



The European Spirits Organisation

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CP.CE-043-2005
11/10/2005

THE EU SPIRITS INDUSTRY'S TRADE PRIORITIES FOR THE 6th WTO MINISTERIAL CONFERENCE IN HONG KONG

BACKGROUND

CEPS – The European Spirits Organisation is the representative body for the European spirits industry. Its membership comprises 38 national associations representing the industry in 25 countries, including most EU Member States, Norway, Romania, Russia, and Switzerland, as well as a group of leading spirits producing companies.

In 2004 CEPS members exported goods valued in excess of €5 billion to some 200 world markets, thereby making a positive contribution of €4.2 billion to the EU's balance of trade. Our industry's total export is equivalent to 120 Airbus A 320 aircraft. As such, CEPS members take a strong interest in all issues of international trade, especially the process of multilateral negotiations within the WTO.

CEPS aims to

- Protect the interests of the spirits industry in the EU;
- Secure non-discriminatory treatment of spirits in comparison to other alcoholic beverages;
- Secure free and fair access for EU spirits in third country markets.

As the representative of an export-oriented industry, CEPS has been a strong and consistent proponent of trade liberalisation for many years. It has also been a steadfast supporter of the World Trade Organisation (WTO) since its formation in 1995 and, as a founder member of the World Spirits Alliance (WSA)¹, continues to participate in a wide-ranging dialogue with officials from key national delegations and the WTO Secretariat in Geneva, aimed at furthering trade liberalisation in world markets.

¹ The World Spirits Alliance (WSA) is the representative body of the international spirits industry. Its membership consists of national associations representing the industry in Australia, Canada, the Caribbean, Europe, Japan, Mexico, New Zealand, South Africa and the United States.

EU SPIRITS INDUSTRY MAIN OBJECTIVES

CEPS has identified a number of priority objectives for the Doha Development Agenda (DDA) negotiations as follows:

- **Market Access / Tariffs:** Reduction, and where possible, elimination of tariff barriers imposed by many WTO members on imports of distilled spirits, with particular emphasis on ‘peak’ tariffs.
- **Non-Tariff Measures:** Liberalisation, and where possible, elimination of non-tariff barriers to access for imported spirits, including import quotas, licensing requirements, discriminatory state trading practices, inappropriate product standards and labelling requirements, and arbitrary limitations on naturally occurring product constituents.
- **Geographical Indications (GIs):** Improving the protection available for GIs associated with distilled spirits so as to provide certainty of legal protection for spirits with GIs and to help combat counterfeiting, by the establishment of the mandated multilateral register for spirits (and wines) GIs with a legally binding content.
- **Trade Facilitation:** Liberalisation, and where possible, elimination of costly procedural and regulatory obstacles to the movement of distilled spirits in international trade, including simplification and harmonisation of customs procedures, elimination of excessive certification and documentation requirements, and enhanced regulatory transparency.
- **Services:** Liberalisation, and where possible, elimination of restrictions on services associated with the marketing of distilled spirits, including restrictions on foreign firms engaged in the importation, distribution or retailing of imported distilled spirits, and discriminatory limitations on advertising of imported distilled spirits.

EU SPIRITS INDUSTRY POSITION

Within the negotiating mandate of the DDA, CEPS priorities focus on three main issues:

1. **AGRICULTURE: *Market access improvement***

Within the agriculture negotiations the industry’s highest priority is to secure improved market access through the greatest possible degree of tariff liberalisation in third countries. As a major exporter, we consider our sector to be a real offensive interest for the EU in the WTO negotiations.

Target countries for tariff reduction

The “Zero for Zero” agreement was the major achievement of the Uruguay Round for our industry. It gave EU spirits tariff-free access to several of the major developed country WTO Member markets – Canada (for brown spirits), Japan and the USA.

However, within its broad objective of securing further tariff liberalisation in all WTO Member markets, CEPS has identified a small number of markets where the need for significant tariff reductions is particularly acute, for example India and Thailand. In some of these markets, all imported spirits are subject to high tariffs; in others, EU exports are currently at a competitive disadvantage.

A list of main top priority markets for significant tariff reductions is given in **Annex A** to this paper.

