



*European Communities
Commission
Background Report*

ISEC/B52/78

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July 13, 1978

NO DISCRIMINATION ON DRINK

Free competition or protectionism?

Summary

People in the south of the European Community drink wine; in the north, they drink beer and spirits. That, of course, is a flagrant generalization, but it explains why the European Commission is now referring to the European Court of Justice four member countries - Britain, France, Italy and Denmark - for discriminatory taxation which has the effect of protecting their own drink industries, and indirectly discourages consumers from drinking imported spirits and beer in the south and imported wines in the north. French advertising regulations are also to come before the Court.

The Commission appreciates that this is a sensitive area, but as the guardian of the Rome Treaty, it has to act if its attention is drawn to measures which conflict with the working of a common market. In these cases it is mainly Article 95 - which prohibits member states from imposing, directly or indirectly, internal taxation on the products of other member countries in excess of that imposed on similar domestic products - that has been infringed.

The Commission's action against the four governments mirrors the action already taken against Distillers Co Ltd for charging one price on whisky for sale in the U.K. and a higher price to buyers wishing to market whisky in other countries of the EEC, so carving up the market and preventing continental consumers from enjoying their whisky at a (lower) British price. DCL argued that their policy was adopted partly to cope with discrimination against their products in some member states.

The Commission's case

It is the European Commission's job to ensure that free and fair trade within the Community is not hindered by fiscal or other barriers or discriminating pricing systems. Under Article 169 of the Treaty, if the Commission considers that a member state or a manufacturer within that state has failed to fulfil an obligation under the Treaty, it must draw attention to infringement by a reasoned opinion, and if this fails to right matters, the offending member may be brought before the Court of Justice.

On the issue of the beverages discrimination alleged against the four countries now referred to the Court, consultations have been dragging on for two or three years. All the infringements concern discriminatory taxation imposed on certain kinds of imported drink.

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The Commission has always recognised that where action is taken against a discriminatory tax, problems may result in areas entirely divorced from the strictly fiscal. For these reasons the Commission has long urged harmonization of the tax legislation of member states. Only in this way, it suggests, can full account be taken of the different needs of the markets and of the economic and social implications of some taxes, so as to achieve neutral conditions of competition.

The infringements

The Commission points out that in the Mediterranean countries the traditional policy has been to protect alcohol derived from wine, for the obvious reason that it is linked to the exigencies of wine production, an essential element of these countries' agriculture. This protection, achieved by taxation differentials has as its primary objective the discouragement in these countries of the production of alcohol from raw materials other than wine, but the effect has been discrimination against imports like grain-based whisky. Article 95 of the Treaty, however, forbids such discrimination. Infringement proceedings have, therefore been initiated against Italy and France in order to re-establish normal conditions of competition. French advertising rules which restrict the advertising of grain-based spirits are also subject to proceedings.

In the non-wine producing countries of the north of the Community wine has tended to be considered a luxury drink, at least in comparison with beer, the locally produced low-alcohol beverage. These countries have always taxed wine heavily, with the result, in the Commission's view, that consumption has been restricted. The Commission considers that wine cannot be considered as a luxury product meriting a higher rate of taxation than competing local products. Britain falls into this category of taxation. The Commission has also sent Ireland a reasoned opinion pointing out that deferred payments of duty on locally produced drink discriminate tax-wise against imports.

The UK case

As far as the U.K. is concerned, the Commission considers the tax level on still light wines to be unfair. Whereas light beer attracts an excise duty of 55p per gallon, for light wines it is £2.955 per gallon, more than five times as much.

The Commission considers that beer and wine have sufficient in common for the high rate of duty on wine to result, indirectly, in the protection of beer and calls for a cut in wine duty. The British government contests this view and argues that the Commission's criteria are unfair, arguing that normal drinking habits of beer or wine are for beer to be drunk by the pint (57 cl) and wine by the glass, equal to $4\frac{1}{2}$ ounces (12.75 cl). Looked at in this way, say the British, the unit of tax would be 7.5p for a pint of beer and 8.3p for a glass of wine. In other words, beer glass for wine glass there is little difference in the tax. Indeed, according to this argument the tax applies favourably to wine if one relates it to the per degree of alcohol in the two drinks. It amounts to 1.88p for a beer of 4° Gay Lussac and to 0.72p for a wine of 11.5° Gay Lussac.

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The Commission does not accept the argument that a pint of beer can be equated with a glass of wine in this way. The Commission also contests the other British arguments for the tax, noting that British duties on beer and wine have no logical rationale; they are of an historical nature, and there has always been discrimination against wine. Inevitably, this has distorted consumption patterns and no valid arguments in favour of the tax can be drawn from them.

The Commission first wrote to the British Government about the matter in July 1976. It sent a reasoned opinion on November 8, 1977, commenting on the British reply to its original letter. As nothing further was heard from the UK, the matter has been referred to the Court. The Commission noted that, despite, a Council recommendation of December 5, 1975 to decrease, or at least not to augment, excise duties on wine, the UK has since then increased its excise duties by 20 per cent.

In Denmark, acquavit and schnapps benefit from a reduced tax compared with other spirits, the manufacture of which is almost non-existent in the country. Although the Danes argue that the drinks are different and therefore merit a differentiated tax, the Commission insists that such discrimination is an infringement of Article 95.

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