

**EUROPEAN COMMUNITIES AND ITS MEMBER STATES – TARIFF TREATMENT  
OF CERTAIN INFORMATION TECHNOLOGY PRODUCTS**

Request for Consultations by Chinese Taipei

The following communication, dated 12 June 2008, from the delegation of Chinese Taipei to the delegation of the European Communities 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 European Communities (EC) and its member States pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) and Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* (GATT 1994) regarding the tariff treatment the EC and its member States accord to flat panel displays, set-top boxes (STBs) with a communication function, and "input or output units" and facsimile machines.

As a participant to the *Ministerial Declaration on Trade in Information Technology Products*, or "ITA" (Information Technology Agreement)<sup>1</sup>, the EC and its member States modified their Schedules of Concessions to the GATT 1994 (Schedules) to reflect the commitments made under the ITA.<sup>2</sup> Such modifications became effective 2 July 1997.<sup>3</sup> Accordingly, the EC and its member States shall grant duty-free treatment for the aforementioned products. However, as a result of the application of certain EC measures, the EC and its member States do impose duties on these products.

This request for consultations is intended to address the EC's measures as described herein. This request also covers any amendments or extensions to these measures as well as any related laws, regulations, practices and implementing measures.

The measures pursuant to which the EC and its member States impose duties include those under the following headings:

**Flat panel displays**

On 31 March 2005, the EC published Council Regulation (EC) No 493/2005, which provides that certain flat panel displays using LCD technology capable of reproducing video images from a source other than an automatic data-processing machine would not be covered by the ITA or by the

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<sup>1</sup> Ministerial Declaration on Trade in Information Technology Products, 13 December 1996 (WT/MIN(96)/16), see also Implementation of the Ministerial Declaration on Trade in Information Technology Products, 2 April 1997 (G/L/160).

<sup>2</sup> G/MA/TAR/RS/16 (2 April 1997).

<sup>3</sup> WT/Let/156 (15 August 1997).

Communication on its implementation (Council Decision 97/359/EC of 24 March 1997).<sup>4</sup> On 26 April 2005, the EC published Commission Regulation (EC) No 634/2005, which provides that flat panel displays with certain attributes would be classified as dutiable.<sup>5</sup> On 29 December 2005, the EC published Commission Regulation (EC) No 2171/2005, which also provides that certain flat panel displays would be classified as dutiable if they had certain attributes.<sup>6</sup> On 30 December 2006, the EC published Uniform Application of the Combined Nomenclature (2006/C 332/05) providing that flat panel displays with certain attributes may not be granted duty-free and would be classified as dutiable.<sup>7</sup>

As a result of the measures at issue, EC member States assess duties on certain flat panel displays.

Furthermore, although the EC has temporarily suspended the collection of duties on some flat panel displays, including certain parts thereof, it still appears to fail to accord tariff treatment that is no less favourable than that provided for in its Schedule.

### **STBs with a communication function**

On 7 May 2008, the EC published an amendment to the Explanatory Notes to the EC's Combined Nomenclature (CN), which provides that the duty-free heading CN 8528 71 ("set-top boxes with a communication function") does not include STBs with modems of certain types (e.g., Ethernet modems) or STBs which incorporate a device performing a recording or reproducing function (e.g., a hard disk or DVD drive).<sup>8</sup> Moreover, in the same amendment, the EC added an explanatory note to accompany CN 8521 90 00 indicating that this subheading includes STBs which incorporate a device performing a recording or reproducing function (e.g., a hard disk or DVD drive).<sup>9</sup>

As a result of the measures at issue, EC member States assess duties on STBs with a communication function.

### **"Input or output units" and facsimile machines**

On 9 March 1999, the EC published Commission Regulation (EC) No 517/1999, which provides that certain "output units" would be classified as dutiable.<sup>10</sup> Moreover, on 9 March 2006, the EC published Commission Regulation (EC) No 400/2006, which provides that certain "output units" or facsimile machines would be classified as dutiable.<sup>11</sup> Also, the EC Customs Code Committee further issued a statement indicating that if a multifunctional device (fax, printer, scanner, copier) has the capability of photocopying in black and white 12 or more pages per minute (A4 format), it would be classified as photocopying apparatus.<sup>12</sup> Subsequent to that statement, on 31 October 2006, the EC

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<sup>4</sup> Council Regulation (EC) No 493/2005 of 16 March 2005, O.J. L 82 (31 March 2005), pp. 1-2.

<sup>5</sup> Commission Regulation (EC) No 634/2005 of 26 April 2005, O.J. L 106 (27 April 2005), pp. 7-9.

<sup>6</sup> Commission Regulation (EC) No 2171/2005 of 23 December 2005, O.J. L 346 (29 December 2005), pp. 7-9.

<sup>7</sup> Uniform Application of the Combined Nomenclature (CN) (Classification of goods), 2006/C 332/05, O.J. C 332 (30 December 2006), pp. 7-9.

<sup>8</sup> Explanatory Notes to the Combined Nomenclature of the European Communities, 2008/C 112/03, O.J. C 112 (7 May 2008), pp. 8-9.

<sup>9</sup> Explanatory Notes to the Combined Nomenclature of the European Communities, 2008/C 112/03, O.J. C 112 (7 May 2008), pp. 8-9.

<sup>10</sup> Commission Regulation (EC) No 517/1999 of 9 March 1999, O.J. L 61 (10 March 1999), pp. 23-24.

<sup>11</sup> Commission Regulation (EC) No 400/2006 of 8 March 2006, O.J. L 70 (9 March 2006), pp. 9-11.

<sup>12</sup> Customs Code Committee, Tariff and Statistical Nomenclature Section, *Report of conclusions of the 360<sup>th</sup> meeting of the Committee*, TAXUD/555/2005-EN, Annex VII (March 2005).

published Commission Regulation (EC) No 1549/2006, which provides that certain "output units" or facsimile machines capable of copying more than 12 monochrome pages per minute would be classified as dutiable.<sup>13</sup>

As a result of the measures at issue, EC member States assess duties on certain "output units" or facsimile machines.

The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu considers that the aforementioned measures at issue taken by the EC concerning flat panel displays, STBs with a communication function, and "input or output units," and facsimile machines appear to be inconsistent with the EC and its member States' obligations under Articles II:1(a) and II:1(b) of the GATT 1994 and their Schedules. The measures in question also nullify or impair, within the meaning of Article XXIII:1 of the GATT 1994, benefits accruing to the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu directly or indirectly under the GATT 1994.

In addition, with respect to STBs, the Tariff and Statistical Nomenclature Section of the Customs Code Committee delivered favorable opinions with respect to the proposed amendments to the Explanatory Notes contained in 2008/C 112/03 in October 2006 and May 2007, respectively. It did not publish the amended explanatory notes in the EC Official Journal until 7 May 2008. Furthermore, EC member States were applying duties to STBs using the approach specified in 2008/C 112/03 prior to 7 May 2008. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu considers that these actions appear to be inconsistent with the EC's obligations under Articles X:1 and X:2 of the GATT 1994.

The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu reserves the right to raise additional facts and claims regarding the above-mentioned measures during the course of consultations.

My authorities look forward to receiving your reply to this request and to fixing a mutually acceptable date for consultations.

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<sup>13</sup> Commission Regulation (EC) No 1549/2006 of 17 October 2006, O.J. L 31 (31 October 2006), pp. 1, 541.