The tariff reduction formula

Turning to the formula to be used for determining tariff reductions, CEPS notes that the Decision Adopted by the General Council on 1 August 2004, establishing a “Framework for Modalities” (“the 2004 Framework”) determined that for agriculture, the formula would include the following elements:

- A tiered structure.
- Tariff reductions from bound rates.
- Each Member – apart from LDCs – to make a contribution.
- Progressivity in tariff reductions to be secured through deeper cuts in higher tariffs with flexibilities for sensitive products.
- “Substantial improvements in market access will be achieved for all products.”

CEPS notes that the recent G20 proposal (“G-20 Proposal - Elements for Discussion on Market Access” dated 5 July 2005) was used as a starting point for recent consultations. This proposal represents a “middle ground” compromise between the Swiss formula and Uruguay Round approaches.

CEPS is in favour of a large element of a Swiss formula which indeed targets more efficiently “peak tariffs”.

While CEPS agrees that the paper represents a helpful starting point, it would not support the proposal that the tariff cap should be set at 100% for developed country Members and 150% for developing country Members. Taking India as an example, imported distilled spirits are currently subject to a Basic Customs Duty (BCD) of 150%. Despite the requirement for substantial improvements in market access for all products, a cap of 150% could see the DDA deliver little in the way of improved market access for EU producers to the world’s biggest whisk(e)y market. This is particularly so when one bears in mind the further protective effect of that Member’s Additional Customs Duty, which, taken together with the BCD, imposes a total tariff burden of between 212 and 525% on imported spirits. Similarly, such a cap would not necessitate the sort of dramatic market access improvements that the EU industry would like to see in a number of other key markets.

Sectoral initiatives

While there is still a great deal of reluctance from many developing countries to accept an ambitious formula for the market access negotiations, CEPS would still encourage, where possible, the EU to consider proposing a plurilateral cross-sectoral initiative that would lead to tariff elimination on spirits in more WTO Members. This would, in effect, be based on the ‘zero for zero’ initiative launched in Singapore in 1996 (cf supra), so as to achieve broader participation among WTO members. CEPS would be eager to discuss with the Commission how such initiatives could be set up and which countries would be focused (the list of countries at annex A being a first group of countries to be targeted).

“Special” and “Sensitive” products

CEPS believes that the categories of “Special” and “Sensitive” products offer adequate scope for WTO Members to take into account the needs of a strictly limited category of products that may be subject to lesser tariff reductions (albeit that the Doha Ministerial Declaration and the 2004 Framework still require that there be “substantial improvements in market access” even in these categories). This, in turn, suggests that the tariff reduction formula itself need not - and should not - include further scope for flexibilities; and that these two exceptions to the general approach should be narrowly defined. CEPS notes that the G-20 Proposal, for example, states that there should be only a “very limited” number of Sensitive products, the number of which should be “credible and reasonable with relation to trade in each market.” CEPS suggests that the same logic should apply to the Special products category.

In particular, it is difficult to imagine that in many countries, any *western-style* distilled spirits could be defined as either “Special” – i.e. vital for developing country Members’ “food security, livelihood security and rural development needs” – or *a fortiori* “Sensitive”. CEPS therefore strongly urges the Commission to oppose any attempts by trading partners to maintain tariff protection for domestic spirits through this mechanism. Similarly, in case safeguard clauses are set up for “Sensitive” or “Special” agricultural products, CEPS expects that those will not cover distilled spirits.

***Ad valorem* equivalent (AVE) conversion exercise**

The 2004 Framework injected momentum into the negotiations at a crucial stage. However, it is widely acknowledged that the lengthy subsequent negotiations concerning the calculation of AVEs in order to apply the tariff reduction formula led to an unfortunate delay in the agriculture market access negotiations.

As well as the impact on the pace of negotiations themselves, CEPS is aware that some WTO Members advocate the eventual mandatory permanent conversion of *all* tariffs to their *ad valorem* equivalents. While this may or may not be appropriate for other industries, the international spirits industry is united in strongly supporting the application of specific tariffs – and, indeed, specific internal taxation - to distilled spirits.

