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

RECOURSE TO ARTICLE 21.5 OF THE DSU BY COLOMBIA

RECOURSE TO ARTICLE 21.5 OF THE DSU BY PANAMA

NOTIFICATION OF AN APPEAL BY PANAMA 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 20 November 2018, from the delegation of Panama, is being circulated to Members.

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, Panama hereby notifies the Dispute Settlement Body of its decision to appeal to the Appellate Body certain issues of law and legal interpretations covered in the Panel Report entitled *Colombia - Measures Relating to the Importation of Textiles, Apparel and Footwear (Recourse to Article 21.5 of the DSU by Panama and Colombia)* (DS461), which was circulated on 5 October 2018 (the "Panel Report"). Pursuant to Rules 20(1) and 21(1) of the Working Procedures for Appellate Review, Panama is simultaneously filing this Notice of Appeal and its Appellant Submission with the Appellate Body Secretariat.

On the basis of the grounds of appeal elaborated in its submission to the Appellate Body, Panama requests the Appellate Body to modify or reverse legal interpretations leading to the legal findings and conclusions of the Panel, as well as to complete the legal analysis as appropriate, with respect to the following errors contained in the Panel Report.¹

I. THE PANEL'S FINDINGS AND CONCLUSIONS UNDER ARTICLE XI:1 OF THE GATT 1994

a. The Panel laid out a legal standard of Article XI:1 that is inconsistent with this provision and is irrelevant for the resolution of this dispute

The Panel erred in finding that certain types of measures cannot be prohibited by Article XI:1 of the GATT 1994. The Panel arrived at this conclusion by setting out a legal standard that is intrinsically contradictory through an interpretative process that was not conducted in accordance with Articles 3.2 and 11 of the DSU. Moreover, the Panel addressed issues that were not relevant for the resolution of this dispute, but which nonetheless adversely affected the manner in which the Panel approached some of Panama's claims.

Panama, therefore, requests the Appellate Body to reverse, or to declare moot and of no legal effect, the Panel's findings in paragraph 7.169 of the Panel Report.

¹ Pursuant to Rule 20(2)(d)(iii) of the Working Procedures for Appellate Review, this Notice of Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to Panama's right to refer to other paragraphs of the Panel Report in the context of its appeal.

b. The Panel erred in its assessment of whether the specific guarantee is inconsistent with Article XI:1 of the GATT 1994

The Panel erred in rejecting Panama's claim that Colombia's specific guarantee as set out in Article 7 of Decree No. 2218, is a costly and burdensome requirement that is inconsistent with Article XI:1 of the GATT 1994. The Panel imposed a special standard of proof for challenging so-called "permissible measures", which has no basis in that provision, and, in any event, was not properly explained. The Panel also relied on a legal standard that has no basis in Article XI:1 of the GATT 1994, i.e. "routine costs inherent in the import process". In the alternative, even if this legal standard was correct, the Panel failed to apply it to the facts of the case. Moreover, contrary to Article 11 of the DSU, the Panel erred in finding that there was no evidence on the record provided by Panama to examine whether the specific guarantee causes limiting effects on imports, and that the examples provided by the parties were "contradictory". The Panel also erred in accepting Colombia's cost-related information at face value and in making rulings on a claim that Panama did not make, i.e. that the "duration" of the guarantee was "excessive" and limited imports.

The Panel further erred in rejecting Panama's claim that the specific guarantee is an arbitrary import requirement that is inconsistent with Article XI:1 of the GATT 1994. The Panel failed to address Panama's argument that the specific guarantee is baseless. It relied on *a priori* considerations unrelated to the relevant standard under Article XI:1 of the GATT 1994. Moreover, contrary to Article 11 of the DSU, the Panel's conclusion that Panama failed to demonstrate a lack of proportionality of the coverage of the specific guarantee in relation to the obligations it seeks to secure is also baseless. Finally, the Panel failed to conduct an objective assessment of Panama's argument that the arbitrariness of the specific guarantee was more exacerbated in cases where the importer had already posted a general guarantee.

Panama, therefore, requests the Appellate Body to reverse the Panel's findings and conclusions in paragraphs 7.195 (second sentence), 7.200, 7.206, 7.209-7.212, 7.232-7.233 as well as paragraphs 7.235-7.238 of the Panel Report.

Furthermore, Panama also requests the Appellate Body to complete the legal analysis and to find that the specific guarantee is inconsistent with Article XI:1 of the GATT 1994 because it is a burdensome and arbitrary requirement that imposes limiting conditions on imports. Panama explains in its Appellant Submission the factual findings or undisputed facts on the record that may enable the Appellate Body to complete the legal analysis.

c. The Panel erred in its assessment of whether the special import regime is inconsistent with Article XI:1 of the GATT 1994

The Panel failed to assess the operation of the different elements of the special import regime collectively, and in its assessment of the individual elements of the regime, the Panel relied on considerations that are extraneous to the applicable standard under Article XI:1 of the GATT 1994. Moreover, contrary to Article 11 of the DSU, the Panel did not engage with Panama's arguments and evidence on the individual elements of the special import regime – the documentary requirements, the requirement that the importer or its legal representative must be present during the customs inspection, the penalties contemplated in the regime - and failed to provide reasoned and adequate explanations thereon.

