

**ARMENIA – MEASURES AFFECTING THE IMPORTATION AND
INTERNAL SALE OF CIGARETTES AND ALCOHOLIC BEVERAGES**

Request for the Establishment of a Panel by Ukraine

The following communication, dated 8 September 2010, from the delegation of Ukraine to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 20 July 2010, Ukraine requested consultations with the Government of the Republic of Armenia ("Armenia") pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT") with respect to:

- The imposition of higher tax rates on imported cigarettes than on like domestic products, pursuant to Armenia's "Law on Fixed Charges on Tobacco Products" of 31 March 2000 ("Tobacco Charges Law");
- The collection of customs duties on imported cigarettes pursuant to the Tobacco Charges Law in excess of those set forth in Armenia's Schedule of Concessions; and
- The imposition of higher excise tax rates on imported alcoholic beverages than on like domestic products, pursuant to the Law "On Excise Tax" of 7 July 2000 ("Excise Tax Law").

Armenia failed to reply to Ukraine's request for consultations, such that no consultations could be held. Thus, it was impossible to resolve the dispute through consultations.

I. THE PRESUMPTIVE TAX ON CIGARETTES

For a small number of products, including cigarettes, Armenia imposes a single, fixed charge (the "presumptive tax") which includes both internal taxes such as VAT and excise tax and the applicable customs duty. Armenia applies this so-called "presumptive tax" at the fixed rates of AMD6,500 per 1,000 imported cigarettes and AMD4,750 per 1,000 like domestic cigarettes (HS 2402 20) pursuant to Article 3 of the Tobacco Charges Law.

This presumptive tax on cigarettes at the above fixed rates for imported and domestic cigarettes is in violation of Armenia's obligations of providing national treatment to imported products and leads to the imposition of customs duties in excess of Armenia's tariff binding of 15 per cent ad valorem for cigarettes as set forth in Armenia's Schedule of Concessions.

A. THE PRESUMPTIVE TAX VIOLATES GATT ARTICLE III – NATIONAL TREATMENT

Pursuant to the Tobacco Charges Law, Armenia is subjecting imported cigarettes to VAT and excise taxes at rates that exceed rates for domestic cigarettes. The VAT for imported cigarettes is 15 per cent of the total fixed charge, while 76.5 per cent of the fixed charge represents the excise tax that is due on imported cigarettes. This is so because the fixed charge covers VAT, excise tax and the customs duty for imported cigarettes. The proportion of Customs Duty of the fixed charge is 8.5 per cent, which implies that 76.5 per cent of the fixed charge represents the excise tax. It is clear that the VAT of 15 per cent of a fixed charge for imported cigarettes of 6,500 AMD (i.e. 975 AMD) is higher than the VAT of 20 per cent of the fixed charge for domestic cigarettes of 4750 AMD (i.e. 950 AMD). Similarly, the excise tax of 76.5 per cent of the fixed charge for imported cigarettes of 6,500 AMD (i.e. 4,972.50 AMD) is higher than the excise tax of 80 per cent of the fixed charge for domestic cigarettes of 4750 AMD (i.e. 3800 AMD). In sum, the different taxable base used for the determination of the VAT and the excise taxes leads to the imposition of internal taxes on imported cigarettes that are in excess of those imposed on domestic cigarettes.

Thus, Armenia imposes internal taxes on imported cigarettes in excess of those imposed on like domestic cigarettes. In addition, Armenia is not similarly taxing imported cigarettes and domestic directly competitive or substitutable products, and this so as to afford protection to the domestic production of cigarettes.

Ukraine therefore considers that Armenia's Tobacco Charges Law and any relevant amendments, replacements, and related or subsequent measures implementing such law, are inconsistent with Armenia's obligations under Articles III:1, III:2, first and second sentence, and III:4 of the GATT 1994 and paragraph 1.2 of the Protocol of Accession of Armenia to the WTO (WT/L/506, 17 December 2002), that incorporates by reference the commitments set out in paragraph 72 of the Report of the Working Party on the Accession of the Republic of Armenia to the World Trade Organization (WT/ACC/ARM/23, 26 November 2002), which provides as follows:

"From the date of accession, Armenia would apply its domestic taxes, including value-added and excise taxes, in a non-discriminatory manner consistent with Articles I and III of the GATT 1994.... The Working Party took note of these commitments."

