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**THAILAND – CUSTOMS VALUATION OF CERTAIN PRODUCTS  
FROM THE EUROPEAN COMMUNITIES**

Request for Consultations by the European Communities

The following communication, dated 25 January 2008, from the delegation of the European Communities to the delegation of Thailand and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

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The European Communities hereby requests consultations with Thailand pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* (GATT 1994) and Article 19 of the *Agreement on Implementation of Article VII of the GATT 1994* (Agreement on Customs Valuation) with respect to the way Thai customs authorities value alcoholic beverages and other products from the European Communities.

The European Communities understands that the Thai customs authorities since September 2006 systematically challenge the declared transaction value of alcoholic beverages and other products from the European Communities imported into Thailand and apply instead an arbitrary value. This arbitrary value ("assessed value") is calculated by deducting (1) a standard margin of profit and general expenses and (2) the customs duty and internal taxes paid from (3) the wholesale price of those goods in the Thai market, regardless of the transaction price provided by the importer. Broad standard margins of profit and general expenses have been fixed by the Thai customs authorities on the basis of sources that have never been explained or disclosed.

Where the shipments are tested and the declared value is different from the "assessed value", the Thai Customs authorities will require a guarantee, or if the amount is small, a cash payment, for an indefinite period of time. The bank guarantee or cash payment is set at the level of the difference between the duty (and taxes) on declared value and the duty (and tax) amount on the "assessed value".

This request is with respect to among others the following measures:

- Customs Act, B.E. 2469;
- Ministerial Regulation No. 132 (B.E. 2543);
- Ministerial Regulation No.145 (B.E. 2547);
- Ministerial Regulation No. 146 (B.E. 2550);
- Customs Regulations No. 2/2550 (2007);

- Customs Notification No. 23 (B.E. 2549) and Customs Notification No. 14/2549;
- Internal Customs Memorandum 0519/5555 dated 3 August 2006 from the Formality and Valuation Standard Group of the Customs Department;
- Internal Customs Memorandum on Customs Valuation dated 22 August 2006 from the Formality and Valuation Standard Group of the Customs Department;
- Internal Customs Memorandum GorKor 0519/2266 dated 27 September 2006;
- Customs Internal Memorandum 0519/2386 dated 6 October 2006;
- The guidelines set out in the summary of Meeting on Guidelines on the Determination of the Rate of Profit and General Expenses for Tobacco, Alcohol and Beer products dated 24 October 2006;
- Customs Notification 29/2549 on Practice Rules of Duty Assessment Appeal;
- the methodology of the Thai customs authorities for determining the customs value of alcoholic beverages and other products from the European Communities; and
- the discriminatory tax treatment imposed on imported alcoholic beverages from the European Communities.

For each of the measures referred to above, this request also covers any amendments, replacements, extensions, implementing measures or other related measures, *inter alia* any act by Thailand that would confirm, extend, amend or otherwise affect the measures in question.

The European Communities considers that the above-mentioned Thai laws, regulations and implementing measures and methodologies for determining the customs value and the systematic challenge of the declared transaction values of imports of alcoholic beverages and other products from the European Communities on the basis of these laws and regulations and other acts or decisions are inconsistent with Thailand's obligations under the WTO Agreements. In particular, the European Communities considers these measures as inconsistent with:

i) Articles I, II, III, X and XI of the GATT 1994;

- Thailand is acting inconsistently with Article I:1 of the GATT 1994, by failing to accord an advantage, favour, privilege or immunity granted, with respect to customs duties and charges of any kind and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation to products originating in other countries immediately and unconditionally to the like products originating in the European Communities.
- Thailand is acting inconsistently with Article II:1(a) and II:1(b) of the GATT 1994, by according treatment less favourable than that provided in Thailand's Schedule. Thailand is further acting inconsistently with Article II:3 of the GATT 1994 by altering its method of determining dutiable value so as to impair the value of any of the concessions provided for in the appropriate schedule.

- Thailand is acting inconsistently with Article III of the GATT 1994, in particular with Article III:2, first and second sentences, and Article III:4 of the GATT 1994.
- Thailand is acting inconsistently with Article X of the GATT 1994, in particular with Article X:1 and Article X:3 of the GATT 1994, by not promptly publishing its laws, regulations, judicial decisions and administrative rulings of general application and by not administering all laws, regulations, decisions and rulings in a uniform, impartial and reasonable manner.
- Thailand is acting inconsistently with Article XI of the GATT 1994, by instituting and maintaining restrictions other than duties, taxes or other charges on the importation of products from the European Communities.

ii) Article VII of the GATT 1994 and the provisions listed below of the Agreement on Customs Valuation and their respective Interpretative Notes as contained in Annex I to that Agreement, and read in the context of the Ministerial Decision Regarding Cases Where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value;

- Thailand is acting inconsistently with Article VII of the GATT 1994, by not recognizing the validity of and giving effect to the general principles of valuation set forth in Article VII, and by not basing the value for customs purposes on the actual value of the imported merchandise on which duty is assessed as well as by not keeping the bases and methods for determining the value of products in a stable manner and by not giving sufficient publicity to enable traders to estimate, with a reasonable degree of certainty, the value for customs purposes.
- Thailand is acting inconsistently with Article 1.1 and 1.2 of the Agreement on Customs Valuation and its Interpretative Notes, by systematically disregarding the transaction value as the customs value of imported alcoholic beverages and other products from the European Communities and by not proceeding sequentially through the succeeding valuation methods set out in the Agreement on Customs Valuation (Articles 1 through 6). Furthermore Thailand is acting inconsistently with Article 1.2 of the Agreement on Customs Valuation and its Interpretative Notes by, if the customs administration considers that it has grounds for considering that the relationship influenced the price, not communicating the grounds to the importer and by not giving the importer a reasonable opportunity to respond.
- Thailand is acting inconsistently with Article 5 of the Agreement on Customs Valuation and its Interpretative Notes, by not basing the customs value of the imported products on the unit price at which the imported goods are sold subject to the deductions laid out in this provision.
- Thailand is acting inconsistently with Article 11 of the Agreement on Customs Valuation and its Interpretative Notes, by not providing in regard to a determination of customs value for the right of appeal, without penalty, by the importer.
- Thailand is acting inconsistently with Article 12 of the Agreement on Customs Valuation, by not publishing its laws, regulations, judicial decisions and administrative rulings of general application giving effect to this Agreement in conformity with Article X of the GATT 1994.

- Thailand is acting inconsistently with Article 16 of the Agreement on Customs Valuation and the Decision Regarding Cases Where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value, by not giving the importer an explanation in writing from the customs administration in Thailand as to how the customs value of the importer's goods was determined.
- Thailand is acting inconsistently with Article XVI:4 of the Marrakesh Agreement establishing the World Trade Organization and Article 22 of the Agreement on Customs Valuation by not ensuring the conformity of its laws, regulations and administrative procedures with its obligations as provided in the WTO Agreements.

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

The European Communities reserves the right to address additional measures and claims under other provisions of the WTO Agreements regarding the above matters during the course of the consultations.

The European Communities looks forward to receiving in due course a reply from Thailand to this request. The European Communities is ready to consider with Thailand mutually acceptable dates to hold consultations.

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