Panama, therefore, requests the Appellate Body to reverse the Panel's findings and conclusions in paragraphs 7.302-7.303, 7.309, 7.338-7.340, 7.344-7.346 of the Panel Report.

Furthermore, Panama also requests the Appellate Body to complete the legal analysis and to find that the special import regime violates Article XI:1 of the GATT 1994 because the combined operation of its elements imposes limiting conditions on imports based on the certain undisputed facts and Panel's findings, as explained in Panama's Appellant Submission.

d. The Panel ignored its previous findings and Colombia's admission about the restrictive nature of the specific guarantee and the special import regime

Panama noted that the trade-restrictive effects of the challenged measures were facts that were recognized by the Panel itself, admitted by Colombia, and argued by Panama. By failing to address

this issue in its analysis under Article XI:1 of the GATT 1994, the Panel failed to comply with its duty to conduct an objective assessment of the matter under Article 11 of the DSU.

Panama, therefore, requests the Appellate Body to reverse the Panel's findings and conclusions in paragraphs 7.237-7.238 and 7.345-7.346 of the Panel Report.

II. THE PANEL'S FINDINGS AND CONCLUSIONS UNDER ARTICLE X:3(A) OF THE GATT 1994

a. The Panel interpreted incorrectly the legal standards of "uniform" and "reasonable" administration under Article X:3(a) of the GATT 1994

The Panel erred in introducing novel legal standards for assessing "uniformity" and "reasonableness", blurring the distinction between these two principles. Panama, therefore, requests the Appellate Body to reverse the Panel's findings and conclusions in paragraphs 7.467-7.469, 7.564, 7.566, 7.577, as well as paragraph 7.584 of the Panel Report.

b. The Panel erred in its assessment of whether the specific guarantee is inconsistent with Article X:3(a) of the GATT 1994

The Panel erred in finding that it was not unreasonable to require the establishment of the specific guarantee from importers that had posted a general guarantee. The Panel applied an incorrect legal standard to the facts, and, as a result, failed to address Panama's arguments. The Panel also failed to provide reasons to support its findings and conclusions.

Panama, therefore, requests the Appellate Body to reverse the Panel's findings and conclusions in paragraphs 7.457-7.458, 7.462-7.463, and 7.476 of the Panel Report.

Furthermore, Panama also requests the Appellate Body to complete the legal analysis and to find that the specific guarantee is applied unreasonably, contrary to Article X:3(a) of the GATT 1994, based on certain undisputed facts and the Panel's findings that are explained in Panama's Appellant Submission.

c. The Panel erred in its assessment of whether the special import regime is inconsistent with Article X:3(a) of the GATT 1994

Contrary to Article 11 of the DSU, the Panel failed to provide reasons as to why Panama failed to demonstrate that certain documentary and certification requirements were being applied unreasonably. Moreover, the Panel erred in finding that the rigidity of the penalties imposed by Decree No. 2218 did not result in unreasonable administration. The Panel also committed legal error by treating Panama's challenge as an "as applied" challenge as opposed to an "as such" challenge, and by failing to engage with Panama's argument that there were not sufficient safeguards to protect the confidentiality of commercially sensitive information.

Panama, therefore, requests the Appellate Body to reverse the Panel's findings and conclusions in paragraphs 7.549, 7.552, 7.558-7.560, 7.564-7.566, 7.574-7.575, 7.577, as well as paragraph 7.584 of the Panel Report.

III. THE PANEL'S FINDINGS AND CONCLUSIONS UNDER ARTICLE 13 OF THE CVA

The Panel erred in finding that the specific guarantee set out in Article 7 of Decree No. 2218 is not inconsistent with Article 13 of the CVA. The Panel failed to provide appropriate meaning to the term "sufficient" guarantee in Article 13. The Panel further erred in finding that the coverage of the specific guarantee could be established on the basis of potential penalties that have not been detected. Panama, therefore, requests the Appellate Body to reverse the Panel's findings and conclusions in paragraphs 7.635, 7.636, 7.641, as well as paragraph 7.644 of the Panel Report.

Furthermore, Panama also requests the Appellate Body to complete the legal analysis and to find that the specific guarantee, as set out in Article 7 of Decree No. 2218, and with respect to products falling under HS Chapters 61, 62, 63, and HS headings 6401, 6402, 6403, 6404, 6405 and

6406.10.00.00, is inconsistent with Article 13 of the CVA based on certain undisputed facts and factual findings that are explained in Panama's Appellant Submission.

Panama notes that the above grounds of appeal are without prejudice to the arguments developed in Panama's Appellant's Submission.