B. THE PRESUMPTIVE TAX LEADS TO THE COLLECTION OF CUSTOMS DUTIES ON IMPORTED CIGARETTES IN EXCESS OF ARMENIA'S BOUND TARIFF RATES

Armenia bound its tariffs for cigarettes (HS 2402 20) at 15 per cent pursuant to its Schedule of Concessions. Nevertheless, under the Tobacco Charges Law, Article 3, Armenia collects customs duties of 8.5 per cent of the fixed charge of 6500 AMD (i.e. 552.50 AMD) which equals the imposition of a customs duty on imported cigarettes of up to 24 per cent.

By imposing customs duties in excess of those provided in its Schedule of Concessions reproduced in the Annex to the Protocol of Accession of Armenia to the WTO, Armenia's Tobacco Charges Law and any relevant amendments, replacements and related or subsequent measures implementing such law are inconsistent with Armenia's obligations under Article II:1 of the GATT 1994.

In addition, Armenia's imposition of specific duties on cigarettes under the Tobacco Charges Law is inconsistent with paragraph 1.2 of the Protocol of Accession of Armenia to the WTO which incorporates by reference the commitments set out in paragraph 53 of the Report of the Working Party on the Accession of the Republic of Armenia to the World Trade Organization, which provides that:

"The representative of Armenia stated that the rates of customs duty would not be applied in excess of the levels bound in Armenia's WTO Schedule of Concessions on Goods, which is annexed to the Protocol of Accession of Armenia. In addition, upon request, Armenia would consult with WTO Members to address any concerns related to the application of specific duties to imports where Armenia had adopted bound ad valorem tariff rates. The Working Party took note of this commitment."

The imposition of this presumptive tax on imported cigarettes constitutes a specific duty which exceeds the bound ad valorem rate. Furthermore, Armenia has refused to consult with Ukraine in order to address the concerns of Ukraine related to the application of specific duties to imports where Armenia had adopted bound ad valorem tariff rates. Both constitute clear breaches of Armenia's accession commitments set forth above.

II. THE EXCISE TAX ON ALCOHOLIC BEVERAGES

Pursuant to its Excise Tax Law, Armenia applies an excise tax on alcoholic beverages (HS 2203, 2204, 2205, 2206, 2207, and 2208) at rates that are substantially higher than those applied on domestic like products or directly competitive or substitutable products.

Armenia imposes a lower excise tax on domestic products than on products imported from Ukraine so as to afford protection to domestic production and to accord imported products treatment less favorable than that accorded to like products or directly competitive or substitutable products of national origin. Ukraine considers that Armenia's Excise Tax Law, any amendments, replacements, and any related or subsequent measures implementing such law are inconsistent with Articles III:1, III:2, and III:4 of the GATT as well as with the paragraph 1.2 of the Protocol of Accession of Armenia to the WTO that incorporates the commitments set out in paragraphs 70 and 72 of the Report of the Working Party on the Accession of the Republic of Armenia to the World Trade Organization which provides that:

"In response, the representative of Armenia stated that legislation had been enacted by Armenia's Parliament in Law No. HO-415-N on 21 October 2002 and would be implemented before the date of accession to equalise the level of excise duties applied to all distilled beverages, vodka, cognac, liquor, etc. (HS 2208) and to equalise the level of excise duties applied to champagne, sparkling wines, wines, etc. (HS 2204). The Working Party took note of these commitments."

Accordingly, Ukraine respectfully requests, pursuant to Article 6 of the DSU, that the Dispute Settlement Body establish a panel to examine these matters, with the standard terms of reference set out in Article 7.1 of the DSU. Ukraine asks that this request be placed on the agenda of the next meeting of the WTO Dispute Settlement Body that will take place on 21 September 2010.
