

# WORLD TRADE ORGANIZATION

WT/DS380/1/Add.3  
G/L/855/Add.3  
G/SCM/D79/1/Add.3  
18 November 2009

(09-5705)

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## INDIA – CERTAIN TAXES AND OTHER MEASURES ON IMPORTED WINES AND SPIRITS

### Request for Consultations by the European Communities

#### Addendum

The following communication, dated 16 November 2009, 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 supplementary consultations<sup>1</sup> 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 discriminatory taxation applied on imported bottled wines and spirits by the National Capital territory of Delhi as well as the discriminatory practices of the state-owned Andhra Pradesh Beverages Corporation and of the Tamil Nadu State Marketing Corporation Limited, in supplying and distributing wines and spirits. These measures adversely affect exports of wines and spirits (codes 22.04, 22.05, 22.06 and 22.08 of the Harmonised System) from the European Communities to India.

#### Discriminatory taxation applied by Delhi

The European Communities understands that the National Capital territory of Delhi applies the "vend fee" on wines and spirits in a way that subjects imported wines and spirits to internal taxes in excess of domestic like products. Pursuant to Notification No F.10(13)/fin.(T1E)/2008-09 of 4 June 2009 the "vend fee" appears to apply on imported wines and spirits at higher rates than on domestic like products and in accordance with a different structure and taxable basis, as compared to the "vend fee" on domestic wines and spirits, as laid down in Notification No F10 (27)/2001 Fin (E-1)(i)/223/kha of 29 June 2001.

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<sup>1</sup> This request supplements the request of consultations entailed in document WT/DS380/1, G/L/855, G/SCM/D79/1 dated 25 September 2008 as well as the supplementary request entailed in document WT/DS380/1/Add.1, G/L/855/Add.1, G/SCM/D79/1/Add.1 dated 17 December 2008 and the subsequent request entailed in document WT/DS380/1/Add.2, G/L/855/Add.2, G/SCM/D79/1/Add.2 of 6 May 2009 with regard to measures not mentioned in the previous requests.

The measures in question include but are not limited to:

- Sections 34 and 58 of the Punjab Excise Act 1914
- The Delhi Liquor Licence Rules, 1976, as amended;
- Notification F10(27)/2000 Fin E-1/ 781 of 28 September 2000
- Notification F10(27)/2001.Fin(E-1)(i)/223/kha of 29 June 2001
- Notification No F.10(13)/fin.(T1E)/2008-09 of 4 June 2009

The European Communities considers that these measures are inconsistent with *Article III, paragraph 2* of the GATT 1994. In particular:

- The "vend fee" is inconsistent with India's obligations under Article III:2 of the GATT 1994, because it subjects imported bottled wines and spirits to internal taxes that are in excess of internal taxes applied on domestic like products.

The discriminatory practice of the Andhra Pradesh Beverages Corporation

Rule 4 of the *Andhra Pradesh (Regulation of wholesale trade and distribution and retail trade in India liquor, wine and beer) Act, 1993* establishes the Andhra Pradesh Beverages Corporation Limited (APBCL) as a corporation wholly owned and controlled by the Government of Andhra Pradesh that has the exclusive privilege of importing, exporting and carrying out the wholesale trade and distribution of *inter alia* Indian liquor, foreign liquor and wine, on behalf of the Government for the whole of the state.

However, APBCL's practice appears to stock predominantly domestic wines and spirits for general sale and does not afford the European enterprises adequate opportunities to compete for participation in APBCL's purchases and sales. Notably, no tenders to supply imported wines and spirits from outside India appear to have been issued to date. This practice seems to be confirmed by the information available on the official website of APBCL about the Corporation's main functions, as well as by the indication that tenders for procurement of wines and spirits issued so far are related to the supply of domestic wines and spirits only.

The measures in question include but are not limited to:

- Section 68-A of the Andhra Pradesh Excise Act, 1968;
- The Andhra Pradesh (regulation of wholesale trade and distribution and retail trade in India liquor, wine and beer) Act, 1993, as amended;
- The Andhra Pradesh prohibition Act , 1995 (Act 17 of 1995), as amended;
- Andhra Pradesh Act 5 of 1997;
- The procurement policy of the Andhra Pradesh Beverages Corporation limited as published under <http://www.apbcl.gov.in/tenders&notis.html>;

- The Andhra Pradesh Beverages Corporation Limited "Information hand book" as published under <http://india.gov.in/allimpfrms/allannouncements/3424.pdf>;
- APBCL practice

The European Communities considers that the measures are inconsistent with India's obligations under the GATT 1994, in particular:

- India fails to accord imported wines and spirits treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation distribution or use in breach of Article III:4 of the GATT 1994 or alternatively of Article XI of the GATT 1994, by maintaining prohibitions or restrictions on the importations of products imported into the territory of India from other members;
- the APBCL fails to act in a manner consistent with the general principles of non-discriminatory treatment prescribed by Article XVII of the GATT 1994, by failing to make the purchases and sales of wines and spirits solely in accordance with commercial considerations and by failing to afford the enterprises of the other contracting parties adequate opportunity to compete for participation in its purchases or sales.

The discriminatory practice of the Tamil Nadu Marketing Corporation Limited

The Tamil Nadu Marketing Corporation Limited (TASMAC) appears to be granted the exclusive privilege of supplying by wholesale and selling by retail domestic wines and spirits and, by virtue of the recent Act 22 of 2007 and Government Order No 40 of 1 July 2008, imported wines and spirits from outside India. However, despite an isolated limited order, which took place in October 2008, wholesale and retail of imported wines and spirits for general sale have been *de facto* denied in Tamil Nadu. TASMAC purchases and sales do not appear to be made solely in accordance with commercial considerations. Furthermore, the European enterprises do not seem to be provided with adequate opportunities to compete for participation in TASMAC's purchases and sales, including with regard to brands registration, as a condition to participate in TASMAC's tenders. This practice appears to contrast with the conditions applied for the registration of domestic brands.

The measures in question include but are not limited to:

- The Tamil Nadu Prohibition Act, 1937, as amended;
- The Tamil Nadu Liquor (Licence and Permit) Rules, 1981, as amended;
- The Tamil Nadu Indian-made foreign spirit (supply by wholesale) Rules, 1983, as amended;
- Government Order Ms. No 39, Home, Prohibition and excise (VIII), 1st July 2008;
- Government Order Ms. No 40, Prohibition and Excise (VIII), 1st July 2008;
- The Tamil Nadu Liquor Retail vending (in Shops and Bars ) Rules, 2003, as amended;

- TASMAC practice

The European Communities considers that the measures are inconsistent also with Article XVII:1 (a) and (b) of the GATT 1994. In particular:

- the TASMAC fails to act in a manner consistent with Article XVII of the GATT 1994, by failing to make the purchases and sales of wines and spirits solely in accordance with commercial considerations and by failing to afford the enterprises of the other contracting parties adequate opportunity to compete for participation in its purchases or sales.

The European Communities considers 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 this document, the request for consultations also covers any amendments, replacements, extensions, implementing measures and the 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.

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