

**Notice of initiation of an examination procedure concerning obstacles to trade within the meaning of Council Regulation (EC) No 3286/94, consisting of measures imposed and practices followed by India affecting trade in wines and spirits**

(2005/C 228/03)

On 20 July 2005, the Commission received a complaint under Article 4 of Council Regulation (EC) No 3286/94<sup>(1)</sup> (hereinafter 'the Regulation').

## 1. The complainants

The complaint was lodged jointly by CEEV (Comité européen des entreprises vins) and CEPS (Confédération européenne des producteurs de spiritueux).

CEPS is the representative body in the EU for producers of spirit drinks. Its membership comprises 38 national associations representing the industry in 21 EU Member States. CEEV is the representative body in the EU for the national trade associations of the EC Member States that represent the industry and/or trade in wines, aromatised wines, sparkling wines, liqueur wines and other vine products. Its membership comprises 12 national associations plus Switzerland.

The CEEV and CEPS are associations acting on behalf of one or more Community enterprises within the meaning of Articles 4(1) and 2(6) of the Regulation.

## 2. The product

The EU products affected by the Indian measures at issue are wines, vermouths, aromatised wines and spirits classified under HS headings 2204, 2205, 2206 and 2208. They include still and sparkling wines, vermouths and other fortified wines such as port and sherry, and spirit drinks distilled from raw materials of agricultural origin such as brandies and wine spirits, whiskies, gin, vodka, rum and liqueurs.

However, the examination which the Commission is initiating may also cover other products, particularly those which interested parties making themselves known within the time limits mentioned below (see Section 8), can show are affected by the alleged practices.

<sup>(1)</sup> Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organisation (WTO) (OJ L 349, 31.12.1994, p. 71). Regulation last amended by Regulation (EC) No 356/95 (OJ L 41, 23.02.1995, p. 3).

## 3. Subject

The complaint focuses on three separate aspects of India's legal regime for imported wines and spirits:

### (a) Additional Duty

Under Indian law, jurisdiction to levy excise tax on alcoholic beverages lies with the 26 Indian State Governments. Excise tax is, in principle, levied only on products which have undergone a manufacturing process in India. Consequently, excise taxes are, in principle, not levied on imports of bottled wines and spirits. Only domestic production and bulk imports bottled in India are taxed (at rates that vary significantly among the 26 Indian State Governments).

In this context, on 1 April 2001, by means of Notification No 37/2001 under Section 3 of the Customs Tariff Act, India introduced a federal Additional Duty on imported wines and spirits to compensate for excise duties paid or payable at State level on domestically produced products. In accordance with Section 3 of the Customs Act, the federal AD should be 'equal' to the excise duty levied on domestic products. The Additional Duty is charged on an *ad valorem* basis at distinct rates. Pursuant to Customs Notification No 32/2003 of 1 March 2003, the current rates of the Additional Duty applicable to imported wine are at the three levels of 75 %, 50 % and 20 % (depending on the value of the imports) and to imported spirits at the four levels of 150 %, 100 %, 50 % and 25 % (again, depending on the value of the imports).

### (b) State excise duties and taxes

As explained, Indian states do not have jurisdiction to levy excise duty on imported bottled wines and spirits. However, the complainants allege that several states do nonetheless apply excise taxes or similar taxes — under different names and at varying levels — to the sale of imported wine and spirits. According to the complainants, some of these (excise and other) taxes are moreover applied only to imported products or applied at higher levels to imported products than to domestic products.

(c) *State import restrictions*

The complainants maintain that seven Indian states have a policy of *de facto* prohibition on importation of wines and spirits.

**4. Allegations of obstacles to trade**

The complainants consider that the measures and practices described in Section 3 constitute obstacles to trade within the meaning of Article 2(1) of the Regulation.

(a) *Additional Duty (AD)*

The complainants contend, first, that the federal Additional Duty must be regarded as an import duty (or other duty and charge) which violates India's obligations under Article II of GATT 1994 read in conjunction with its tariff schedule. In this context, the complaint explains that India's WTO tariff bindings commit India to a maximum rate of duties and charges on wines and spirits of 150 %. All imported wines are spirits are subject to a Basic Customs Duty of 150 % (for spirits) and 100 % (for wines). The federal Additional Duty is applied in addition to these rates. Thus, in so far as the federal Additional Duty is to be regarded as an import duty (or other duty or charge), the total duty rate exceeds for all spirits and all wines (except the most expensive ones<sup>(1)</sup>) the bound duty rate of 150 %. Moreover, the complaints argue that the federal Additional Duty is not to be regarded as '*equivalent to an internal tax*' within the meaning of Article II.2(a) and cannot therefore be justified under that provision.

