

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

Request for Consultations by the European Communities

The following communication, dated 22 September 2008, 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 Articles 4 and 30 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"), 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 Indian states of Maharashtra and Goa as well as restrictions on retail sale applied by the Indian State of Tamil Nadu. 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.

1. Discriminatory taxation applied by the Indian State of Maharashtra

The European Communities understands that the State of Maharashtra applies a "special fee" which appears to tax imported bottled wines and spirits in excess of domestic like products. Maharashtra exempts from "excise duty" wines manufactured as own brand from the grapes produced within the State of Maharashtra without addition of alcohol or without blending of wine manufactured in the State or brought from across customs frontier or from other States, therefore conferring a subsidy upon the use of domestic over imported goods and subjecting imported wines to a higher tax burden than domestic like products. It appears that recently modified legislation continues to tax imported wines and spirits in excess of domestic like products.

The measures in question include but are not limited to:

- Bombay Prohibition Act, 1949
- Bombay Foreign Liquor and rectified spirit (transport) fees rules, 1954;
- Bombay Foreign liquor rules, 1953;
- Maharashtra potable liquor (fixation of maximum retail price) rules, 1996;
- Notification MIS 1107/CR-40/II/EXC-3 of 28 August 2008;
- Notification No.BPA.1108/CR-23/EXC-3 of 4 August 2008 "Maharashtra Potable liquor (Fixation of maximum Retain prices)(Second amendment) Rules, 2008;
- Notification No.BPA.1108/CR-23/EXC-3 of 4 August 2008 "Bombay Foreign Liquor and Rectified Spirit (Transport)Fees (Amendment) Rules, 2008;

- Notification MIS 1107/CR-33 (1)/EXC-3; MIS 1107/CR-33 (2)/EXC-3 and MIS 1107/CR-33 (3)/EXC-3/ of 10 July 2007 amending the Bombay Foreign Liquor and rectified spirit (transport) fees rules, 1954, the Bombay Foreign liquor rules 1953 and the Maharashtra potable liquor (fixation of maximum retail price) rules 1996;
- Notification MIS 1107/CR/CR-33(1)/EXC-3 of 12 November 2007 amending Bombay Foreign Liquor and rectified spirit (transport) fees rules, 1954;
- The Ready Reckoner on AD valorem Duty released by the Commissioner of State Excise, Maharashtra, of 19 October 1996;
- Notification BWR 1105/CR-9/EXC-3 of 31 March 2006 amending Notification BWR 1105/CR-9(1)/EXC-3 of 31 March 2006;

The European Communities considers that these measures are inconsistent with Article III, paragraph 2 and paragraph 4 of the GATT 1994 as well with Article 3.1(b) and 3.2 of the *Agreement on Subsidies and Countervailing Measures*. In particular:

- The "special fee" is inconsistent with India's obligations under Article III:2 of the GATT 1994, because it subjects imported BIO bottled wines and spirits to internal taxes that are in excess of internal taxes applied on domestic like products.
- The "excise duty" exemption for domestic wine is inconsistent with Article 3.1(b) and 3.2 of the *Agreement on Subsidies and Countervailing Measures*, because the remittance of the whole excise duty in respect of the wine manufactured from the grapes produced within the State of Maharashtra and without using alcohol or without blending of any other wine is a subsidy contingent upon the use of domestic over imported goods in accordance to Article 3.1(b) of the SCM Agreement and as such, is prohibited by virtue of Article 3.2 of the SCM Agreement.
- The "excise duty" exemption is inconsistent with Article III:4 of the GATT 1994, by failing to accord, to products of the territory of the European Communities imported into the territory of India, 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.

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

Article 4.2 of the SCM Agreement requires that a request for consultations under Article 4.1 of the SCM Agreement include a statement of available evidence with regard to the existence and nature of the subsidy in question. This request identifies the existence and nature of the subsidies, and further available evidence is listed in the Annex to this request.

2. Discriminatory taxation applied by the Indian State of Goa

The European Communities understands that the State of Goa appears to apply the "import fee" and the "label recording fee" in a way that subjects imported wines and spirits to internal taxes in excess of domestic like products. According to recently modified legislation the "import fee" appears to be applied in slabs to imported spirits and wines according to the value of their maximum retail price. The "import fee" is not applied on domestic in-State like products. The rate of the initial "label recording fee" to be paid annually for each label of imported spirits amounts to at least four times the amount of the rate applied on domestic like products. The rate of the initial "label recording fee" to be

paid annually for each label of imported wines amounts to twenty five times the amount of the rate applied on domestic like products.

The measures in question include but are not limited to:

- The Goa Excise Duty Act, 1964
- General clauses act, 1897 (Central Act 10 of 1897), Section 21
- Notification No Fin(Rev)/2-35/15/75(C) of 25 March 1976 as amended by notification 1/1/2004-Fin(R&C) of 22 March 2004
- Notification 1/6/2006-Fin (R&C) of 31 March 2006;
- Notification 1/2/2007 Fin (R&C) of 20th November 2007
- Notification 1/1/2008 Fin (R&C) (A) of 23rd April 2008
- Notification 1/1/2008-Fin(R&C)Part of 13rd August 2008

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

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

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

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

The European Communities understands that according to Tamil Nadu's legislation the importation into, transportation within and sale within the State of Tamil Nadu of wines and spirits appears to be 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 measures currently applied 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. They also 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, even after recently modified legislation, they appear not to establish a legal basis 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 seems to confirm 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.

In addition, it appears that recently amended legislation applies a "special fee" which seems to tax imported spirits and wines in excess of domestic like products.

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
- Section 18-B of the Tamil Nadu Prohibition Act, 1937
- Prohibition and excise department notification NII//PE/239d)/81
- G.O. MS 113 of 3 June 2003
- G.O. MS 112 of 3 June 2003
- The Tamil Nadu Liquor (Licence and Permit) Rules, 1981
- Amendments to Tamil Nadu liquor (licence and permit rules), 1981 (G.O.Ms. No40, Prohibition and Excise (VIII), 1st July 2008), No SRO A-19 (a-1)/2008 and SRO A-19(a-2)/2008
- The Tamil Nadu Liquor Retail (in Bars and Shops) Rules, 2003

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

- India seems to act 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, alternatively, with 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.
- India seems to act inconsistently with Article III:2 of the GATT 1994, because it appears to apply a "special fee" on imported wines and spirits only, therefore subjecting imported wines and spirits to taxation in excess of domestic like products.

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 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.

ANNEX

STATEMENT OF AVAILABLE EVIDENCE

The evidence set out below is evidence available to the European Communities at this time regarding the existence and nature of the subsidies set out in the request for consultations. It reflects the presently available evidence regarding the claims reflected in the European Communities for consultations and is supported by the documents that are listed below. The European Communities reserves the right to supplement or alter this list in the future, as required. The European Communities' request for consultations describes in more detail the nature of these subsidies.

- The Bombay Prohibition Act, 1949
 - Notification BWR. 1105/CR-9/EXC-3 of 31 March 2006
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