

**INDIA – MEASURES AFFECTING THE IMPORTATION AND SALE
OF WINES AND SPIRITS FROM THE EUROPEAN COMMUNITIES**

Request for Consultations by the European Communities

The following communication, dated 20 November 2006, from the delegation of the European Communities to the delegation of India and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

The European Communities hereby requests consultations with India pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) and Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* (GATT 1994) regarding duties applied by India and restrictions on retail sale applied by the Indian State of Tamil Nadu. These measures adversely affect exports of wines and spirits (codes 2204, 2205, 2206 and 2208 of the Harmonised System) from the European Communities to India.

1. Duties applied by India

The measures in question include, but are not limited to, the following:

- Sections 2 and 3, and Schedule 1, of the 1975 Customs Tariff Act;
- Customs Notification No. 5/2004 of 8 January 2004 on Basic Customs Duty applied to spirits (code 2208 of the Harmonised System);
- Customs Notification No. 20/1997 of 1 March 1997 on Basic Customs Duty applied to wines (codes 2204, 2205 and 2206 of the Harmonised System);
- Customs Notification No. 32/2003 of 1 March 2003 on Additional Duty applied to wines and spirits (codes 2204, 2205, 2206 and 2208 of the Harmonised System); and
- Customs Notification No. 19/2006 of 1 March 2006 (on Extra Additional Duty applied to, *inter alia*, codes 2204, 2205, 2206 and 2208 of the Harmonised System).

Under Section 2 and Schedule 1 of the 1975 Customs Tariff Act, India applies a Basic Customs Duty to imported wines and spirits (codes 2204, 2205, 2206 and 2208 of the Harmonised System). The Basic Customs Duty is applied pursuant to Customs Notification No. 20/1997 of 1 March 1997 to wines (codes 2204, 2205 and 2206) at a level of 100% *ad valorem* and pursuant to Customs Notification No. 5/2004 of 8 January 2004 to spirits (code 2208) at a level of 150% *ad valorem*. Under Section 3 and Schedule 1 of the 1975 Customs Tariff Act, India also applies an Additional Duty and an Extra Additional Duty to imported wines and spirits. The Additional Duty is

applied pursuant to Customs Notification No. 32/2003 of 1 March 2003 to wines at levels ranging from 20% to 75% (depending on the customs value of the wines imported), and to spirits at levels from 25% to 150% (depending on the customs value of the spirits imported). The Additional Duty is applied to the aggregate of customs value and Basic Customs Duty. The Extra Additional Duty is applied pursuant to Customs Notification No. 19/2006 of 1 March 2006 to wines and spirits at a level of 4% *ad valorem*. The Extra Additional Duty is applied to the aggregate of customs value, Basic Customs Duty and Additional Duty. The aggregate duty level resulting from the application of the Basic Customs Duty, the Additional Duty and the Extra Additional Duty ranges from 177.33% to 264% for imported wines and from 252.22% to 550% for imported spirits. Those aggregate duty levels exceed the bound level of 150% *ad valorem* for wines and spirits set forth in the WTO tariff schedule of India.

The European Communities considers that these measures are inconsistent with India's obligations under the GATT 1994. In particular, India has acted inconsistently with Article II:1(a) and (b), read in conjunction with Article III:2 of the GATT 1994, by failing to accord to the commerce of another Member treatment no less favourable than that provided for in India's tariff schedule annexed to the WTO Agreement. India has failed to exempt products, which are the products of territories of another Member, on their importation into India's territory, from ordinary customs duties in excess of those set forth and provided in India's schedule. India has failed to exempt such products from all other duties or charges of any kind imposed on or in connection with the importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date.

The European Communities consider that these measures also nullify or impair the benefits accruing to the European Communities under the GATT 1994.

2. Restrictions on sale applied by the Indian State of Tamil Nadu

The measures in question include, but are not limited to, the following:

- Sections 3, 4, 17-B, 17-C, 17-E and 24 of the Tamil Nadu Prohibition Act, 1937
- The Tamil Nadu Liquor (Licence and Permit) Rules, 1981
- The Tamil Nadu Liquor Retail (in Bars and Shops) Rules, 2003.

Under the above measures, the importation into, transportation within and sale within the State of Tamil Nadu of wines and spirits (codes 2204, 2205, 2206 and 2208 of the Harmonised System) is prohibited, and punishable by fine or imprisonment. Exceptions to this prohibition apply to holders of licences for importation, transportation and sale issued by the State of Tamil Nadu. The above measures appear to establish a legal basis for awarding licences for the importation into, and transportation within, Tamil Nadu of wines and spirits produced in other Indian States as well as wines and spirits imported into India from other WTO Members. The above measures appear to establish a legal basis for awarding licences for the sale (including wholesale and retail distribution) within Tamil Nadu of wines and spirits produced in other Indian States, but not for sale of wines and spirits imported into India from other WTO Members. Moreover, the practice of the authorities of the State of Tamil Nadu confirms that the sale (including wholesale and retail distribution) within Tamil Nadu of wines and spirits imported into India from other WTO Members is prohibited and that licences for such sale are not issued.

The European Communities considers that these measures are inconsistent with India's obligations under the GATT 1994. In particular, India has acted inconsistently with:

- Article III:4 of the GATT 1994 by failing to accord to the products of the territory of other Members imported into the territory of India treatment no less favourable than that accorded to like products of Indian origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use; or
- Article XI of the GATT 1994 by maintaining prohibitions or restrictions on the importation of products imported into the territory of India from other Members.

The European Communities consider that these measures also nullify or impair the benefits accruing to the European Communities under the GATT 1994.

For each of the measures referred to in sections 1 and 2 above, this request also covers any amendments, replacements, extensions, implementing measures or other related measures.

The European Communities reserves the right to address additional measures and claims under other provisions of the WTO Agreement regarding the above matters during the course of the consultations.

The European Communities looks forward to receiving in due course a reply from India to this request. The European Communities is ready to consider with India mutually convenient dates to hold consultations in Geneva.
