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ARMENIA - MEASURES AFFECTING THE IMPORTATION AND
INTERNAL SALE OF CIGARETTES AND ALCOHOLIC BEVERAGES

Request for Consultations by Ukraine

The following communication, dated 20 July 2010, from the delegation of Ukraine to the delegation of Armenia and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of Armenia pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes and Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994) on the following matters:

1. Armenia applies so-called "presumptive tax" at the fixed rates of AMD 6,500 per 1,000 imported cigarettes and AMD 4,750 per 1,000 like domestic cigarettes (HS 2402 20) pursuant to its Law "On Presumptive Tax for Tobacco Products" of 24 March 2000 (the Law). It appears to impose a lower rate on domestic products than on directly competitive or substitutable products imported from Ukraine, so as to afford protection to the domestic production and accord these products treatment less favorable than that accorded to like products of national origin.

2. Ukraine considers that the presumptive tax subjects products imported from Ukraine to internal taxes in excess of those applied to like Armenian products in violation of Article III:1&2, and Article III:4 first sentence of the GATT 1994.

3. The Law also appears to be inconsistent with Armenia's obligations under the provisions of paragraph 1.2 of the Protocol on the Accession of the Republic of Armenia to the WTO (WT/L/506, 17 December 2002) insofar as it incorporates by reference the commitments set out in paragraph 72 of the Report of the Working Party on the Accession of the Republic of Armenia to the World Trade Organization (WT/ACC/ARM/23, 26 November 2002), which provides as follows:

"[From the date of accession, Armenia would apply its domestic taxes, including value-added and excise taxes, in a non-discriminatory manner consistent with Articles I and III of the GATT 1994.... The Working Party took note of these commitments.]"

4. In addition, although Armenia bound its tariff for cigarettes (HS 2402 20) at 15 per cent, pursuant to the Law Armenia appears to collect customs duties on imported cigarettes of up to 24 per cent,

which is in excess of those set forth and provided for in the Schedule reproduced in the Annex to the Protocol on the Accession of the Republic of Armenia to the WTO (circulated in document WT/ACC/ARM/23/Add.1), in violation of Article II:1(a&b, first sentence) of the General Agreement on Tariffs and Trade (1994).

5. The Law therefore also would appear to violate paragraph 53 of the Report of the Working Party on the Accession of the Republic of Armenia to the World Trade Organization, which records the following commitment:

"The representative of Armenia stated that the rates of customs duty would not be applied in excess of the levels bound in Armenia's WTO Schedule of Concessions on Goods, which is annexed to the Protocol of Accession of Armenia. In addition, upon request, Armenia would consult with WTO Members to address any concerns related to the application of specific duties to imports where Armenia had adopted bound ad valorem tariff rates. The Working Party took note of this commitment."

6. Besides, pursuant to its Law "On Excise Tax" of 7 July 2000 Armenia applies excise tax on imported alcoholic beverages (HS 2203, 2204, 2205, 2206, 2207, and 2208) at rates, which are substantially higher than those applied on like domestic products. It appears to impose a lower rate on domestic products than on directly competitive or substitutable products imported from Ukraine, so as to afford protection to the domestic production and accord these products treatment less favorable than that accorded to like products of national origin.

7. Ukraine considers that the excise tax subjects products imported from Ukraine to internal taxes in excess of those applied to like Armenian products in violation of Article III:1&2, and Article III:4 first sentence of the GATT 1994.

8. Therefore, the Law "On Excise Tax" would appear to violate paragraphs 72 and 70 of the Report of the Working Party on the Accession of the Republic of Armenia to the World Trade Organization. The latter paragraph records the following commitment:

"In response, the representative of Armenia stated that legislation had been enacted by Armenia's Parliament in Law No. HO-415-N on 21 October 2002 and would be implemented before the date of accession to equalise the level of excise duties applied to all distilled beverages, vodka, cognac, liquor, etc. (HS 2208) and to equalise the level of excise duties applied to champagne, sparkling wines, wines, etc. (HS 2204). The Working Party took note of these commitments."

9. The Government of Ukraine has attempted to resolve this matter through bilateral contacts at senior levels of the Government of Armenia, to no avail.

10. In view of the foregoing, we respectfully request that Armenia bring the relevant measure into conformity with WTO rules with immediate effect by applying VAT and excise taxes on imported and domestic tobacco products and alcoholic beverages in a non-discriminatory manner, and by limiting customs duties to the ad valorem equivalent of no more than 15 per cent, i.e. its bound rate.

11. With a view to reaching a mutually satisfactory solution to this matter, we propose that consultations be held in Geneva as soon as possible on a date to be agreed between our Missions.

Ukraine reserves its right to raise further factual claims and legal matters during the course of consultations.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.