REPORT TO THE TRADE BARRIERS REGULATION COMMITTEE

EXAMINATION PROCEDURE CONCERNING AN OBSTACLE TO TRADE, WITHIN THE MEANING OF COUNCIL REGULATION (EC) No 3286/94, CONSISTING OF TRADE PRACTICES MAINTAINED BY INDIA AFFECTING TRADE IN WINES AND SPIRITS

COMPLAINT SUBMITTED BY THE EUROPEAN SPIRITS ORGANISATION (CEPS) AND THE COMITÉ EUROPÉEN DES ENTERPRISES VINS (CEEV)

CASE-HANDLERS

UNIT F.2

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ACRONYMS

AD	Additional Duty
BCD	Basic Customs Duty
BII	Bottled in India
BIO	Bottled at origin
BL	Bulk litre
CEPS	The European Spirits Organisation
CEEV	Comité Européen des entreprises vins
CIF	Cost, Insurance and Freight
CL	Country liquor
EAD	Extra Additional Duty
ED	Excise Duty
EDP	Ex-distillery price
IMFL	Indian-made foreign liquor
IWSR	International Wine and Spirits Record
LC	Landed Cost
MRP	Maximum retail price
NA	Not Applicable
PL	Proof litre
Rs	Indian Rupees
TBR	Trade Barriers Regulation
USD	United States Dollars
VAT	Value Added Tax

EXECUTIVE SUMMARY

A. Introduction

On 20 July 2005, CEPS (the European Spirits Organisation) and CEEV (Comité européen des enterprises vins) lodged a complaint pursuant to Article 4 of Council Regulation (EC) No 3286/94 (the Trade Barriers Regulation) against certain Indian trade practices which affect the importation and internal sale of wines and spirits. The complaint alleged that these practices are inconsistent with Articles II, III and XI of the GATT 1994. The Commission, after consulting the TBR Committee, initiated an examination procedure on 17 September 2005.

The Commission services gathered information and comments from the Community producers and exporters of wines and spirits; the Indian authorities; Indian importers of wines and spirits; and one Indian association of producers of spirits. A verification visit took place in India from 23 January to 2 February 2006.

The proceeding concerns wines and spirits falling under codes 2204, 2205, 2206 and 2208 of the Harmonised System.

B. The challenged practices and obstacles to trade

The Complaint concerns alleged trade barriers maintained by India in the form of an Additional Duty applied by the Indian customs authorities on importation of wines and spirits, as well as restrictions on sale of wines and spirits maintained by certain Indian States. During the investigation India introduced a further Additional Duty (hereinafter "Extra Additional Duty") levied only on imported products. The investigation was expanded to include that Duty. (The Complaint also alleged the existence of trade barriers in the form of internal taxes on sale applied by certain Indian States to imported wines and spirits, but these allegations were withdrawn by the complainants during the investigation.)

The investigation has confirmed that India applies, in addition to ordinary customs duties (Basic Customs Duty) of 100% (wines) and 150% (spirits) *ad valorem*, **Additional Duty** to imported bottled wines at rates of 20% to 75% (depending on the price of the imported products) and to imported bottled spirits at rates of 25% to 150% (depending on the price of the imported products). The investigation has also confirmed that India applies, in addition to Basic Customs Duty and Additional Duty, **Extra Additional Duty** to imported wines and spirits (bottled as well as bulk) at a rate of 4% *ad valorem*. The cumulative application of Basic Customs Duty, Additional Duty and Extra Additional Duty entails the following overall duty burden in respect of imported (bottled) wines and spirits.

WINES

	BCD	AD	EAD	TOTAL
CIF value 0-25 USD	100%	75%	4%	*264%*
Example: CIF 25 USD	25 USD	37.5 USD	3.5 USD	66 USD
CIF value 25-40 USD	100%	50%	4%	*212%*
Example: CIF 40 USD	40 USD	40 USD	4.8 USD	84.8 USD
CIF value 40- USD	100%	20%	4%	*177.33%*
Example: CIF 60 USD	60 USD	40 USD*	6.4 USD	106.4

SPIRITS

	BCD	AD	EAD	TOTAL
CIF value 0-10 USD	150%	150%	4%	*550%*
Example: CIF 10 USD	15 USD	37.5 USD	2.5 USD	55 USD
CIF value 10-20 USD	150%	100%	4%	*420%*
Example: CIF 20 USD	30 USD	50 USD	4 USD	84 USD
CIF value 20-40 USD	150%	50%	4%	*298.33%*
Example: CIF 40 USD	60 USD	53.2* USD	6.13 USD	119,33 USD
CIF value 40- USD	150%	25%	4%	*252.22%*
Example: CIF 60 USD	90 USD	53.2* USD	8.13 USD	151.33 USD

** Fixed minimum rate of Additional Duty in this category.*

This overall duty burden exceeds, by a large margin, the bound tariffs of India (bound at 150% *ad valorem*) in respect of both (bottled) wines and spirits, contrary to Article II:1 of the GATT 1994.

The Additional Duty is, according to India, a border tax adjustment applied to compensate for excise duties applied to *Indian* wines and spirits by Indian States (Indian States do not have the power to apply excise taxes to *imported* bottled wines and spirits). However, the investigation has shown that in practice the Additional Duty exceeds (by a large margin) the excise duties and other indirect taxes applied to domestic wines and spirits in at least ten different Indian States (out of the 28 States, including the territory of Delhi, which have power under Indian law to adopt their own taxation policies). The additional duty cannot, therefore, be justified under Article II:2(a) of the GATT 1994.