Internationally traded spirits tend to be premium products, and therefore of high value as well as high quality, in a way that provides benefit for our economies. *Ad valorem* tariffs, by their very nature, have the effect of pricing many consumers out of the market for such products, reducing consumer choice as a result. In addition, such tariffs, by necessitating an assessment of the value of a shipment of distilled spirits, can often lead to disputes as to the correct valuation of the products for customs purposes, and at the very least introduce an additional, unnecessary layer of bureaucracy. The adoption of a specific tariff, by contrast, is simple, easy to apply, and not susceptible to subjective valuation disputes.

CEPS therefore welcomes the Commission’s view that the AVE conversion exercise should be for the application of the tariff reduction formula only, and urges the Commission to maintain that position in negotiations.

2. GEOGRAPHICAL INDICATIONS: a multilateral register for our GIs

For CEPS the key objective is to secure enhanced certainty of legal protection for EU spirits with geographical indications through the establishment of a multilateral (Wines and) Spirits Register as mandated by TRIPS agreement and reinforced by ministers at Doha.

Although the Uruguay Round delivered improved protection for spirits (and wines) with GIs, through the higher level of protection accorded to them under Article 23 TRIPS, counterfeit remains a serious problem for the industry in many markets around the world. Indeed, in some key emerging markets, the problem is becoming significantly worse. This usurpation of EU spirits comes at a cost to the EU economy in terms of lost potential exports and the risk that poor quality counterfeit products might tarnish the genuine product's image in the eyes of consumers, with a longer term impact on sales of EU spirits.

On a world-wide basis, counterfeiting of spirit drinks (most of which are European and bearing GIs) can be estimated at around 5% to 8% of total yearly turnover (using the standard OECD bracket). This converts into a range of a minimum loss of €600 million per annum (i.e. 11 million cases² in volume) to a maximum of €900 million (17 million cases in volume). These figures are drawn from the spirits industry specialized anti-counterfeiting association, the International Federation of Spirits Producers (IFSP), which groups the major European spirits companies. Accordingly, these figures should be taken as an absolute minimum, as they do not cover counterfeiting affecting smaller companies.

Furthermore, it should again be borne in mind that EU exports of spirits amounted to €5 billion in 2004. When taken together with wine exports of €4.5 billion, it can be seen that the lion's share – some 80% - of EU exports of products with GIs are accounted for by wines and spirits. The sector, which represents one sixth of total EU agricultural exports, is therefore a significant offensive interest for the EU in the DDA negotiations, not only in terms of market access, but also through securing improved implementation of the existing Article 23 TRIPS protection for these products by the establishment of a multilateral register for wines and spirits with GIs with an element of binding legal effect. CEPS welcomes the Commission's continuing efforts to secure an agreement on the form of the Register.

The "Joint Proposal" Members (Argentina, Australia, Canada and the USA) oppose a legally binding multilateral register for a variety of reasons. Although it appears likely that they will agree to a register of some sort during the "end game" of the negotiations, precisely how useful that register will be to the European spirits industry will depend on the delicate balance secured in the overall Single Undertaking.

Bearing in mind the hostility of certain Members to the current EU proposals for the Register – and, regrettably, *a fortiori* to the additional issues of Extension and the "claw-back" list - the industry believes the EU should signal its willingness to prioritise its objectives for Hong Kong in a realistic manner so that real success is obtained on GIs.

CEPS is suggesting here the following strategy:

- 1- Implementation of a register for (wines and) spirits GIs with an element of binding content, as the only GI issue for which the mandate cannot be disputed by other WTO Members. A first list of commercially significant wine and spirits GIs that are subjected to greater risk of usurpation could be discussed within Members;
- 2- Put the extension as an issue for further negotiations, recognising the fact that resistance is even stronger than on the register. Ministers could nevertheless give it a real mandate then;
- 3- Definitely drop the claw backlist initiative from the negotiations, as a move towards alternative and flexible solutions.

