

UKRAINE – TAXES ON DISTILLED SPIRITS

Request for the Establishment of a Panel by Moldova

The following communication, dated 1 June 2011, from the delegation of Moldova to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

The Permanent Mission of the Republic of Moldova to the UN Office in Geneva presents its compliments to the Dispute Settlement Body of the World Trade Organization (WTO) and has the honour to communicate the following.

On 2 March 2011, the Republic of Moldova requested consultations with Ukraine under Article XXII 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 respect to discriminatory taxation applied on imported alcoholic beverages by the Ukraine (WT/DS423/1).

The Republic of Moldova and Ukraine held consultations in Kiev on 13 April 2011 with a view to reach a mutually satisfactory solution. Unfortunately, the consultations failed to settle the dispute.

The Republic of Moldova 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 Republic of Moldova claims that:

- Ukraine had acted inconsistently with Article III:2, first sentence, of the GATT 1994 by applying a lower tax rate on the domestic distilled spirits, namely "Cognac", than on certain other imported like distilled spirits, thereby nullifying or impairing the benefits accrued to the Republic of Moldova under the GATT 1994;

In the event that the beverages falling within the category of "spirits" were found by the Panel not to be "like products" to domestic "Cognac" within the meaning of the first sentence of Article III:2, the Republic of Moldova further claims that:

- Ukraine has acted inconsistently with Article III:2, second sentence, of the GATT 1994 by applying a lower tax rate on domestic distilled spirits, namely "Cognac", than on certain other imported directly competitive or substitutable distilled spirits, so as to afford protection to the domestic production, thereby nullifying or impairing the benefits accrued to the Republic of Moldova under the GATT 1994.

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

The Republic of Moldova requests 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 amendments made to the Law No. 178 from 07.05.1996 "On rates of excise duty on ethyl alcohol and alcoholic beverages" in 2008, (provisions further included in the new Ukrainian Tax Code nr. 2755 from 02.12.2010), different excise tax rates are applied to "spirits" falling under HS 2208 20 12 00 and HS 2208 20 62 00, namely "Cognac", and to the rest of the alcoholic beverages falling under HS 2208.

This difference in tax burden is made even more dramatic by a systemic postponement of the term of equalization of the mentioned rates. Thus, the tax burden on some Moldavian distilled spirits reached a value almost four times greater than the tax burden on Ukrainian "like products", named "Cognac".

The Republic of Moldova considers that the "Cognac" and all alcoholic beverages falling with the category of "spirits" are "like products" within the meaning of the first sentence of Article III:2 of the GATT 1994.

Therefore, the Republic of Moldova claims that by levying a tax on the alcoholic beverages falling within the category of "spirits" which is in excess of the tax applied to domestic "Cognac", Ukraine violates Article III:2, first sentence, of the GATT 1994.

(2) Article III:2, second sentence

In case that any of the beverages falling within the category of "spirits" will be found by the Panel not to be a "like product" to domestic "Cognac", the Republic of Moldova claims that, at the very least, they would still be "directly competitive or substitutable" products. Moreover, the Republic of Moldova believes that the above-mentioned tax differentials between the "Cognac" and the rest of the alcoholic beverages falling under HS 2208 cannot be regarded as "de minimis".

Nevertheless, the Republic of Moldova notes that most of the alcoholic beverages falling within the category of "spirits", which is exported in substantial quantities to Ukraine, is classified under different from "Cognac" tariff position. In contrast, so called "Cognac" is primarily manufactured in Ukraine and almost all of the consumed "Cognac" in Ukraine is domestically produced.

For the above reasons, the Republic of Moldova claims that, by applying a higher tax on distilled spirits (to the extent that they are not "like products" to "Cognac", but still "directly competitive or substitutable" products) than on the "Cognac", Ukraine affords protection to its domestic production of so called "Cognac", thereby violating Article III:2, second sentence, of the GATT 1994.