The Extra Additional Duty is also, according to India, a border tax adjustment applied to compensate for sales taxes, value added tax and other local taxes applied to *Indian* products, including wines and spirits. However, most of these taxes apply to imported as well as Indian products and the investigation has shown that in practice the Extra Additional Duty exceeds (by a large margin) indirect taxes applied to domestic wines and spirits in at least four different Indian States. The Extra Additional Duty cannot, therefore, be justified under Article II:2(a) of the GATT 1994.

The investigation has also given rise to serious concerns, which call for further investigation, that the Indian States of Bihar, Daman & Diu, Jharkand, Tamil Nadu and Uttaranachal may be restricting sale of imported wines and spirits, contrary to Articles III:4 or IX of the GATT 1994.

Thus, the investigation has shown that the Indian measures under investigation (Additional Duty and Extra Additional Duty) are inconsistent with the WTO Agreement. There is therefore evidence of an obstacle to trade within the meaning of Articles 2(1) and 4(1) of the TBR.

C. Adverse trade effects

The investigation showed that India is an important potential market for European wines and spirits and that the Additional Duty, as well as the recently introduced Extra Additional Duty, has prevented and continues to prevent EC producers from realising this market potential. The Community industry therefore suffers adverse trade effects, resulting from the identified obstacles to trade, within the meaning of Articles 2(4) and 4(1) of the TBR.

D. Community interest

It is evident that the Community Industry has been suffering for the past five years, and continues to suffer, as a result of the Indian measures under investigation (that, in effect, replaced WTO-illegal quantitative restrictions applied for more than forty years) notably due to their inability to develop the significant market potential of India. Repeated diplomatic efforts to resolve the situation with the Indian authorities have failed to resolve the problem.

The Community therefore must defend its rights, negotiated in the WTO, for market access for its EC producers in India. Additionally the Community has an interest to ensure that all of its trading partners observe the obligations contained in the WTO Agreement, and avoid circumvention of those rules.

A. INTRODUCTION

On 20 July 2005, CEPS and CEEV lodged a complaint pursuant to Article 4 of Council Regulation (EC) No 3286/94[1] (the Trade Barriers Regulation, hereinafter "the TBR") in order to eliminate certain alleged Indian trade practices which adversely affect Community sales of wines and spirits.

The complaint was lodged on account of adverse trade effects being suffered by Community producers of wines and spirits resulting from Additional (customs) Duty

[1] 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 (OJ No L349, 31.12.94, p. 71), as last amended by Council Regulation (EC) No 356/95 (OJ No L 41, 23.02.95, p.3).

applied by India to importer wines and spirits, indirect taxes applied by Indian States to imported wines and spirits as well as restrictions applied to the distribution and sale of imported wines in spirits by Indian States. The complainants considered that the Indian authorities have violated Articles II, III and XI of the General Agreement on Tariffs and Trade ("the GATT") 1994. The Commission initiated the investigation after consulting with the Member States in the framework of the Committee set up under Article 7(1) of the TBR. The Notice of Initiation was published in the Official Journal on 17 September 2005 (2005/C 228).

A.1 THE INVESTIGATING ACTIVITY

The present TBR proceeding has been marked by the refusal of the Indian Government to cooperate effectively with the investigation activity. That refusal is unprecedented in the history of the TBR. It has hampered, to some extent, the efforts of the Commission services to conduct a timely examination.

During the first stage of the examination, the Commission services gathered information on the Indian measures, on the products subject to investigation, on the Indian and Community industries and on the adverse trade effects claimed by the complainants. This information was collected, *inter alia*, by means of 30 separate questionnaires addressed to:

– Community producers and exporters;

– Indian importers;

– Indian producers;

– Indian authorities (the Central Government and State Governments).

The Indian authorities, Indian producers and associations of Indian producers failed to reply to the questionnaires. The Indian Government requested additional time to respond to the questionnaires, and the Commission services awarded a substantial period (of 2 months) in addition to the period (of 1 month) initially awarded. However, the Indian Government informed the Commission services – more than three weeks after the expiry of the extended deadline – that it would provide no replies in writing at all.

Three replies were received from EC producers that represented between 57% and 79% (in value) of total exports of spirits to India in the three year period before the complaint was lodged. Two replies were received from companies that represented together between 21% and 28% (in value) of total exports of wines to India in the three year period before the complaint was lodged. For the purposes of this investigation, this level of response was taken as being representative of the EC wines and spirits exporters to India. In addition, one Indian importer of spirits replied to the questionnaire.

Moreover, a verification visit took place in India between 23 January and 2 February 2006. Whereas the Commission services had suggested to conduct this visit in November 2005, the Indian Government failed to cooperate at that stage. During the verification visit, Commission officials visited New Delhi and Mumbai and interviewed a number of relevant parties. However, only the authorities of three

Indian States could be interviewed, and all individual Indian producers of wines and spirits refused the invitation to meet Commission officials. This added to the difficulties for the examination caused by the refusal of the Indian Government, Indian producers and associations of producers to respond to the questionnaires.