The complainants contend, secondly, and in the alternative that the federal Additional Duty accords treatment to imported wines and spirits that is clearly less favourable than that accorded to 'like' (or 'directly competitive or substitutable') products of national origin, in breach of Article III.2 of GATT 1994. In this regard, the complainants argue that while imported spirits are not, in general, subject to State excise taxes, the rate of the federal AD substantially exceeds the level of excise duty applied on the sale of domestic spirits in most Indian states. According to the complainants, imported wines and spirits also subject to excess taxation if a comparison is made of, on the one hand, the rate of the federal AD plus other indirect taxes applied at State level on the sale of imported wines and spirits and, on the other, the sum of excise duty and other

<sup>(1)</sup> I.e., wines imported at *cif* prices above USD 100 per case (12 bottles) to which the lowest rate of (20 % *ad valorem*) AD is applicable.

indirect taxes applied at State level to domestic wines and spirits.

(b) *State excise duties and taxes*

The complainants contend that, although Indian states do not have jurisdiction to levy excise duty on imported bottled wines and spirits, some States do nonetheless apply either excise taxes or similar taxes — under different names and at varying levels — to the sale of imported wine and spirits. Thus, it is argued that at least thirteen Indian States apply either excise duties or other taxes which could be considered as alternative means of collecting revenue from imported products as they are not entitled to levy excise duties. According to the complainants, some of these (excise and other) taxes are either applied only to imported products or applied at higher levels to imported products than to domestic products contrary to Article III.2 of GATT 1994.

(c) *State import restrictions*

The complainants maintain that seven Indian states have a policy of *de facto* prohibition of importation of wines and spirits, contrary to Articles III.4 or XI.1 of GATT 1994.

In light of the factual information available and the evidence submitted, the Commission is satisfied that the complaint contains sufficient *prima facie* evidence of the existence of obstacles to trade within the meaning of Article 2(1) of the Regulation.

**5. Allegation of adverse trade effects**

Consumption of branded western-style spirit drinks in India in 2004 was estimated by the International Wine & Spirits Record (IWSR) at 87 million nine litre cases, making it one of the largest spirits markets in the world. This estimate includes some 550 000 cases of imported spirits, the remainder (99,4 %) comprising domestically produced 'Indian Made Foreign Liquor' (IMFL). In 2004, the EU exported spirits with a value of some EUR 23 211 000 to India.

The Indian wine market has been growing steadily, albeit slowly, over the last decade. In 2004, it was estimated at 667 000 nine litre cases, of which 96 000 or 14 % were imported. In 2004, the EU exported wines with a value of some EUR 4 167 000 to India.

The complainants claim that the practices subject to the complaint impede meaningful access to the Indian market, place imported wines and spirits at a competitive disadvantage compared to domestically produced goods, and have prevented a natural growth in the consumption of imported wines and spirits in India.

In this regard, the complainants point out that following the elimination of Federal quantitative restrictions on importation in 2001 and their replacement with the measures set out in this complaint, the volume of spirits imports fell by some 60 — 70 % during the period April to August 2001, as compared to the same period in the previous year, because goods destined for the tourist trade became subject to a fiscal burden which effectively priced them out of the market. The complainants also point out that when certain tax concessions were subsequently granted for goods sold in certain classes of hotels and restaurants, the volume of wines and spirits imported increased substantially. This suggests that the tax measures subject of this complaint are preventing EU wines and spirits from achieving increased penetration of the Indian domestic market.

The complainants also refer to figures on the typical market penetration achieved by imported spirits in other developing countries broadly similar to India, which suggest that the barriers to trade confronting the EU spirits industry in India are particularly problematic.

The Commission considers that the complaint contains sufficient prima facie evidence of adverse trade effects, within the meaning of Article 2(4) of the Regulation.

#### 6. Community interest

The EU spirits industry, as represented by CEPS, exports each year goods estimated at a value in excess of EUR 5 billion to over 150 countries. The spirits sector directly employs about 50 000 people and indirectly a further 250 000. EU wine exports to third countries are valued at EUR 4,5 billion representing 12,5 billion hectolitres (hl) by volume.

The Commission considers it essential to ensure a level playing field in third country markets for our export industries, particularly with regard to internal taxes. Tariff protection should not

be replaced with other protectionist barriers in breach of international commitments. This is especially important in the case of alcoholic beverages, as they typically bear a high tax burden through the combination of excise duties and value-added taxes.

In view of the above, it is considered to be in the Community's interest to initiate an examination procedure

#### 7. Procedure

Having decided, after due consultation of the Advisory Committee established by the Regulation, that there is sufficient evidence to justify initiating an examination procedure for the purpose of considering the legal and factual issues involved, and that this is in the interest of the Community, the Commission has commenced an examination in accordance with Article 8 of the Regulation.

Interested parties may make themselves known and make known their views in writing on specific issues raised by the complaint, providing supporting evidence.

Furthermore, the Commission will hear the parties who so request in writing when they make themselves known, provided that they are primarily concerned by the result of the procedure.

This notice is published in accordance with Article 8(1)(a) of the Regulation.

#### 8. Time limit

Any information relating to the matter and any request for a hearing should reach the Commission not later than 30 days following the date of publication of this notice and should be sent in writing to:

European Commission  
Directorate-General for Trade  
Mr. Jean-François Brakeland, Unit F.2  
CHAR 9/74  
B-1049 Brussels  
Fax (32-2) 299 32 64