

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

Request for Consultations by Japan

The following communication, dated 28 May 2008, from the delegation of Japan 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.

Upon instruction from my authorities, I hereby wish to convey the request of the Government of Japan for consultations with the European Communities and its member States (hereinafter referred to as "the EC") 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 EC's tariff treatment of multifunctional printers ("MFPs"), liquid crystal display ("LCD") monitors, and set-top boxes ("STBs") with a communication function.

As a participant in the *Ministerial Declaration on Trade in Information Technology Products*, or "ITA" (Information Technology Agreement)¹, the EC committed itself to eliminate its tariffs on certain information technology products, such as "input or output units" including printers and LCD monitors, facsimile machines, and STBs with a communication function. Specifically, as to printers, the EC's ITA commitments are set forth in ITA Attachment A, Section 1 (HS96 8471.60 "input or output units") and Attachment B ("Network equipment: ... input or output units ...").² As to facsimile machines, the EC's ITA commitments are set forth in ITA Attachment A Section 1 (HS96 8517.21 "facsimile machines") and Attachment B ("Network equipment: ... input or output units ...").³ As to LCD monitors, the EC's ITA commitments are set forth in ITA Attachment A, Section I (HS96 8471.60 "input or output units") and Attachment B ("Flat panel displays (including LCD...)...").⁴ As to STBs with a communication function, the EC's ITA commitments are set forth in ITA Attachment B ("Set top boxes which have a communication function...").

The EC modified its Schedule of Concessions ("EC Schedule") to reflect the commitments it made under the ITA.⁵ Such modifications became effective on 2 July 1997.⁶ Accordingly, under Schedule LXXX, the EC has the obligation not to apply any customs duties and other duties and charges of any kind, within the meaning of Article II: 1(b) of the GATT 1994, with respect to the above products.

¹ Ministerial Declaration on Trade in Information Technology Products, 13 December 1996 (WT/MIN(96)/16).

² See id.

³ See id.

⁴ See id.

⁵ G/MA/TAR/RS/16 (2 April 1997).

⁶ WT/Let/156 (15 August 1997).

This request for consultations is intended to address current EC laws, regulations, policies and practices, as well as any changes or amendments to those laws, regulations, policies or practices that may be in process or may be implemented in the future.

MFPs

With regard to MFPs, the measures at issue include Commission Regulation No. 517/1999 of 9 March 1999, Report of conclusions of the 360th meeting of the Committee held in Brussels from 26 January 2005 to 28 January 2005⁷, Commission Regulation No. 400/2006 of 8 March 2006, Commission Regulation No. 1549/2006 of 7 October 2006, Commission Regulation No. 1214/2007 of 20 September 2007, and the EC Combined Nomenclature (CN) for 2008 ("2008 CN")⁸. These measures provide the basis for other measures at issue in regards to MFPs, including the past, present and/or future application by the EC of a six per cent customs duty on imports of MFPs, in excess of the EC's tariff commitment for "input or output units" or facsimile machines.

The 2008 CN is binding on all EC member states. The 2008 CN established CN code 8443.31, which provides as follows:

CN code	Description	Conventional rate of duty (%)
1	2	3
8443	Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof:	
8443 31	- - Machines which perform two or more of the functions of printing, copying, or facsimile transmission, capable of connecting to an automatic data-processing machine or two a network:	
8443 31 10	- - - Machines performing the functions of copying and facsimile transmission, whether or not with a printing function, with a copying speed not exceeding 12 monochrome pages per minute - - - Other:	Free
8443 31 91	- - - - Machines performing a copying function by scanning the original and printing the copies by means of an electrostatic print engine	6
8443 31 99	- - -Other	Free

As a result of the measures at issue, the EC classify certain MFPs under subheading 8443.31.91 of the CN. The EC thus apply a six per cent duty on such products, which appears to be inconsistent with the EC's commitment not to apply any customs duties and other duties and charges of any kind, within the meaning of Article II:1 (b) of the GATT 1994, with respect to all "input or output units" and facsimile machines under the EC Schedule and ITA. Japan is challenging the aforementioned EC measures as such, as well as the way in which those tariff schedules have been and will be applied so as to impose higher than permitted import duties.

⁷ Customs Code Committee, Tariff and Statistical Nomenclature Section (Mechanical), Report of conclusions of the 360th meeting of the Committee held in Brussels from 26 January 2005 and 28 January 2005, Brussels, March 2005, TAXUD/555/2005-EN.

⁸ Commission Regulation (EC) No. 1214/2007 (20 September 2007). The 2008 CN went into effect on 1 January 2008.