Meetings with the Indian Government

Meetings were held with the following governmental authorities (in New Delhi):

- Department of Commerce
- Ministry of Finance
- Ministry of Food Processing Industries
- Excise Commissioner of the Territory of Delhi
- Excise Commissioner of the State of Maharashtra
- Excise Commissioner of the State of Tamil Nadu

Meetings with Indian Associations representing producers of spirits

- All India Distiller's Association, New Delhi

Meetings with individual Indian importers

- Mohan Brothers, New Delhi
- Francis Waziarg Group, New Delhi
- Sun Tan Trading, Mumbai
- Sonarys Brands, Mumbai

Meeting with Community producers

- Diageo, New Delhi
- Pernod Ricard (Seagram), New Delhi
- Moët Hennessy, Mumbai

Following the verification visit, the Commission services submitted a written request for additional information from the Indian Government. Contrary to oral assurances given during the verification visit, the Indian Government did not provide any such information. The failure of the Indian Government to cooperate in this regard further added to the difficulties caused by the lack of responses to questionnaires and the inability of Commission officials to meet all interested parties.

A.2 THE COMPLAINANT

The complaint has been lodged jointly by CEEV and CEPS, on behalf of the European Community ("EC") wines and spirits industries.

CEEV was established in 1995 as the representative body in the EC for producers of wines, aromatised wines, sparkling wines, liqueur wines and other vine products. Its membership comprises 18 national associations representing the industry in 11 EC

Member States. CEPS was established in 1993 as the representative body in the EC for producers of spirit drinks. Its membership comprises 38 national associations representing the industry in 21 EC Member States.

CEEV and CEPS members (hereinafter "the EC wines and spirits industries") exported in 2005 goods amounting to € 10.45 billion to some 150 third country markets. Over 600,000 people are directly, and over 850,000 indirectly, employed in the production of wines and spirits in the EC. In 2005, the EC wines and spirits industries exported wines and spirits with a value of, respectively, € 5.6 million and € 24.2 million to India[2].

CEEV and CEPS are associations acting on behalf of Community enterprises (producers of wines and spirits) within the meaning of Articles 2(6) and 4(1) of the TBR.

A.3 THE PRODUCTS

The affected products are wines, vermouths, aromatised wines and spirits classified under codes 2204, 2205, 2206 and 2208 of the Harmonised System. They include still and sparkling wines, vermouths and other fortified wines (such as port and sherry); as well as spirit drinks distilled from raw materials of agricultural origin (such as brandies and wine spirits, whiskies, gin, vodka, rum and liqueurs). As explained further in this Report, an examination of the specificities of each of the different products falling within this broad range is not pertinent for the present investigation. Some categories of products will, however, be examined further in the context of the legal assessment below (Chapter D.1.4).

B. THE MARKET

B.1 INTRODUCTION

This chapter sets out the main characteristics of the Indian market for wines and spirits. The two sectors differ in a number of ways such as the size of the market, trade volumes, import shares, price segments, growth potential of the market, consumption patterns and the cultural perception in India of consuming wines and spirits. For this reason, the two sectors are addressed separately in each section below. A further important characteristic of the Indian market is that each Indian State is essentially a separate market as policies on licensing and taxation are determined at State level (see further below, Chapter C.3). This results in different distribution and pricing structures in each State. In addition to the different State policies, there are strong geographical variations in consumption patterns due to the diversity of cultural, social and religious values in India.

[2] These figures do not include wines and spirits exported in bulk containers for bottling and/or blending with local products in India (BII products). Products exported in bulk are, as explained in Chapter C.1 and C.5, not within the scope of the trade practices challenged in the Complaint.

A common feature of each of these separate markets is the existence of two distinct segments known respectively as standard spirits and country liquor. These two segments differ substantially in terms of production methods, distribution and pricing. Standard spirits includes spirits imported from outside India (including bottled (BIO) spirits from the EC) and Indian-made Foreign Liquor (IMFL). IMFL is generally understood to mean branded spirits produced in India and made in colour and flavour to resemble imported spirits - such as whisky, gin, vodka, rum, and wine spirits – in accordance with the relevant production standards of the Bureau of Indian Standards[3]. Country liquor is unbranded spirit-drinks produced from distilled ethanol - typically, flavoured and/or coloured with fruit concentrates - produced in accordance with the country liquor production standard of the Bureau of Indian Standards. IMFL and country liquor are generally sold through different (separately licensed) outlets. Country liquor retails at significantly lower prices than standard spirits, including IMFL. According to EC industry, the country liquor market is at least twice the size of the market for standard spirits. The market of country liquor is not subject to the Complaint and is accordingly not addressed in this report. Hereinafter, the term "spirits" should therefore be read as a including standard spirits, not country liquor.

B.2 SIZE OF THE DOMESTIC MARKET

B.2.1 *Spirits*

The size of the Indian market for spirits in 2004 was estimated by the IWSR at 87 million nine-litre cases[4]. This makes India a major international market for spirits, and it is the world's largest market for whisky.

The Indian spirits market has been growing for many years, and this trend is continuing. According to the ISWR, the market grew on average approximately 4% per year (including a small drop of 2% in 2004) between 2000 and 2004[5], and the total consumption of spirits in India rose from a level of 74.17 million nine-litre cases (in 2000) to a forecasted level of 91.79 million nine-litre cases in 2005[6].

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[3] The Bureau of Indian Standards is part of the Indian Ministry of Consumer Affairs and public Distribution, Government of India. On the content of these standards, see below Chapter D.1.4.2.

[4] *International Wine & Spirits Record (IWSR): Report on India, 2005*. The data is collected by the ISWR, an independent organization. The data is drawn from discussions with major Indian producers and is crosschecked against data collected for taxation purposes by the Central and State Governments as well as by exporting country statistics. Data on the Indian market varies considerably due to the special nature of the Indian market. This report therefore draws mainly on IWSR data as it is generally recognized as a reliable source. The IWSR data are supplemented in this Report by additional data and industry estimates, where deemed appropriate to complement the picture. It may be noted that according to estimates by the Government of India (*Model Policy/Taxation/Act/Rules For Alcoholic Beverages & Alcohol*, Ministry of Food Processing Industries, February 2006, p. 23), the spirits market is approximately 119 million nine-litre cases (the higher figure, as compared to the IWSR, may be explained by the fact that some Indian States have in recent years re-classified certain country liquors for statistical purposes as IMFL).