² A case is a standard spirits industry measurement, it amounts to 9 litres (12 bottles)

3. **TRADE FACILITATION: *Reducing the technical burden on our exports***

The industry notes that encouraging progress has been made in the trade facilitation negotiations since they began in the wake of the 2004 Framework, with a wide range of developed and developing country Members making constructive proposals for improvements. There now appears to be widespread acceptance among Members that a successful trade facilitation outcome would deliver significant economic benefits to all. CEPS supports the Commission's comprehensive series of helpful position papers that were submitted to the Negotiating Group earlier this year as part of that dialogue. For the European spirits industry, many of the proposals that have been made would, if implemented, deliver significant tangible benefits in export markets around the world.

Indeed, a good objective would be to try to transpose at international level the major achievements of the EU's Single Market, where a given product, be it of European or foreign origin, may freely circulate amongst the 25 EU Member States without undergoing customs checks or other national certification/analysis. In addition, within the EU, product definitions, tax bases, classification and labelling requirements, for example, have been largely harmonized. To a significant extent, non-tariff barriers within the EU have been abolished. We can underline that all alcoholic beverages imported to the EU are submitted to the same regulation -eg. designation and movement- as locally produced European alcoholic beverages.

In addition, the EU is preparing full harmonization of customs checks at the EU's external borders. This is intended to:

a) simplify and harmonise customs business processes through radical overhaul of the existing EU Customs Code mainly by:

- reducing the number of customs treatments,
- making electronic customs declaration the rule,
- clearly defining the roles of inland and border customs offices,
- promoting the use of Single European Authorisation (central clearance in case two or more Member States are involved in the operation or procedure),
- developing an Authorised Economic Operator programme through which reliable traders will be able to benefit from trade facilitation on an EU-wide basis and, taking account of security aspects, from reduced customs controls.

and

b) lay down the data requirements and interfaces on a community wide level in order to

- ensure interoperability between existing national systems and
- offer a single entry point for customs at EU level to traders.

Therefore, CEPS believes that the EU is uniquely positioned to foster trade facilitation at the WTO.

CEPS further believes that for WTO Members to gain the maximum benefits from any such agreement on trade facilitation, it should involve at least an element of binding content. Clearly, developing and least developed country Members will need technical assistance and support for capacity building if some of the more ambitious proposals are to become reality, and if the trade facilitation agreement is indeed to be brought within the ambit of WTO dispute settlement. It is therefore encouraging to note the significant financial and technical assistance that has been offered by the Commission, many individual EU Member States and, indeed, a number of multilateral organisations to that end. This aid, taken together with appropriate transition periods, should enable the trade facilitation negotiations to achieve an ambitious outcome.

CEPS has submitted two position papers on trade facilitation to the Commission in 2005. Both set out a variety of problems currently encountered by the industry, and suggest proposed solutions to each one that could be incorporated in a trade facilitation agreement. The issues covered include:

- Procedures involved in the administration of national tax stamp regimes for distilled spirits;
- Import licensing requirements;
- Customs valuation disputes;
- Customs and other import-related fees;
- Excessive and duplicative documentary requirements;
- The potential for better and more widespread use of IT; and
- Burdensome border crossing procedures.

Copies of both papers are available from the CEPS Secretariat.

CONCLUSION

The EU spirits industry has an ambitious international trade agenda, for which the best chances of success rest within the DDA multilateral negotiations. The industry thus warmly welcomes the Commission's flexible and constructive approach to the negotiations and urges a redoubling of efforts to adopt a realistic strategy in order to secure a successful outcome at Hong Kong, with a view to concluding the round in 2006. CEPS will continue to work with its partner associations in the WSA to encourage other governments to adopt a similar approach.

Finally, CEPS remains hopeful that the strong international trade agenda can be progressed on a broad front and on a multilateral basis within the framework of the DDA.

However, should the Hong Kong Ministerial fail to deliver the hoped-for progress in the Round, thus making a swift conclusion unlikely, CEPS believes that the EU should consider using alternative means of securing improved market access for EU exports in key overseas markets, through mechanisms such as bilateral and regional Free Trade Agreements (FTAs).

ANNEX A**MARKET ACCESS****Spirits Industry main priority markets for tariff reduction**

COUNTRIES	BCD
COLOMBIA	20% (except Tequila)
KOREA	15% (Cognac, brandies) – 20% other spirits
INDIA	150%
MALAYSIA	28-58 MYR/L
MERCOSUR	20%
THAILAND	60%