

integration agreements. The products might not be covered by the agreement or might not be entirely exempt from duties. It may also be that the final determination of the origin of imported goods forms part of the customs valuation process and is therefore pending at the time when the guarantee is requested. This means that there will not necessarily be certainty as to the applicability of the respective exemptions at that particular time. Furthermore, it should be noted that the specific bond under Decree No. 2218/2017 also serves to cover any possible penalties and that imports of goods from countries with which Colombia has signed economic integration agreements may also be subject to penalties if an offence is detected.

7.643. The foregoing is particularly important if it is considered that the provisions of the Customs Valuation Agreement are to be understood in the context of Article 17 of that Agreement. That is, that none of these provisions should be construed "as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes".

### **7.5.2.3 Conclusion**

7.644. For all the reasons given above, the Panel concludes that Panama has failed to demonstrate that the specific bond provided for in Article 7 of Decree No. 2218/2017 is inconsistent with Article 13 of the Customs Valuation Agreement.

## **8 CONCLUSIONS AND RECOMMENDATION**

8.1. For the reasons set forth in this Report, the Panel concludes as follows:

8.2. With respect to its terms of reference, the Panel concludes that:

- a. the specific bond and the special import regime with the characteristics described in Decree No. 1745/2016 are "inextricably linked" and "clearly connected" to the measure declared by Colombia as taken to comply, that is, the tariffs imposed by Decree No. 1744/2016;
- b. the specific bond and the special import regime with the characteristics provided for in Decree No. 2218/2017 fall within the Panel's terms of reference, as the language of Panama's panel request is sufficiently broad and the replacement of the original measures has not changed their essence;
- c. in order to fulfil its mandate to resolve the matter before it, it has to examine and make findings and, where appropriate, recommendations, concerning the specific bond and the special import regime with the characteristics provided for in Decree No. 2218/2017, not the characteristics provided for in Decree No. 1745/2016;
- d. Panama's claims regarding Article VIII:3 of the GATT 1994 and Article 7.2(g) of the Customs Valuation Agreement do not fall within the Panel's terms of reference, as Panama did not include these provisions in its panel request; and
- e. Panama's claims in its panel request fall within the Panel's terms of reference in both proceedings.

8.3. With regard to Decree No. 1744/2016, the Panel concludes that Colombia has demonstrated that the tariffs provided for in that Decree are not inconsistent with Colombia's obligations under Articles II:1(a) and II:1(b), first sentence, of the GATT 1994.

8.4. Regarding Panama's claims under XI:1 of the GATT 1994, the Panel concludes that:

- a. Panama has failed to demonstrate that the specific bond provided for in Article 7 of Decree No. 2218/2017 has limiting effects on imports in a manner inconsistent with Article XI:1 of the GATT 1994; and

- b. Panama has failed to demonstrate that the special import regime provided for in Articles 4 to 10 of Decree No. 2218/2017 has limiting effects on imports in a manner inconsistent with Article XI:1 of the GATT 1994.

8.5. With regard to Panama's claims under Article X:3(a) of the GATT 1994, the Panel concludes that:

- a. Panama's claim that Decree No. 390/2016 is administered in a manner inconsistent with Article X:3(a) of the GATT 1994 through Decree No. 2218/2017 does not fall within the Panel's terms of reference;
- b. Panama has failed to demonstrate that the specific bond provided for in Article 7 of Decree No. 2218/2017 is administered in a non-uniform, non-impartial or unreasonable manner, inconsistently with Article X:3(a) of the GATT 1994; and
- c. Panama has failed to demonstrate that the special import regime provided for in Articles 4 to 10 of Decree No. 2218/2017 is administered in a non-uniform, non-impartial or unreasonable manner, inconsistently with Article X:3(a) of the GATT 1994.

8.6. Regarding Panama's claims under the Customs Valuation Agreement, the Panel concludes as follows:

- a. the special import regime provided for in Articles 4 to 10 of Decree No. 2218/2017 does not fall within the scope of application of Articles 1, 2, 3, 5, 6 and 7.2(f) of the Customs Valuation Agreement in the manner described by Panama. The Panel therefore rejects Panama's claims under each of those Articles; and
- b. Panama has failed to demonstrate that the specific bond provided for in Article 7 of Decree No. 2218/2017 is inconsistent with Article 13 of the Customs Valuation Agreement.

8.7. In view of the foregoing, having found that the tariffs provided for in Decree No. 1744/2016 are not inconsistent with Colombia's obligations under Articles II:1(a) and II:1(b), first sentence, of the GATT 1994, and that Panama has failed to demonstrate that the specific bond and the special import regime are inconsistent with the WTO Agreement, the Panel concludes that Colombia has implemented the recommendations and rulings of the DSB in *Colombia - Measures Relating to the Importation of Textiles, Apparel and Footwear* to bring its measure into conformity with its obligations under the WTO Agreement.

8.8. Having found that Panama has failed to demonstrate that Colombia has acted inconsistently with its obligations under the WTO Agreement, the Panel considers that no recommendation under Article 19.1 of the DSU is necessary, and makes none.

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