[5] Source: IWSR.

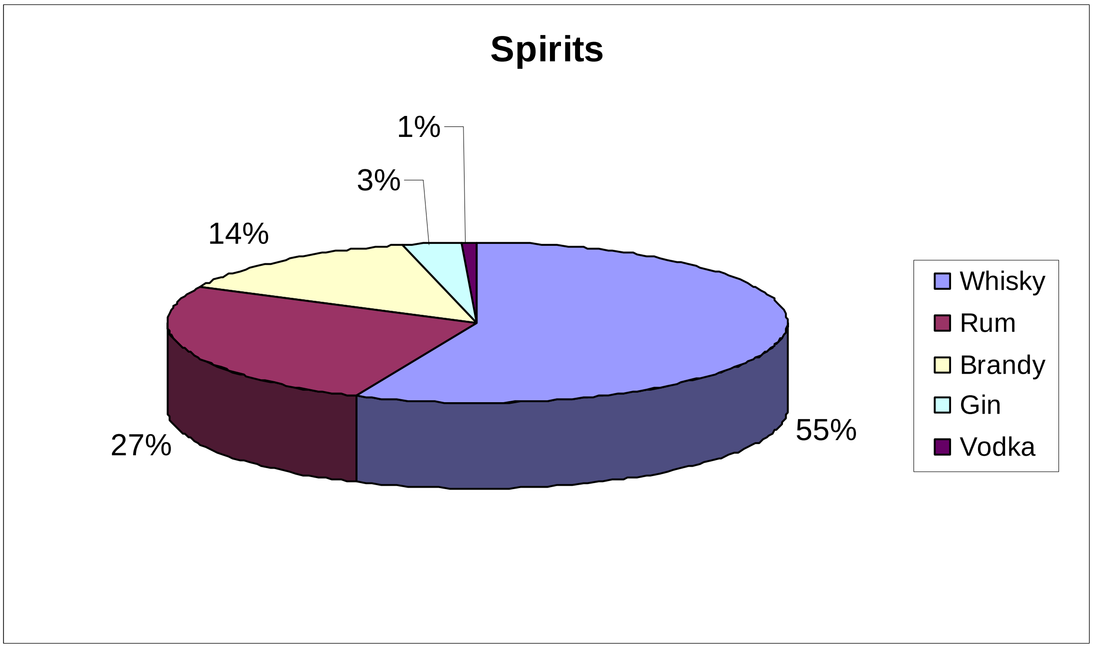
[6] It may be noted that according to an independent study conducted for the Government of India (Report by Rabo India Finance Pvt. Ltd for the Ministry of Food Processing Industries, Government of India, April 2005), the market grew even faster at (on average) 8% each year between 1998 and 2003.

Evolution of consumption of spirits in India in volume (thousand nine-litre case)

	2000	***2001***	***2002***	***2003***	***2004***	***Forecast 2005***
Consumption total	*74,174.00*	*78,217.50*	*83,475.50*	*88,874.75*	*87,098.50*	*91,790.00*
Consumption growth rate	-	*5%*	*6%*	*6%*	*-2%*	*5%*

Source: IWSR.

In India, whisky accounts for the largest share (approximately 55%) of the total consumption of spirits. Other key categories of spirits consumed include rum (27%), brandy (14%), gin (3%) and vodka (1%). The relative market share of different spirits drinks, measured in consumption in the year of 2004, may be illustrated as follows.



Source: Study by Rabo Bank for the Government of India[7].

As noted above, there are pronounced regional variations in consumption patterns within India. As regards spirits, whisky is predominantly consumed in the North and West of India, while in the South rum and brandy have traditionally been more dominant.

Moreover, Indian consumption of spirits is largely concentrated in the following eleven Indian States: Andhra Pradesh, Assam, Delhi, Goa, Karnataka, Maharashtra, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. According to the Imported Wine & Spirits Association of India, these States together account for

[7] See above, footnote 6.

approximately 70% of the spirits market (in volume). The tax regime of all of those States have been reviewed in the present investigation.

Consumption of spirits in India by State

State	**Market share (in volume)**
Andhra Pradesh	19.6%
Assam	2.2%
Delhi	3.6%
Karnataka	10.7%
Maharashtra	6.8%
Punjab	2.8%
Rajasthan	4.3%
Tamil Nadu	17.1%
West Bengal	1.6%
Uttar Pradesh	2.9%
Sub-total	**71.6%**

Source: Estimates by EC industry.

As regards BIO spirits from the EC, Indian consumption is even more geographically concentrated. According to EC producers and Indian importers, the key markets are Delhi, Maharashtra (Mumbai) and Karnataka (Bangalore) as well as, with much more limited sales, Goa and Rajasthan. It is reasonable to assume that sales in Delhi and Mumbai account for 60% to 80% of overall sales of BIO spirits.

B.2.2 *Wines*

The Indian market for wine is small in comparison to the market in spirits. India has traditionally not been considered an important wine market, and Indian consumer appreciation for wine is a relatively recent phenomenon. The market is, however, regarded as having considerable growth potential. The size of the market is currently estimated at around 667,000 nine-litre cases per year.[8] IWSR data indicate that the wine market has grown rather strongly – at annual rates of 5% to 9% - since 2002[9].

