

**DOMINICAN REPUBLIC – MEASURES AFFECTING THE IMPORTATION
AND INTERNAL SALE OF CIGARETTES**

*Arbitration
under Article 21.3(c) of the
Understanding on Rules and Procedures
Governing the Settlement of Disputes*

Report of the Arbitrator
John Lockhart

1. On 19 May 2005, the Dispute Settlement Body (the "DSB") adopted the Appellate Body Report¹ and the Panel Report², as modified by the Appellate Body Report, in *Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes*.³ At the DSB meeting of 13 June 2005, the Dominican Republic confirmed its intention to implement the recommendations and rulings of the DSB in this dispute and stated that it would require a "reasonable period of time" in which to do so, pursuant to Article 21.3 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU").⁴
2. On 12 July 2005, Honduras informed the DSB that consultations with the Dominican Republic had not resulted in agreement on the reasonable period of time for implementation. Honduras, therefore, requested that such period be determined by binding arbitration, in accordance with Article 21.3(c) of the DSU.⁵
3. In a joint letter dated 14 July 2005, Honduras and the Dominican Republic communicated to the Chairman of the DSB their agreement that, notwithstanding the 90-day period for arbitration described in Article 21.3(c) of the DSU (which would expire on 17 August 2005), an arbitration completed within 60 days after the date of the appointment of the arbitrator would be deemed by the parties to be the award of the arbitrator under Article 21.3(c) of the DSU.⁶
4. On 21 July 2005, the parties requested me to act as Arbitrator, pursuant to Article 21.3(c) of the DSU, to determine the reasonable period of time for implementation of the recommendations and rulings of the DSB in respect of this matter. I accepted the appointment on 22 July 2005⁷, and undertook to issue my award no later than 20 September 2005.
5. By joint letter to me dated 29 July 2005, Honduras and the Dominican Republic communicated their agreement to suspend the arbitration proceedings, pending agreement on a reasonable period of time for implementation. By letter dated 4 August 2005, I acknowledged receipt of the joint letter and agreed to treat the matter as suspended until further notice.⁸

¹Appellate Body Report, WT/DS302/AB/R.

²Panel Report, WT/DS302/R.

³WT/DS302/12.

⁴WT/DSB/M191, para. 27.

⁵WT/DS302/13.

⁶WT/DS302/14.

⁷WT/DS302/15.

⁸WT/DS302/16.

6. By joint letter to me dated 16 August 2005, the parties informed me that they had reached agreement on the reasonable period of time for compliance in this matter, and requested that I "issue such rulings reflecting this agreement as [I] may deem appropriate in the circumstances". The parties' agreement is set out in the joint letter dated 16 August 2005, attached as Annex 1 to this Report. Under the circumstances, it will not be necessary for me to issue an award in this arbitration.

Signed in the original at Sydney this 25th day of August 2005 by:

John Lockhart
Arbitrator

ANNEX I

Geneva, 16 August 2005

Mr. John Lockhart
World Trade Organization
Centre William Rappard
Rue de Lausanne 154
1211 Geneva 21

Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes

Arbitration under Article 21.3(c) of the DSU

Sir,

The Dominican Republic and Honduras have mutually agreed that the reasonable periods of time for the Dominican Republic to implement the recommendations and rulings of the Dispute Settlement Body (the "DSB") in *Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes* (WT/DS202) are as follows:

1. In respect of the finding of the Panel specified in paragraph 8.1(b) of the Panel Report relative to the transitional surcharge for economic stabilisation, found to be inconsistent with the provisions of Article II:1(b) of the GATT 1994, the Dominican Republic shall immediately bring the measure into conformity with its obligations under the GATT 1994.
2. In respect of the finding of the Panel specified in paragraph 8.1(e) of the Panel Report relative to the requirement that a tax stamp be affixed to all cigarette packets in its territory and under the supervision of the local tax authorities, found to be inconsistent with Article III:4 of the GATT 1994, the Dominican Republic shall immediately bring the measure into conformity with its obligations under the GATT 1994.
3. In respect of the finding of the Panel specified in paragraph 8.1(c) of the Panel Report relative to the foreign exchange fee, found to be inconsistent with the provisions of Article II:1(b) of the GATT 1994, the Dominican Republic shall bring the measure into conformity within twenty four (24) months from 19 May 2005, the date of the adoption of the Panel and Appellate Body Reports.

In respect of the measures that have to be brought into conformity immediately (the measures referred to in paragraphs 8.1(b) and 8.1(e) of the Panel Report, *i.e.*, the transitional surcharge for economic stabilisation and the requirement that a tax stamp be affixed to all cigarette packets in the territory of the Dominican Republic and under the supervision of the local tax authorities), the Dominican Republic and Honduras have likewise agreed that Honduras may, at its discretion, exercise its rights under Article 21.5 or Article 22.6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU") at anytime starting sixty (60) days from the date of this notification, without prejudice to the rights of Honduras relative to the bringing into conformity of the measure referred to in paragraph 8.1(c) of the Panel Report, *i.e.*, the foreign exchange fee.


In addition to the foregoing, the Dominican Republic and Honduras have also agreed that the Dominican Republic shall forthwith desist from requiring importers of cigarettes to post the bond referred to in paragraph 8.1(f) of the Panel Report.

The Dominican Republic and Honduras respectfully request the Arbitrator to issue such rulings reflecting this agreement as he may deem appropriate in the circumstances.



Dario Castillo
Ambassador
Permanent Mission of Honduras

Yours sincerely,



Homero Hernández
Ambassador
Permanent Mission of the
Dominican Republic

cc: H.E. Mr. Eirik Glenne
Chairman, Dispute Settlement Body
World Trade Organization
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1211 Geneva 21