

URUGUAY – TAX TREATMENT ON CERTAIN PRODUCTS

Request for Consultations by Chile

The following communication, dated 18 June 2002, from the Permanent Mission of Chile to the Permanent Mission of the Eastern Republic of Uruguay and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

I have been instructed by my Government to request consultations with the Eastern Republic of Uruguay under Article XXII of the GATT 1994 and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes in connection with Uruguay's tax treatment on certain products.

The Specific Internal Tax (*Impuesto Específico Interno* – IMESI) is levied on the first alienation and the import by non-taxpayers of certain specified goods, including beverages (alcoholic beverages, juices, mineral water), tobacco and cigarettes, automobiles, and lubricants and fuels. The IMESI tax scheme is contained in a number of different provisions, including Chapter 11 of the Harmonized Text of 1996, Decree 96/990 of 21 February 1990 of the Ministry of the Economy and Finance, and bimonthly resolutions of the Directorate-General of Taxation (DGI), and was recently amended, for cigarettes, by Decree 200/002 of 3 June 2002.

This tax is applied in various ways, most of which involve the use of *notional prices* to determine the tax assessment base. As a result, the base is raised with respect to the actual sales price, more notably so in the case of goods of foreign origin. In some cases, not only does this lead to discrimination and violation of Uruguay's international obligations with respect to national treatment, but it amounts, in practice, to an import prohibition.

A closer look at the situation with respect to beverages and to cigarettes and tobacco illustrates this point:

Beverages. The legislation establishes the following differential rates according to the product:

Product	Rate in %
Wines (including champagne)	20.2
Liqueurs (gin, grappa, rum, tequila, whisky, etc.)	80
Beer	23.5
Non-alcoholic beverages (including mineral water)	10.5
Malts	13
Other	21.5

However, the tax base for these products varies considerably and differentially according to their origin.

Wines and liqueurs are divided into two, three or four categories depending on their actual sales price. For each category, the Uruguayan authority establishes a notional price on the basis of which the tax payable is calculated. In other words, the rate of 20.2 or 80 per cent is applied to the notional price fixed by the authority every two months for each one of the categories, regardless of the actual sales price (which is only used to place the product in one of the categories and apply the corresponding notional price). In establishing the categories of products and their corresponding notional prices at its discretion, the Uruguayan authority discriminates, in practice, against imported products. Chilean wines, for example, are generally classified in the second category, for which the notional price is almost double that of the first category (which includes most of the wines produced in Uruguay).

In the case of other beverages (beer, mineral water, juices), the authority fixes a notional price every two months to which it applies the corresponding rate. For imported products, the tax base corresponds to the notional price multiplied by a factor of 2. This is known in Uruguay as the "double IMESI". In other words, the tax base for domestic products is not only determined arbitrarily by the authority, but it corresponds to half the base applied to imported products.

Tobacco and cigarettes. For these two products the tax is the same regardless of their origin: 30 per cent for tobacco and 68.5 per cent for cigarettes. However, as in the case of beverages and other products, notional prices are used to determine the tax base. In the case of tobacco, although Regulatory Decree 96/990 stipulates that the notional price shall be fixed on the basis of the sales price multiplied by a certain factor (depending on whether it is tobacco or frontier zone tobacco and whether it is sold to a distributor or a retailer), the bimonthly resolutions fix these notional prices arbitrarily according to the brand (and ultimately, the origin), with differences of up to 100 per cent. For cigarettes, the notional price is fixed on the basis of the sales price multiplied by a factor which varies depending on the origin of the product. For domestic cigarettes, the factor is 4.61 per cent or 4.39 per cent depending on whether they are sold to a wholesaler or a retailer. For cigarettes from neighbouring countries, the notional price corresponds to the notional price of the highest-category domestic cigarettes multiplied by a factor of 1.3; in the case of cigarettes imported from other countries, such as Chile, that factor is 2. This means that the IMESI tax base for cigarettes from neighbouring countries is one third higher than for highest-priced Uruguayan cigarettes, while for cigarettes imported from other countries, it is double the Uruguayan tax base. In other words, the taxes paid on foreign products are considerably higher than the taxes paid on domestic products with the result that in many cases, it is economically impossible to market imported products on the Uruguayan market.

On 3 June 2002, Decree 200/002 establishing a minimum tax base for all cigarettes was promulgated. This minimum base is added to the difference with the notional price established according to the mechanism described above. In other words, while the taxable amount does not change, and the discrimination between domestic and imported products (differentiated between border zone and other imports) is maintained, domestic products whose sales price is below the minimum tax base are penalized. This illustrates how the authority arbitrarily establishes the conditions for access and marketing of these products.

In the case of the other products affected by the IMESI, there are various degrees of discrimination between domestic and foreign products.

In view of the above, Chile considers the Specific Internal Tax (IMESI), introduced through Chapter 11 of the Harmonized Text of 1996, regulated by Decree 96/990 of the Ministry of the Economy and Finance of 21 February 1990, and amended by Decree 200/002, as well as its bimonthly implementation through DGI resolutions, to be contrary to Articles I and III of the GATT 1994, in that they establish a tax scheme based on notional prices to determine the tax base, which discriminates between domestic and imported products and, in certain cases, between imported

products according to their origin. For certain products this discrimination amounts, in practice, to an import prohibition.

It should be recalled that this system was already questioned by the WTO in 1998 during the Trade Policy Review of Uruguay. The Uruguayan representation stated at the time that Uruguay was preparing legislation that would ensure equality of treatment for all products, regardless of their origin.

Chile reserves the right to raise other issues of fact and law during the consultations.

I await your reply to this request for consultations in order to establish a mutually convenient date for holding them.