Evolution of consumption of wines in India in volume (thousand nine-litre case)

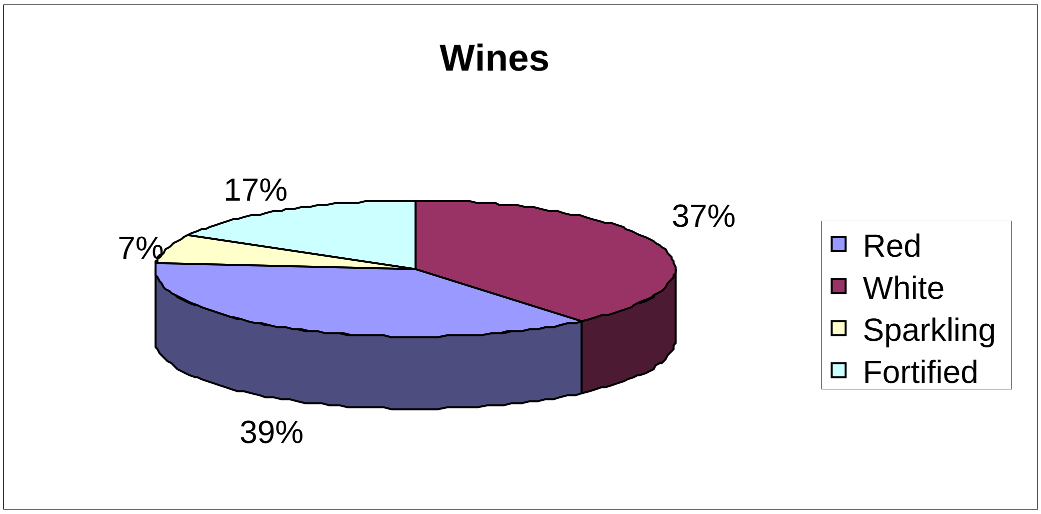
	2000	***2001***	***2002***	***2003***	***2004***	***Forecast 2005***
Consumption total	*558.25*	*558.75*	*580.75*	*611.75*	*667.00*	*715.50*
Consumption growth	*-*	*0%*	*0%*	*5%*	*9%*	*7%*

[8] Source: IWSR.

[9] It may be added that according to a study conducted for the Government of India, cited above in footnote 6, the market has been growing even faster at (on average) 20% each year between 1998 and 2003 and that industry sources have suggested to the Commission services that the growth rate is increasing and could reach approximately 30% in 2005-2006.

Source: IWSR

Red wine accounts for the largest share of the wine market measured in consumption (39%), followed closely by white wine (37%). The market shares of sparking wine and fortified wines are smaller (7% and 17% respectively). The relative market share of different wines, measured in consumption in the year of 2004, may be illustrated as follows.



Source: Study by Rabo Bank for the Government of India[10].

As for spirits, consumption patterns of wine vary geographically within India. Consumption of wines is heavily concentrated in urban centres such as Mumbai (Maharashtra), Delhi, Bangalore (Karnataka), and Punjab[11]. The following eleven Indian States account, according to the Imported Wine & Spirits Association of India, for approximately 90% of the wine market: Andhra Pradesh, Assam, Delhi, Goa, Karnataka, Maharashtra, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. The tax regime of all of those States have been reviewed in the present investigation.

Consumption of wines in India by State

State	**Market share (in volume)**
Andhra Pradesh	1.2 %
Assam	2.2%
Delhi	10.7%
Goa	26.4%
Karnataka	19.4%
Maharashtra	25.9%
Punjab	0.9%
Rajasthan	1.0%
Tamil Nadu	1.5%

[10] See above, footnote 6.

[11] Source: Interviews by Commission officials with Indian wine importers.

Uttar Pradesh	1.0%
West Bengal	2.0%
Sub-total	**92.2%**

Source: Estimates by EC industry.

