

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED
DS44/5
7 December 1993
Limited Distribution

(93-2101)

COUNCIL
17 December 1993

Original: English

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

Recourse to Article XXIII:2 by Brazil, Chile, Colombia,
El Salvador, Guatemala, Thailand and Zimbabwe

The following joint communication, dated 3 December 1993, has been received from the Permanent Missions of Brazil, Chile, Colombia, El Salvador, Guatemala, Thailand and Zimbabwe, with the request that the matter be inscribed on the Agenda of the Council meeting on 17 December.

As explained in documents DS44/1 and DS44/2, Section 1106 of the United States "Omnibus Budget Reconciliation Act of 1993", signed on 10 August last, amends the United States "Agricultural Adjustment Act of 1938" to protect domestically-produced tobacco, to the detriment of the imported product. According to the Act, United States manufacturers are required to use yearly a minimum of 75 per cent of locally-produced tobacco in the manufacturing of cigarettes. Heavy penalties are imposed on manufacturers who do not comply with that requirement. Furthermore, the Act includes three assessments to be paid on raw tobacco imports: (1) a fee on imports of flue-cured and burley tobacco to fund the domestic price support program; (2) an inspection fee to be levied on imported tobacco; and (3) a marketing assessment fee to be paid by importers of flue-cured and burley tobacco.

In view of the fact that the Act is not consistent with United States' GATT obligations, in particular, but not limited to the provisions of Articles III:1, III:2, III:4, III:5 and VIII:1, and in view of the detrimental impact of the Act on their tobacco exports, the above mentioned contracting parties formally requested, on 7 September 1993, consultations with the United States Government under Article XXIII:1 of the GATT, on the matter.

As agreed among the parties, these consultations were held on 4 October 1993. Not only were consultations judged to be unsatisfactory at the time, for the United States even failed to provide explanation on the issues raised then, but also because the United States has not, as of today, yet responded fully to the written questions presented on the matter as agreed. Furthermore, the United States has not shown any willingness to bring its legislation into conformity with the General Agreement.

Since consultations are considered to have been exhausted without any satisfactory solution to the requesting parties, the Governments of Brazil, Chile, Colombia, El Salvador, Guatemala, Thailand and Zimbabwe, acting jointly and severally, each in the exercise of the rights accruing to its as a contracting party to the General Agreement, request that a panel be established, pursuant to Article XXIII:2, to examine, taking into consideration the contents of the above paragraphs as well as of documents DS44/1 and DS44/2, the conformity of the mentioned United States legislation with the provisions of the General Agreement, the nullification of impairment of benefits accruing to those countries under the General Agreement and any other implications on their tobacco exports.