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JAPAN - TAXES ON ALCOHOLIC BEVERAGES

Request for Consultations by the European Community

The following communication dated 21 June 1995 from the Permanent Delegation of the Commission of the European Communities in Geneva to the Permanent Mission of Japan is circulated in accordance with Article 4.4 of the DSU.

Please find enclosed a request by the European Communities to hold consultations with your authorities under Article XXII:1 of the General Agreement on Tariffs and Trade 1994 and under Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) contained in Annex 2 to the Agreement Establishing the World Trade Organization with regard to the internal taxation of certain alcoholic beverages in Japan.

I am addressing a copy of this request to the Director-General of the World Trade Organization for circulation to all members of the Organization. I am also addressing a copy of this request to the Chairpersons of the Dispute Settlement Body and the Council for Trade in Goods for notification in accordance with Article 4:4 of the DSU.

I am looking forward to receive the reaction of your authorities at your earliest convenience.

REQUEST FOR CONSULTATIONS WITH JAPAN UNDER ARTICLE XXII:1 OF
THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

In accordance with paragraph 1 of Article XXII of the General Agreement on Tariffs and Trade 1994 (hereafter the "GATT 1994") and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereafter the "DSU"), the European Community requests consultations with Japan.

The measures concerned by this request are the internal taxes levied by Japan on certain alcoholic beverages pursuant to the Liquor Tax Law.

The products concerned are shochu and all the other distilled spirits and liqueurs falling within HS 2208.20 ("Spirits obtained by distilling grape wine or grape marc"), 2208.30 ("whiskies"), 2208.40 ("rum and tafia"), 2208.50 ("gin and geneva") and 2208.90 ("other" such as fruit brandies, vodka, ouzo, korn, cream liqueurs and "classic" liqueurs).

The European Community considers that the above measures infringe the first and the second sentences of Article III:2 of the GATT 1994, thereby nullifying and impairing the benefits accrued to the European Community under that agreement. The claims submitted by the European Community are set out in detail in sections II and III of this document.

The European Community recalls that on 10 November 1987 the CONTRACTING PARTIES to the GATT 1947 adopted, at the request of the European Community, a panel report in which it was concluded that the Liquor Tax Law was inconsistent with Article III:2 of the GATT 1947. The European Community understands that, following the adoption of the above-mentioned report, the Liquor Tax Law has been amended by Japan. The European Community considers that, despite such amendments, some substantial aspects of the Liquor Tax Law are inconsistent with Article III:2 of the GATT 1994.

In accordance with Article 4.4 of the DSU, the European Community is notifying the Dispute Settlement Body and the Council for Trade in Goods of this request for consultations.

I. Factual Aspects

The European Community understands that under the Liquor Tax Law, the distilled alcoholic beverages covered by this request are classified into the following four categories:

- (i) "Shochu";
- (ii) "Whisky/Brandy";
- (iii) "Spirits", which includes all other distilled alcoholic beverages such as vodka, gin, rum, ouzo and korn; and
- (iv) "Liqueurs", which includes both "classic" liqueurs and cream liqueurs

The category "shochu" is further classified into two sub-categories: "shochu Koh (A)" and "shochu Otsu (B)".

Different tax rates are applied to each of the above-mentioned categories or subcategories. The rates are expressed as a specific amount in Japanese Yen per litre of each category or subcategory. These amounts are unrelated to the alcoholic strength of the beverages. Within each category or subcategory, the rate increases with the alcohol content, although not proportionately. A chart summarizing the rates applied on the products concerned is provided as Annex 1.¹

II. Article III:2, first sentence

Under the Tax Liquor Law, different tax rates are applied to each of the two subcategories of shochu and to the category of "spirits". As shown by the chart included in Annex 1, the rate per litre of "shochu B" is always lower than the rate levied on "spirits".

The rate per litre of "shochu A" is also lower than the rate per litre of "spirits" for beverages with less than 36-37% alcohol content. Above that percentage, the rate on "shochu A" is higher. However, almost all "shochu A" available on the Japanese market is at an alcoholic strength of between 20 and 30%, with 20% being the most common strength. Thus, in practice, the rate per litre of "spirits" is always higher than the rate per litre of "shochu A".

If the tax rates per litre of pure alcohol, instead of the rates per litre of each beverage, are compared, the rate applied to "spirits" is also higher:

	Current Tax Rate per Litre of Pure Alcohol	Tax Discrimination Index
shochu otsu (B) (20%)	Y 346.00	100
shochu koh (A) (20%)	Y 540.00	165
spirits (40%)	Y 992.73	287

The European Community considers that the two subcategories of shochu and all distilled liquors falling within the category "spirits" (such as vodka, gin, rum, ouzo and korn) are "like products" within the meaning of the first sentence of Article III:2 of the GATT 1994.

Therefore, the European Community submits that by levying a tax on the distilled liquors falling within the category "spirits" which is in excess of the tax applied to each of the two shochu subcategories, Japan has violated Article III:2, first sentence, of the GATT 1994.

III. Article III:2, second sentence

As shown by the chart in Annex 1, the tax rate per litre of "whisky/brandy" is always higher than the rate per litre of "shochu A" and of "shochu B".

Likewise, the tax rate per litre applied to "liqueurs" is always higher than the tax rate per litre of "shochu B". The rate per litre of "shochu A" is lower than the rate on "liqueurs" at an alcoholic strength below 32-33%. Above that percentage, the rate on "shochu A" is higher. Nevertheless, as

¹English only.

indicated above, almost all "shochu A" sold on the Japanese market is between 20 and 30%, with 20% being the most common strength. Thus, again, the rate per litre of "shochu A" is in practice always lower.

The tax rates per litre of pure alcohol levied on "shochu A" and "shochu B" are also lower than the corresponding rates on "whisky/brandy" and "liqueurs":

	Current Tax Rate per Litre of Pure Alcohol	Tax Discrimination Index
Shochu otsu (B) (20%)	Y 346.00	100
Shochu koh (A) (20%)	Y 540.00	165
Liqueurs (40%)	Y 821.75	238
Whisky/Brandy (40%)	Y 2455.75	710

The European Community considers that the two subcategories of shochu and the beverages falling within the categories of "whisky/brandy" and "liqueurs" are "directly competitive or substitutable" products, within the meaning of the Explanatory Note to Article III:2, second sentence of the GATT 1994.

To the extent that any distilled liquors falling within the category "spirits" may not eventually be considered to be "like products" to shochu, the European Community takes the view that they would still be "directly competitive or substitutable" products.

The European Community believes that the above-described tax differentials between, on the one hand, the two subcategories of shochu and, on the other hand, "whisky/brandy" and "liqueurs" cannot be regarded as "de minimis". The tax differentials between the two shochu subcategories and the "spirits" category to which reference has been made in paragraph II are also above the "de minimis" level.

The European Community notes that whisky, brandy and most of the distilled liquors falling within the categories of "spirits" and "liqueurs" are primarily produced in countries other than Japan and exported in substantial quantities to Japan. In contrast, shochu is primarily manufactured in Japan and almost all shochu consumed in Japan is domestically-produced.

For the above reasons, the European Community submits that, by applying a higher tax on the categories of "whisky/brandy" and "liqueurs" and on distilled liquors falling within the category "spirits" (to the extent that they are not "like products" to shochu) than on the subcategories "shochu A" and "shochu B", Japan has afforded protection to its domestic production of shochu, thereby violating Article III:2, second sentence, of the GATT 1994.

ANNEX 1

