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JAPAN - TAXES ON ALCOHOLIC BEVERAGES

Request for the Establishment of a Panel by the European Communities

The following communication, dated 14 September 1995, from the Permanent Delegation of the European Commission to the Permanent Mission of Japan is circulated at the request of the Permanent Delegation of the European Commission.

On 21 June 1995, the European Communities requested consultations with Japan under Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") with regard to the internal taxation of certain alcoholic beverages in Japan (WT/DS8/1).

The European Communities and Japan held consultations in Geneva on 20 July 1995 with a view to reaching a mutually satisfactory solution. Unfortunately, the consultations failed to settle the dispute.

The European Communities hereby request that a panel be established at the next meeting of the Dispute Settlement Body ("DSB") pursuant to Article XXIII:2 of GATT 1994 and Article 6 of the DSU.

The European Communities claim that:

- Japan had acted inconsistently with Article III:2, first sentence, of the GATT 1994 by applying a higher tax rate on the category of "spirits" than on each of the two subcategories of shochu, thereby nullifying or impairing the benefits accrued to the European Communities under the GATT 1994; and that

- Japan has acted inconsistently with Article III:2, second sentence, of the GATT 1994 by applying a higher tax rate on the category of "whisky/brandy" and on the category of "liqueurs" than on each of the two subcategories of shochu, thereby nullifying or impairing the benefits accrued to the European Communities under the GATT 1994.

In the event that the liquors falling within the category of "spirits" were found by the Panel not to be "like products" to shochu within the meaning of the first sentence of Article III:2, the European Communities further claim that:

- Japan has acted inconsistently with Article III:2, second sentence, of the GATT 1994 by applying a higher tax rate on the category of "spirits" than on each of the two subcategories of shochu, thereby nullifying or impairing the benefits accrued to the European Communities under the GATT 1994.

The above claims are set out in detail in the following paragraphs.

The European Communities request that the panel be established with the standard terms of reference as set out in Article 7 of the DSU.

1. Article III:2, first sentence

Under the Japanese Liquor Tax Law, different tax rates are applied to each of the two subcategories of shochu and to the category of "spirits". The rate per litre of "shochu B" is always lower than the rate levied on "spirits". The rate per litre of "shochu A" is also lower than the rate per litre of "spirits" for beverages with an alcohol content of less than 36-37 . Above that percentage, the rate on "shochu A" is higher. However, in accordance with the legal definition of "shochu A" contained in the Liquor Tax Law, the maximum alcohol content of this liquor is 36 . Thus, in practice, the rate per litre of "spirits" is always higher than the rate per litre of "shochu A". If the tax rates per litre of pure alcohol, instead of the rates per litres of each beverage, are compared, the rate applied to "spirits" is also higher.

The European Communities consider that the two subcategories of shochu and all distilled liquors falling with the category "spirits" are "like products" within the meaning of the first sentence of Article III:2 of the GATT 1994.

Therefore, the European Communities claim that by levying a tax on the distilled liquors falling within the category "spirits" which is in excess of the tax applied to each of the two shochu subcategories, Japan violates Article III:2, first sentence, of the GATT 1994.

2. Article III:2, second sentence

The tax rate per litre of "whisky/brandy" is always higher than the rates per litre of "shochu A" and of "shochu B". Likewise, the tax rate per litre applied to "liqueurs" is always higher than the tax rate per litre of "shochu B". The rate per litre of "shochu A" is lower than the rate on "liqueurs" at an alcoholic strength below 32-33 . Above that strength, the rate on "shochu A" is higher. Nevertheless, most of the "shochu A" sold on the Japanese market has 25 or less. Thus, the rate per litre of "shochu A" is as a general rule lower than the rate on "liqueurs". The tax rates per litre of pure alcohol levied on "shochu A" and "shochu B" are also lower than the corresponding rates on "whisky/brandy" and "liqueurs".

The European Communities consider that the two subcategories of shochu and the liquors falling within the categories of "whisky/brandy" and "liqueurs" are "directly competitive or substitutable" products within the meaning of the Explanatory Note to Article III:2, second sentence, of the GATT 1994.

Should any of the liquors falling within the category "spirits" be found by the Panel not to be a "like product" to shochu, the European Communities claim that, at the very least, they would still be "directly competitive or substitutable" products.

The European Communities believe that the above-mentioned tax differentials between the two subcategories of shochu and the categories of "whisky/brandy" and "liqueurs" cannot be regarded as "de minimis". The tax differentials between the two shochu subcategories and the "spirits" category to which reference has been made in paragraph 1 are also above the "de minimis" level.

The European Communities note that whisky, brandy and most of the distilled liquors falling within the categories of "spirits" and "liqueurs" are primarily produced in countries other than Japan and exported in substantial quantities to Japan. In contrast, shochu is primarily manufactured in Japan and almost all shochu consumed in Japan is domestically produced.

For the above reasons, the European Communities claim that, by applying a higher tax on the categories "whisky/brandy" and "liqueurs" and on distilled liquors falling within the category "spirits" (to the extent that they are not "like products" to shochu) than on the subcategories "shochu A" and "shochu B", Japan affords protection to its domestic production of shochu, thereby violating Article III:2, second sentence, of the GATT 1994.