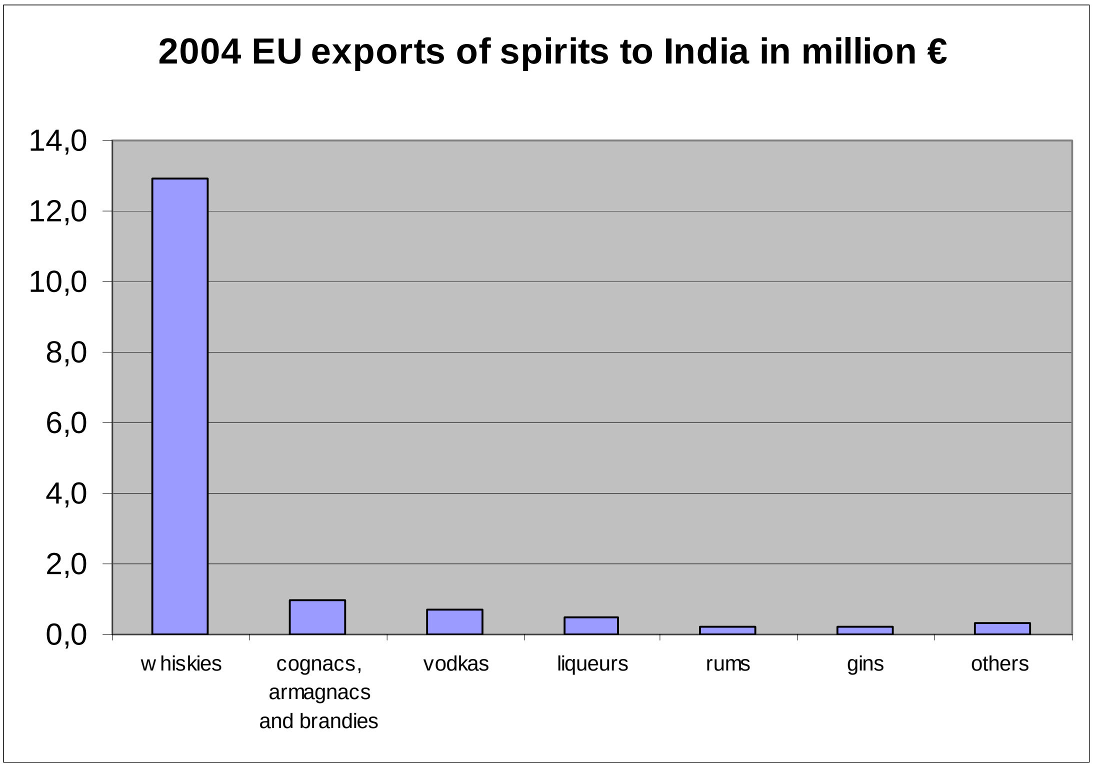
B.3 IMPORTS

It may be stressed (see further Chapter C.2) that India applied, until April 2001, a system of non-automatic import licensing (quantitative restrictions) to BIO wines and spirits. Under that system, strictly limited quantities of BIO products were allowed to be imported for sale in certain tourist hotels. The elimination of that system in April 2001 coincided precisely with the introduction of the Additional Duty (and the Special Additional Duty of 4% *ad valorem* which was since repealed, but recently re-introduced as Extra Additional Duty). The following analysis accordingly focus on of imports of wines and spirits since 2000.

B.3.1 *Spirits*

Indian total consumption of imported spirits (BIO and Bottled in India, i.e. BII) amounted, according to the ISWR, to 552,000 nine-litre cases in 2004. Of this consumption, approximately 380,000 nine-litre cases were BIO spirits. According to EC export statistics[12], EC producers exported directly to India 249,600 nine-litre cases of BIO spirits in 2004 at a total value of € 15.8 million, of which approximately € 12.9 million were whiskies, € 1.0 million cognacs, armagnacs and brandies, € 0.7 million vodkas, 0.5 € million liqueurs, and 0.2 million € for rums and gins.

[12] Source: Comext.



Source: Comext.

Consumption of imported spirits (BIO and BII) measured in volume has grown on average 1.8% (including a notable drop of 5% and 16% in 2001 and 2002) over the period of 2001 to 2004. However, imported BIO spirits account for a very small share of the spirits consumed in India. According to the IWSR, imported (BII and BIO) spirits amounted to less than one per cent[13], and BIO spirits alone account for less than half a per cent, of all spirits consumed in India in 2004 in volume. Moreover, despite consistent growth in overall consumption of spirits in India, the market share of imported BIO spirits fell substantially in 2001 and 2002 and, despite a limited recovery in 2004, remains below the (low) level which prevailed in 2000. These figures include all (genuine) BIO wines and spirits sold through duty paid retail, duty free retail as well as informal ('grey') distribution channels (see further below, section B.5 on distribution).

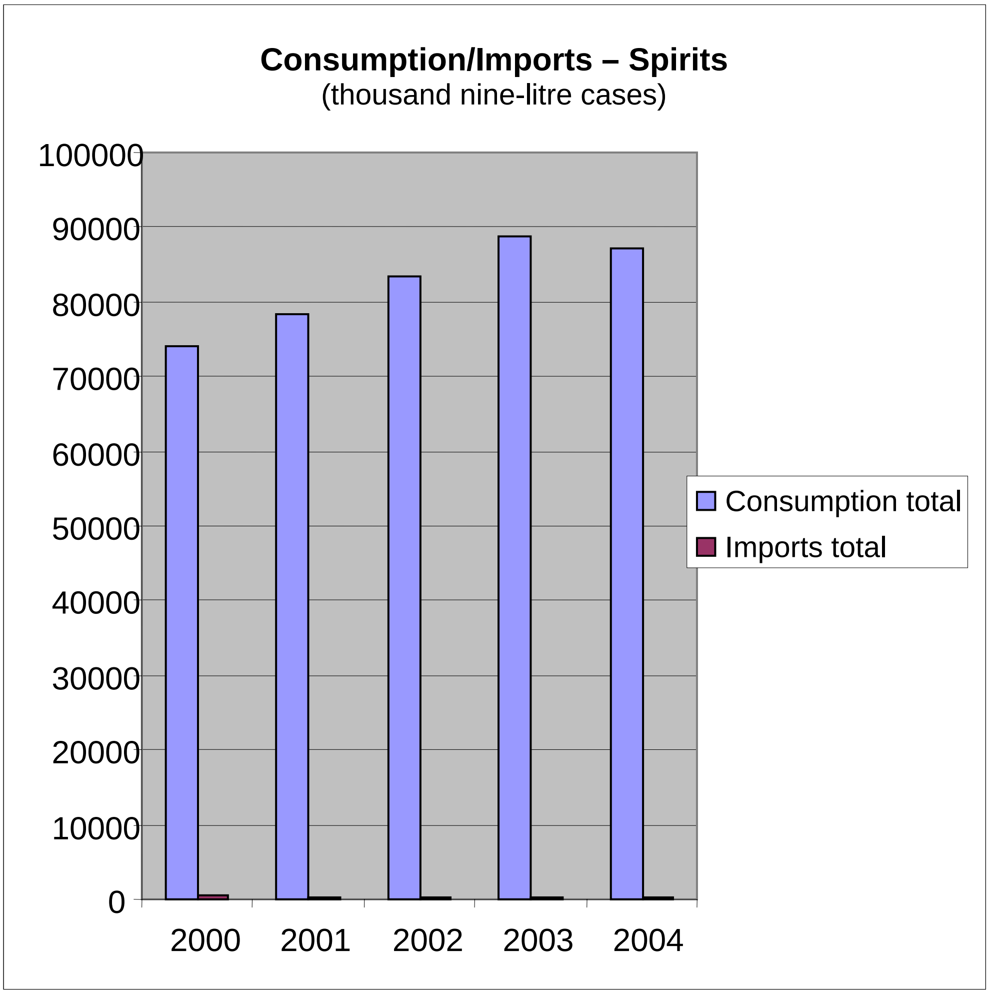
Evolution of BIO spirits imports and market share of imported BIO spirits (thousand nine-litre case)

