

MEXICO – TAXES ON SOFT DRINKS¹

(DS308)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	<i>United States</i>	<i>GATT Arts. III and XX(d)</i>	Establishment of Panel	<i>6 July 2004</i>
			Circulation of Panel Report	<i>7 October 2005</i>
Respondent	<i>Mexico</i>		Circulation of AB Report	<i>6 March 2006</i>
			Adoption	<i>24 March 2006</i>

1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: Mexico's tax measures under which soft drinks using non-cane sugar sweeteners were subject to 20 per cent taxes on (i) their transfer and importation; and (ii) specific services provided for the purpose of transferring soft drinks and bookkeeping requirements.
- Products at issue: Non-cane sugar sweeteners such as High Fructose Corn Syrup ("HFCS") and beet sugar and soft drinks sweetened with such sweeteners.

2. SUMMARY OF KEY PANEL/AB FINDINGS

National treatment

- GATT Art. III:2, first sentence (internal tax): As for soft drinks sweetened with HFCS, the Panel found that the tax measures were inconsistent with Art. III:2, first sentence, as these drinks were subject to internal taxes (20 per cent transfer and services taxes) in excess of taxes imposed on like domestic products – i.e. soft drinks sweetened with cane sugar (exemption from those taxes).
- GATT Art. III:2, second sentence (internal tax): As for non-cane sugar sweeteners such as HFCS, the Panel found that the tax measures were inconsistent with Art. III:2, second sentence as "the dissimilar taxation (i.e. 20 per cent transfer and services taxes)" imposed on "directly competitive or substitutable imports (HFCS) and domestic products (cane sugar)" was applied in a way that afforded protection to domestic production.
- GATT Art. III:4 (internal regulation): The Panel concluded that Mexico acted inconsistently with Art. III:4 in respect of non-cane sugar sweeteners, such as HFCS, by according them less favourable treatment (through tax measures as well as bookkeeping requirements) than that accorded to like domestic products (cane sugar).

Exceptions clause

- GATT Art. XX(d): The Appellate Body upheld the Panel's finding that Mexico's measures, which sought to secure compliance by the United States with its obligations under the NAFTA, did not constitute measures "to secure compliance with laws or regulations" within the meaning of Art. XX(d). The Appellate Body stated that the terms "laws or regulations" under Art. XX(d) refer to the rules that form part of the domestic legal order (including domestic legislative acts intended to implement international obligations) of the WTO Member invoking Art. XX(d) and do not cover obligations of *another* WTO Member. Also, the Appellate Body held that a measure can be said to be designed "to secure compliance" even if there is no guarantee that the measure will achieve its intended result with absolute certainty, and that the use of coercion is not a necessary component of a measure designed "to secure compliance".

3. OTHER ISSUES²

- Panel's jurisdiction: The Appellate Body upheld the Panel's decision that under the DSU, it had no discretion to decline to exercise its jurisdiction in a case that had been properly brought before it.

¹ *Mexico – Tax Measures on Soft Drinks and Other Beverages*

² Other issues addressed: DSU Art. 11 (*amicus curiae* submission); (Panel's findings on Art. XX(d)); preliminary ruling; burden of proof; terms of reference; Mexico's request for Panel's recommendations (DSU Art. 19.1).