

# DOMINICAN REPUBLIC – IMPORT AND SALE OF CIGARETTES<sup>1</sup>

(DS302)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	Honduras	GATT Arts. II, III:2 and 4, XI:1 and 3(a), XI:1 and XX(d)	Establishment of Panel	9 January 2004
			Circulation of Panel Report	26 November 2004
Respondent	Dominican Republic	DSU Art. 19:1	Circulation of AB Report	25 April 2005
			Adoption	19 May 2005

## 1. MEASURE AND PRODUCT AT ISSUE

- Measures at issue: Dominican Republic's general measures relating to import charges and fees and other measures specific to import and sale of cigarettes.
- Product at issue: Cigarettes imported from Honduras as well as all imported products in the case of transitional surcharge measure and the foreign exchange fee.

## 2. SUMMARY OF KEY PANEL/AB FINDINGS

### *Stamp requirement*

- GATT Art. III:4 (national treatment): The Panel found that the stamp requirement, which required tax stamps to be affixed to cigarette packets in the Dominican Republic, "accords less favourable treatment to imported cigarettes than that accorded to the like domestic products, contrary to GATT Art. III:4". The Appellate Body upheld the Panel's finding that this requirement was not necessary within the meaning of Art. XX(d) as, *inter alia*, there were "reasonably available" alternative WTO-consistent measures and, thus, the measure was not justified under Art. XX(d).

### *Bond requirement*

- GATT Arts. XI:1 and III:4: The Panel found that Honduras failed to establish that the bond requirement, under which cigarette importers had to post a bond to ensure payment of taxes, operated as an import restriction contrary to Art. XI:1. The Appellate Body upheld the Panel's rejection of Honduras's claim under Art. III:4 (national treatment), and agreed with the Panel that a detrimental effect of a measure on a given imported product does not necessarily imply that the measure accords less favourable treatment to imports if the effect is explained by factors unrelated to the foreign origin of the product, such as the market share of the importer.

### *Transitional surcharge and foreign exchange fee*

- GATT Art. II:1(b) ("other duty or charge"): The Panel found that the transitional surcharge imposing certain surcharges on all imports was a border measure that was neither an ordinary customs duty, nor a charge or duty that fell under Art. II:2, and therefore was an "other duty or charge" that was inconsistent with Art. II:1(b). Also, having concluded that the foreign exchange fee was not an ordinary customs duty, but imposed on imported products only, the Panel found that the fee was a border measure in the nature of an other duty or charge inconsistent with Art. II:1(b). The Panel also found that the fee was not an exchange measure justified by Art. XV:9(a).

### *Selective consumption tax ("SCT")*

- GATT Art. III:2, first sentence, and Art. X: While the Panel had found that the SCT, for which the value of imported cigarettes was determined, was inconsistent with Art. III:2, first sentence, Art. X:3(a) and Art. X:1, the Panel did not recommend that the measure be brought into conformity as the measure at issue was "no longer in force".

## 3. OTHER ISSUES<sup>2</sup>

- GATT Art. XX(d) (exception): The Appellate Body upheld the Panel's finding that the tax stamp requirement was not "necessary" within the meaning of GATT Article XX(d) and therefore it was not justified under this provision.

<sup>1</sup> *Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes*

<sup>2</sup> Other issues addressed in this case: DSU Art. 11 (objective assessment); Appellate Body's recommendation in respect of the measure that has been already modified (DSU Art. 19.1); request of information from IMF; scope of products (panel request, DSU Art. 6.2); terms of reference (subsequent amendments to the measures after panel establishment); Honduras's claim against the timing of SCT payments in conjunction with the bond requirement (DSU Art. 6.2).