had called indicative prices for certain goods that originated in and/or were imported from Panama, for the purpose of collecting customs duties and internal taxes. These indicative prices were applied to specific goods from all countries except those which had concluded free trade agreements with Colombia, obliging importers of certain goods to pay customs duties and other duties and taxes on the basis of arbitrary or fictitious prices rather than their transaction value, making it a measure which, in Panama's view, was not uniform, impartial and reasonable, or consistent with the valuation methods set forth in Article VII of the GATT 1994 and in the Agreement on Customs Valuation. At the same time, owing to the way in which the import regime based on indicative prices was administered, the establishment of those prices did not reflect uniform, impartial or reasonable criteria and procedures. The same was true for implementation, which could have unreasonable consequences for importers: for example, when the transaction value presented was below the indicative price, if the importer did not correct the declared value to reflect the indicative price, the imported goods were liable to be declared in legal abandonment and to end up in the hands of the State. Panama also considered the measure to be inconsistent with Article X:3(a) of the

GATT 1994. Furthermore, by using a different tax base for imported products – subject to indicative prices – and for like national products, Colombia was applying domestic tax regulations, which ensured less favourable treatment for imported products than for like products of domestic origin, in violation of Article III:4 of the GATT 1994. In any case, this difference in regulations resulted in the imposition of internal taxes on imported products in excess of those applied to like domestic products, in violation of Article III:2 of the GATT 1994. Meanwhile, Colombia had also established restrictions on the use of ports by assigning certain points of entry into the country for goods classified under Chapters 15 to 64 (textiles and footwear products) from or originating in Panama. In practice that meant that the goods in question must be imported through two designated ports only: the Special Administration for Customs Service in Bogota and the Special Customs Administration in Barranquilla. Moreover, there were other discriminatory provisions that applied only to goods from Panama, such as the obligation to present import declarations for such products in advance, and limitation of the possibility of presenting the legalization declaration without payment of a rescue fee, in the case of corrections in declarations pertaining to textiles, only to situations where differences in weight or the width of the cloth did not exceed 7 per cent and 10 per cent respectively. An importer that failed to comply with these requirements was subject to special procedures, including detention of goods. This measure did not apply to goods from third countries entering Colombia directly. Panama considered that these measures relating to ports of entry were inconsistent with the obligations contained in Articles I, V, XI, and XIII of the GATT, and that they provided to goods in transit from Panama to Colombia treatment less favourable than that accorded to products transported directly from their place of origin, which was in violation of Article V:6 of the GATT 1994.

7. The representative of Colombia noted that Panama's request for the establishment of a panel was being submitted at the special DSB meeting. She recalled that at the regular DSB meeting on 25 September 2007, Colombia had stated its objection to this special DSB meeting, the convening of which, in Colombia's view, constituted a procedural error. Article 2.3 of the DSU was a general provision which did not prevail over a specific provision such as Article 6 of the DSU, which regulated the establishment of panels. With regard to Panama's request for the establishment of a panel, Colombia noted that, on 31 July 2007, consultations had been held with Panama. During those consultations, Colombia had had the opportunity to explain the scope of the measures challenged by Panama and their consistency with WTO rules. In Colombia's view, this was a very useful meeting, in which answers had been provided to 31 questions raised beforehand by Panama without any objections being made to Colombia's replies. Colombia believed that it was important that the parties to the dispute continued to work in the framework of consultations. For that reason, Colombia objected to the establishment of a panel at the present meeting.

8. The DSB took note of the statements and agreed to revert to this matter.