

URUGUAY – TAX TREATMENT ON CERTAIN PRODUCTS

Request for the Establishment of a Panel by Chile

The following communication, received on 3 April 2003, from the Permanent Mission of Chile to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

I am writing to request the establishment of a panel, in accordance with Articles 4 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), concerning the Specific Internal Tax (*Impuesto Especifico Interno* - IMESI) applied by Uruguay. The IMESI is levied on the first alienation, in any form, by taxpayers (manufacturers and importers), and the direct import by non-taxpayers, of certain specified consumer goods, including beverages (alcoholic beverages, juices, mineral water), tobacco and cigarettes, automobiles, and lubricants and fuels. This tax scheme is contained in a number of different provisions, including Chapter 11 of the 1996 Harmonized Text of Laws in Force relating to taxes under the responsibility of the Directorate-General of Taxation ("Harmonized Text of 1996"), as amended by Decree No. 200/002 of 3 June 2002, Regulatory Decree No. 96/990 of 21 February 1990 of the Ministry of the Economy and Finance, and bi-monthly resolutions of the Directorate-General of Taxation (DGI) adjusting the notional prices fixed every six months.

On 18 June 2002, pursuant to Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and Article 4 of the DSU, Chile requested consultations with Uruguay in order to find a solution to this issue. That request was circulated in document WT/DS261/1 and G/L/555. Although the consultations, which took place in Montevideo, Uruguay, on 23 July 2002, enabled the parties to acquire a better understanding of each other's position, unfortunately, in spite of the time that has elapsed, they have not led to a mutually satisfactory solution.

The IMESI is applied in various ways, most of which involve the use of *notional prices*. These notional prices are fixed every six months by the Executive as basic prices, and are adjusted every two months by the DGI in order to determine the tax assessment base. As a result, the base is raised with respect to the actual sales price, more notably so in the case of goods of foreign origin. In some cases, not only does this lead to discrimination and violation of Uruguay's international obligations with respect to most-favoured-nation and national treatment, but it amounts, in practice, to an import prohibition.

A closer look at this situation with respect to beverages and to cigarettes and tobacco illustrates this point.

Beverages. The legislation establishes the following differential rates according to the product:

Product	Rate in %
Wines (including champagne)	20.2
Liqueurs (gin, grappa, rum, tequila, whisky, etc.)	80
Beer	23.5
Non-alcoholic beverages (including mineral water)	10.5
Malts	13
Other	21.5

However, the tax base for these products varies considerably and differentially according to their origin.

Wines and liqueurs are divided into two, three or four categories depending on their actual sales price. For each category, the Uruguayan authority establishes a notional price on the basis of which the tax payable is calculated. In other words, the rate of 20.2 or 80 per cent is applied to the notional price fixed by the authority every two months for each one of the categories, regardless of the actual sales price (which is only used to place the product in one of the categories and apply the corresponding notional price). In establishing the categories of products and their corresponding notional prices at its discretion, the Uruguayan authority discriminates, in practice, against imported products. Chilean wines, for example, are generally classified in the second category, for which the notional price is almost double that of the first category (which includes most of the wines produced in Uruguay).

In the case of other beverages (beer, mineral water, juices), the authority also adjusts every two months a notional price fixed every six months, to which it applies the corresponding rate. For imported products, the tax base corresponds to the notional price multiplied by a factor of 2. This is known in Uruguay as the "double IMESI". In other words, the tax base for domestic products is not only determined arbitrarily by the authority, but it corresponds to half the base applied to imported products.

Tobacco and cigarettes. For these two products the tax is the same regardless of their origin: 30 per cent for non-frontier zone tobacco and 20 per cent for frontier zone tobacco. For cigarettes, the tax is 68.5 per cent. However, as in the case of beverages and other products, notional prices are used to determine the tax base. In the case of tobacco, although Regulatory Decree 96/990 stipulates that the notional price shall be fixed on the basis of the sales price multiplied by a certain factor (depending on whether or not it is frontier zone tobacco and whether it is sold to a distributor or a retailer), the six-monthly decrees and the bimonthly resolutions respectively fix and adjust these notional prices arbitrarily according to the brand (and ultimately, the origin), with differences of up to 100 per cent. For cigarettes, the notional price is fixed on the basis of the sales price multiplied by a factor which varies depending on the origin of the product. For domestic cigarettes, the factor is 4.68 or 4.45 depending on whether they are sold to a wholesaler or a retailer. For cigarettes from neighbouring countries, the notional price corresponds to the notional price of the highest-category domestic cigarettes multiplied by a factor of 1.3; in the case of cigarettes imported from other countries, such as Chile, that factor is 2 – i.e. once again, the "double IMESI" is applied. This means that the IMESI tax base for cigarettes from neighbouring countries is one third higher than for highest-priced Uruguayan cigarettes, while for cigarettes imported from other countries, it is double the Uruguayan tax base. In other words, the taxes paid on foreign products are considerably higher than the taxes paid on domestic products with the result that in many cases, it is economically impossible to market imported products on the Uruguayan market.

On 3 December 2002, Decree No. 460/02 of the Ministry of the Economy and Finance, stipulating that the notional price for Paraguayan cigarettes would be determined in the same way as for domestic cigarettes, was published in the Official Journal. This was in response to a MERCOSUR arbitral tribunal ruling according to which the Uruguayan legislation discriminated against cigarettes of Paraguayan origin in relation to cigarettes from Argentina and Brazil. For the purposes of the IMESI, Argentina and Brasil fall within the category of neighbouring countries, and their notional price in fact corresponds to the notional price of domestic cigarettes multiplied by a factor of 1.3. In other words, as of last December, the INESI tax scheme established a new category of imported cigarettes – foreign cigarettes, cigarettes from neighbouring countries and Paraguayan cigarettes (assimilated to domestic cigarettes). This simply reaffirms the discretion and arbitrariness with which the authority applies the IMESI, thereby fixing the conditions of access and marketing of the products in question.

In view of the above, Chile considers the Specific Internal Tax (IMESI), introduced through Chapter 11 of the Harmonized Text of 1996, amended by Decree No. 200/002 of 3 June 2002, and regulated by Decree No. 96/990 of the Ministry of the Economy and Finance of 21 February 1990, as well as its six-monthly implementation through decrees issued by the said Ministry and bi-monthly implementation through DGI resolutions, and other supplementary provisions and/or amendments, to be contrary to Articles I and III of the GATT 1994, in that they establish a domestic tax scheme based on notional prices to determine the tax base which discriminates between domestic and imported products and, in certain cases, between imported products according to their origin. For certain products this discrimination in fact amounts, in practice, to an import prohibition. The IMESI established and applied by Uruguay causes nullification and impairment in respect of Chilean products.

Consequently, Chile requests the establishment of a panel with the standard terms of reference set forth in Article 7 of the DSU, and to that end asks that this request be included in the agenda of the next meeting of the Dispute Settlement Body, scheduled to take place on 15 April 2003.
