

PHILIPPINES – TAXES ON DISTILLED SPIRITS

Request for the Establishment of a Panel by the United States

The following communication, dated 26 March 2010, from the delegation of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 14 January 2010, the United States requested consultations with the Philippines 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 1994") with regard to the taxation of distilled spirits by the Philippines (WT/DS403/1). Consultations were held on 23 February 2010, but have failed to resolve the dispute.

The Philippines taxes distilled spirits at rates that differ depending on the product from which the spirit is distilled. Distilled spirits produced from certain materials that are typically produced in the Philippines are taxed at a low rate. Other distilled spirits are taxed at significantly higher rates (for example at a rate that is approximately from 10 to 40 times higher than the rate for the domestic product). The tax rate also depends on whether the product from which the spirit is distilled is produced commercially in the country where it is processed into distilled spirits. The Philippine taxes on distilled spirits do not appear to tax imported distilled spirits and directly competitive or substitutable domestic distilled spirits similarly. The taxes appear to be applied in a way that affords protection to domestic production. In addition, the taxes appear to subject imported distilled spirits to internal taxes in excess of those applied to like domestic products.

The United States understands that the instruments reflecting the Philippine measures include:

- Section 141 of the *National Internal Revenue Code of 1997* (Republic Act No. 8424, *an Act amending the National Internal Revenue Code as amended and for other purposes*, as subsequently amended, particularly by Republic Act No. 9334, *an Act increasing the excise tax rates imposed on alcohol and tobacco products, amending for the purpose Sections 131, 141, 142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, as amended*);
- Republic Act No. 8240, *an Act amending Sections 138, 139, 140 and 142 of the National Internal Revenue Code, as amended and for other purposes*;
- *Revenue Regulations No. 02-97, Governing Excise Taxation on Distilled Spirits, Wines and Fermented Liquors*;
- *Revenue Regulations No. 17-99, Implementing Sections 141, 142, 143 and 145(A)*

and (C) (1), (2), (3) and (4) of the National Internal Revenue Code of 1997 relative to the Increase of the Excise Tax on Distilled Spirits, Wines, Fermented Liquors and Cigars and Cigarettes Packed by Machine by Twelve Per Cent (12%) on 1 January 2000;

- *Revenue Regulations No. 9-2003, Amending Certain Provisions of Revenue Regulations No. 1-97 and Revenue Regulations No. 2-97 Relative to the Excise Taxation of Alcohol Products, Cigars and Cigarettes for the Purpose of Prescribing the Rules and Procedures To Be Observed in the Establishment of the Current Net Retail Price of New Brands and Variants of New Brands of Alcohol and Tobacco Products;*
- *Revenue Regulations No. 23-2003, Implementing the Revised Tax Classification of New Brands of Alcohol Products and Variants Thereof Based on the Current Net Retail Prices Thereof as Determined in the Survey Conducted Pursuant to Revenue Regulations No. 9-2003;*
- *Revenue Regulations No. 12-2004, Providing for the Revised Tax Rates on Alcohol and Tobacco Products introduced on or before December 31, 1996, and for those Alcohol and Tobacco Products Covered by Revenue Regulations No. 22-2003 and 23-2003, Implementing Act No. 9334; and*
- *Revenue Regulations No. 3-2006, Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 9334, and Clarifying Certain Provisions of Existing Revenue Regulations Relative Thereto;*

as well as any amendments, replacements, related measures or implementing measures.

The Philippine measures appear to be inconsistent with the first and second sentences of Article III:2 of the GATT 1994.

Accordingly, the United States respectfully requests, pursuant to Article 6 of the DSU, that the Dispute Settlement Body establish a panel, with standard terms of reference as set out in Article 7.1 of the DSU, to examine the matter described above.
