

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED

DS44/1

7 September 1993

Limited Distribution

COUNCIL
22 September 1993

Original: English

UNITED STATES - LEGISLATION CONCERNING THE USE OF IMPORTED
TOBACCO BY DOMESTIC CIGARETTE MANUFACTURERS

Communication from Brazil

The following communication, dated 7 September 1993 and addressed to the Office of the United States Trade Representative in Geneva, has been received from the Permanent Mission of Brazil with the request that it, together with the attached explanatory text, be circulated to contracting parties and that the matter be inscribed on the Agenda of the Council meeting on 22 September.

The Permanent Missions of Argentina, Brazil, Colombia, El Salvador, Guatemala, Thailand, Venezuela and Zimbabwe in Geneva wish to convey to you, on behalf of their respective Governments, a request for consultations under Article XXIII:1 of the General Agreement on Tariffs and Trade (GATT), concerning the amendments to the "Tobacco Program" of the "Omnibus Budget Reconciliation Act of 1993".

The new piece of legislation, which establishes the amount of tobacco produced in the United States that is to be yearly used by United States' manufacturers in the manufacture of cigarettes, violates Article III:5 and other relevant provisions of the GATT.

Our Governments believe that expeditious consultations are in order and, therefore, would like to consult with the United States as rapidly as possible.

./.

UNITED STATES - LEGISLATION CONCERNING THE USE OF IMPORTED
TOBACCO BY DOMESTIC CIGARETTE MANUFACTURERS

Communication from Argentina, Brazil, Colombia, El Salvador, Guatemala
Thailand, Venezuela and Zimbabwe

The United States "Omnibus Budget Reconciliation Act of 1993" as approved by the United States Congress, and signed by President Clinton on 10 August 1993, contains provisions that amend the United States "Tobacco Program" and have the effect of protecting domestically produced tobacco, to the detriment of imported tobacco that is used in the manufacture of cigarettes in that country.

The new provisions establish that a minimum of 75 per cent of the tobacco used by the United States companies in the manufacturing of cigarettes during every calendar year is to be grown in the United States. According to the legislation "the manufacturer shall certify to the Secretary [of Agriculture], for each calendar year, the percentage of the quantity of tobacco used by the manufacturer to produce cigarettes during the year that is produced in the United States".

The manufacturer who does not comply with such a rule is subject to penalties. In addition to the penalties, the new provisions contain requirements for purchase of flue-cured and burley tobacco from producer-owned cooperatives. Cigarette manufacturers are required to purchase minimum amounts of tobacco from the cooperatives or also face penalties. Specifically, they must purchase (for burley and for flue-cured tobacco together) the quantity imported during the preceding calendar year that exceeds 25 per cent of the quantity of all tobacco used by the manufacturer to produce cigarettes. Half of that purchase is to come from burley stocks and half from flue-cured stocks.

Furthermore, importers are also required to pay additional fees on imported tobacco. Each importer must pay a fee on each pound of tobacco imported, based on the per pound marketing assessment fee paid by purchasers of both burley and flue-cured tobacco.

By establishing such legislation, the United States violates Article III:5 and other relevant provisions of the General Agreement on Tariffs and Trade (GATT). Mainly, according to Article III:5, "no contracting party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, no contracting party shall otherwise apply internal quantitative regulations in a manner contrary to the principles set forth in paragraph 1."

Before the approval of the above-mentioned measures, tobacco exporting countries which have a share in the United States market and which would be negatively affected in their exports of the product to the United States should these measures be approved, expressed their concern to the United States authorities, through their Embassies in Washington. Also, during the last Council meeting, on 21 July, the issue was brought, by Brazil, under the item "Other Business", to the attention of the contracting parties. On that occasion, Brazil and other producing countries expressed their concerns about the approval of such restrictive and GATT-illegal measures.

Regretfully, these concerns have not been addressed and the measures have been approved. In view of their approval, and the consequent failure by the United States to carry out its obligations under the General Agreement, the Governments of Argentina, Brazil, Colombia, El Salvador, Guatemala, Thailand, Venezuela and Zimbabwe have decided to request consultations with the United States under Article XXIII:1 of GATT.