DOMINICAN REPUBLIC – SAFEGUARD MEASURES
(DS415, 416, 417, 418)

1. MEASURE AND PRODUCT AT ISSUE

• Measure at issue: The provisional and final safeguard measures imposed by the Dominican Republic on imports, and the investigation that led to the imposition of those measures.

• Product at issue: Polypropylene bags and tubular fabric.

2. SUMMARY OF KEY PANEL FINDINGS

• GATT Arts. I:1 (most-favoured-nation treatment) and II:1(b) (schedules of concessions – other duties or charges): The Panel concluded that the measures at issue had the effect of suspending the Dominican Republic’s most-favoured-nation treatment obligation in Art. I:1, as well as the prohibition on other duties or charges in connection with importation within the meaning of Art. II:1(b).

• GATT Art. XIX:1(a) (applicability of emergency action on imports of particular products): As a consequence, the Panel concluded that the measures suspended the Dominican Republic’s obligations under GATT within the meaning of Art. XIX:1(a) and that the provisions of GATT Art. XIX and the SA were applicable.

• GATT Art. XIX:1(a) (conditions for safeguard measures – unforeseen developments, definition of the domestic industry” and serious injury): The Panel concluded that the Dominican Republic acted inconsistently with Art. XIX:1(a) with respect to the existence of unforeseen developments and the effect of GATT obligations; with SA Arts. 4.1(c) and 2.1 and GATT Art. XIX:1(a) with respect to the definition of the domestic industry; with SA Arts. 4.1(e), 4.2(a) and 2.1 and GATT Art. XIX:1(a) with respect to the determination of serious injury. As a consequence, the Dominican Republic also acted inconsistently with SA Arts. 3.1, last sentence, 4.2(c) and 11.1(a) with respect to the obligation of setting forth in its published report its findings and reasoned conclusions reached on all pertinent issues of fact and law, accompanying its published report with a demonstration of the relevance of the factors examined, and only taking safeguard measures in conformity with GATT Art. XIX and the SA.

• GATT Art. XIX:1(a) and SA Art. 2.1 (conditions for safeguard measures – increased imports): The Panel rejected the claim that the Dominican Republic acted inconsistently with SA Art. 2.1 and GATT Art. XIX:1(a) with respect to the determination of an absolute increase in imports; consequently, the Panel also rejected the related claims under SA Arts. 3.1, last sentence, 4.2(a) and 4.2(c). The Panel exercised judicial economy on claims with respect to the determination of a relative increase in imports.

• GATT Art. XIX:1(a) and SA Arts. 2.1 and 4.2(a) (conditions for safeguard measures – causal link between the increase in imports and the serious injury): In light of its determinations on serious injury, the Panel abstained from making findings on the existence of a causal link between the increase in imports and a serious injury.

• SA Arts. 2.1, 2.2, 3.1, 4.2, 6 and 9.1 (parallelism): The Panel rejected the claim that the Dominican Republic had acted inconsistently with Arts. 2.1, 2.2, 3.1, 4.2, 6 and 9.1 in respect of parallelism, by not conducting a new analysis to determine the increase in imports, injury and causation, without taking into account imports from certain developing country Members that were excluded from the application of these measures.

• SA Art. 9.1 (developing country exception): The Panel concluded that the Dominican Republic acted inconsistently with Art. 9.1 by failing to take all reasonable steps to exclude from the application of the measures a developing country that exported less than the de minimis levels indicated in that provision.

• GATT Art. XIX:2 and SA Art. 12.1(c) (notification): The Panel rejected the claim that the Dominican Republic acted inconsistently with GATT Art. XIX:2 and SA Art. 12.1(c) in notifying its definitive measure. As a consequence, the Panel also rejected the claim that the Dominican Republic failed to give complainants an opportunity to hold consultations and to obtain an adequate means of trade compensation as required by GATT Art. XIX:2 and SA Arts. 8.1 and 12.13.