	2000	***2001***	***2002***	***2003***	***2004***
Consumption total	*74,174*	*78,217*	*83,475*	*88,874*	*87,098*
Consumption growth rate	*-*	*5%*	*7%*	*6%*	*-2%*
Imports total	*439*	*382*	*326*	*338*	*380*

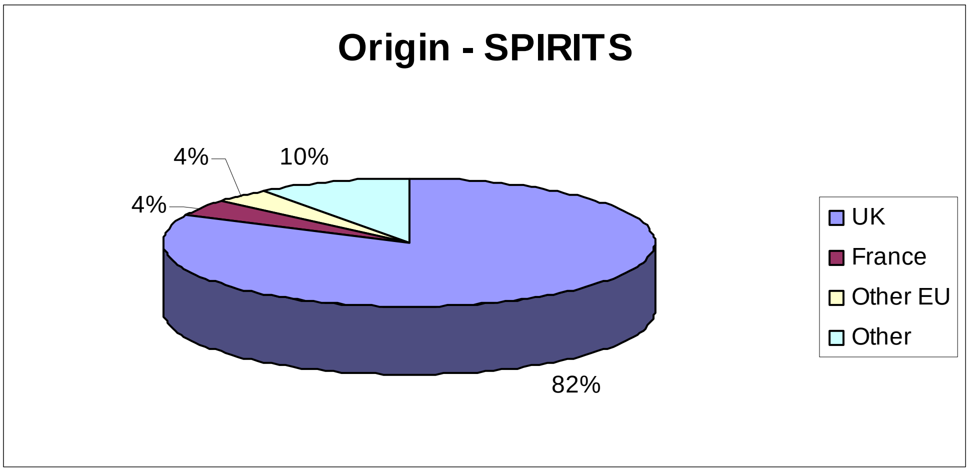
[13] This figure was recently confirmed in a report by the Government of India: *Model Policy/Taxation/Act/Rules For Alcoholic Beverages & Alcohol*, Ministry of Food Processing Industries, February 2006, p. 71.

Imports share of total	*0.59%*	*0.49%*	*0.39%*	*0.38%*	*0.44%*
Imports growth rate	-	*-12%*	*-15%*	*4%*	*12%*

Source: IWSR.



Products from the EC account for the largest share of Indian BIO spirits imports (82% according to Indian import statistics for 2004-2005). The United Kingdom is the main supplier, accounting for 73% of all Indian imports of spirits, followed by France (4%). Other important origins of imports include the United Arab Emirates (8.5%), Jamaica (2%), Mexico (1.7%) and the United States of America (1.2%). The relative import shares may be illustrated as follows.



B.3.2 *Wines*

Indian consumption of imported wines (BIO and BII) amounted, according to the IWSR, to 96,000 nine-litre cases in 2004. Separate consumption data for BIO wines is not available. EC export statistics[14] indicate that EC producers exported directly to India BIO wines in 2004 at a total value of € 3.8 million. Of these, approximately € 2.2 million were still wines, € 0.8 million champagne, € 0.7 million fortified wines (Port, Sherry etc.), and 0.04 € million vermouths. Consumption of imported wines (BIO and BII), measured in volume, has grown on average 6% over the period of 2001 to 2004.

Source: Comext

Compared to spirits, the market share of imported (BII and BIO) wines of total Indian wine consumption is considerably higher, amounting to 14-15% in 2004, according to the Imported Wine & Spirits Association of India. According to Indian import