LCD Monitors

With regard to LCD monitors, the measures at issue are Council Regulation No. 493/2005 of 16 March 2005, Commission Regulation No. 634/2005 of 26 April 2005, Commission Regulation No. 2171/2005 of 23 December 2005, Commission Regulation No. 1549/2006 of 7 October 2006, Uniform Application of the Combined Nomenclature No. 2006/C332/05 (published 30 December 2006), Commission Regulation No. 1214/2007 of 20 September 2007, and the 2008 CN. These measures provide the basis for other measures at issue in regards to LCD monitors, including the past, present and/or future application by the EC of a 14 per cent customs duty on imports of LCD monitors, in excess of the EC's tariff commitment for "input or output units" or flat panel display devices.

Under Council Regulation No. 493/2005, Commission Regulations 634/2005 and 2171/2005, the EC classified certain LCD monitors as dutiable "video monitors".

Furthermore, as part of the amendments incorporated into the 2008 CN, the EC established CN code 8528.51 and 8528.59, both of which provide as follows:

CN code	Description	Conventional rate of duty (%)
1	2	3
8528	Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: ...	
8528 51 00	- - Of a kind solely or principally used in an automatic data-processing system of heading 8471	Free
8528 59	- - Other:	
8528 59 10	- - - Black and white or other monochrome	14
8528 59 90	- - - Colour	14 ⁽¹⁾

(1) Customs duty autonomously suspended, until 31 December 2008, for monitors with a diagonal measurement of the screen of 48,5 cm or less and with an aspect ratio of 4:3 or 5:4 (TARIC code 8528 59 90 30).

As a result of the measures at issue, the EC classify certain LCD monitors under subheading 8528.59.10 or subheading 8528.59.90 and, thus, apply a 14 per cent duty on such products. The application of a 14 per cent duty appears to be inconsistent with the EC's commitment not to apply any customs duties and other duties and charges of any kind, within the meaning of Article II:1 (b) of the GATT 1994, with respect to "input or output units" and flat panel display devices under the EC Schedule and ITA. Japan is challenging both the foregoing EC measures as such as well as the way in which those tariff schedules have been and/or will be applied so as to impose higher than permitted import duties.

STBs with a communication function

With regard to STBs with a communication function, the measures at issue are Explanatory Notes to the Combined Nomenclature of the European Communities, 2008/C 112/03 (7 May, 2008), Commission Regulation No. 1214/2007 of 20 September 2007 and the 2008 CN. These measures provide the basis for other measures at issue in regards to STBs with a communication function, including the past and/or future application by the EC of a 13.9 per cent customs duty on imports of STBs with a communication function, in excess of the EC's tariff commitment for STBs with a communication function.

The EC established CN code 8521.90 and 8528.71, both of which provide as follows:

CN code	Description	Conventional rate of duty (%)
1	2	3
8521	Video recording or reproducing apparatus, whether or not incorporating a video tuner: ...	
8521 90 00	-- Other:	13.9
8528	Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: Not designed to incorporate a video display or screen: Video tuners: ...	
8528 71 13	-- Apparatus with a microprocessor-based device incorporating a modem for gaining access to the Internet, and having a function of interactive information exchange, capable of receiving television signals ("set-top boxes with communication function")	Free

The measures at issue provide that the subheading 8528.71.13 does not include set top boxes with modems of certain types (e.g., Ethernet modems) or set top boxes which incorporate a device performing a recording or reproducing function (e.g., a hard disk or DVD drive) and that the subheading 8521.90.00 includes set top boxes which incorporate a device performing a recording function. As a result, the EC classify certain STBs with a communication function under subheading 8521.90.00 of the CN. The EC therefore apply a 13.9 per cent duty on such products, which appears to be inconsistent with the EC's commitment not to apply any customs duties and other duties and charges of any kind, within the meaning of Article II:1 (b) of the GATT 1994, with respect to all STBs with a communication function under the EC Schedule and ITA.

WTO Inconsistency of the EC Measures at Issue

The Government of Japan considers the foregoing measures at issue taken by the EC concerning MFPs, LCD monitors, and STBs with a communication function appear to be inconsistent with the EC's obligations under the relevant provisions of GATT 1994 and the *Marrakesh Agreement Establishing the World Trade Organization* (the Marrakesh Agreement) including, but not limited to, Article II of the GATT 1994. The measures in question also nullify or impair, within the meaning of Article XXIII:1 of the GATT 1994, benefits accruing to Japan directly or indirectly under the GATT 1994.

The Government of Japan reserves the right to raise further facts and claims during the course of consultations.

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