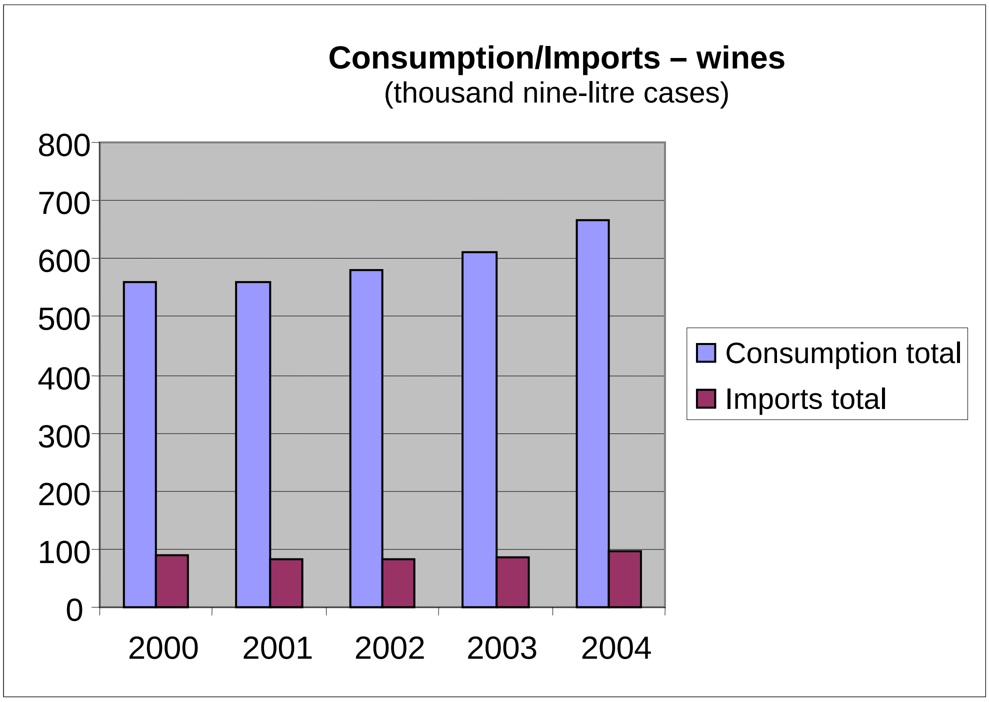
[14] Source: Comext.

statistics, the import share for wines was 10% in 2004[15]. This share has remained almost constant over the past five years.

Evolution of wine imports and market share of imported wines (thousand nine-litre case)

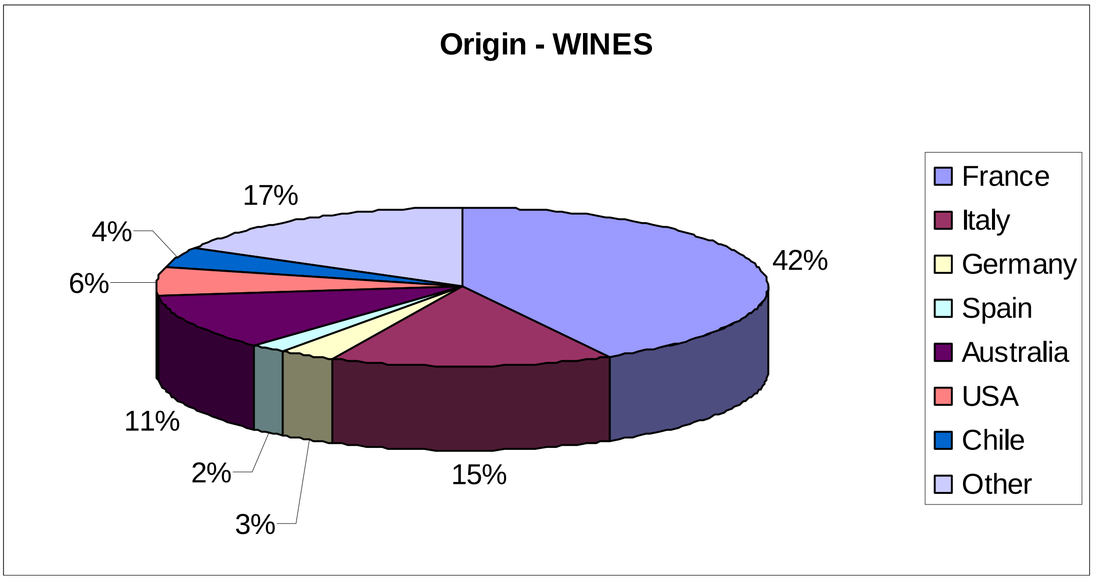
	2000	**2001**	**2002**	**2003**	**2004**
Consumption total	*558.25*	*558.75*	*580.75*	*611.75*	*667.00*
Consumption growth rate	-	*- 0%*	*4%*	*5%*	*9%*
Imports total	*88.25*	*83.75*	*83.25*	*86.75*	*96.00*
Imports share of total	*15.8%*	*15.0%*	*14.3%*	*14.2%*	*14.3%*
Imports growth rate	-	*- 5%*	*0%*	*4%*	*10%*

Source: IWSR.



Imports from the EC account for the largest share of Indian BIO wine imports (69.45% according to Indian import statistics for 2004-2005). France is the main supplier (42%), followed by Italy (15%), Germany (2.9%), Spain (1.8%) and Portugal (1.5%). Other important origins of imports include Australia (11.2%), the USA (6.1%) and Chile (4.35%). The relative import shares may be illustrated as follows.

[15] *Model Policy/Taxation/Act/Rules For Alcoholic Beverages & Alcohol*, Ministry of Food Processing Industries, February 2006, p. 71.



B.4 DOMESTIC PRODUCTION

B.4.1 *Spirits*

Indian production of spirits-drinks for human consumption started on an industrial scale in the 1930s, initially as a means to dispose of a by-product of sugar production (molasses). Since then, the industry has grown very considerably and today it produces a wide spectrum of different spirits drinks, including whiskies, gins, vodkas, rums, and brandies. The total annual production - which is done in approximately 295 distilleries - exceeds 90 million nine-litre cases of spirits. Indian spirits are produced in most India States, including the commercially most important States of Andhra Pradesh, Delhi, Goa, Karnataka, Maharashtra, Punjab, Rajasthan, Tamil Nadu and West Bengal.

The industry is dominated by a few large producers, including UB Group, Jagatjit Industries, Mohan Meaken and International Distilleries Limited. The UB Group merged in 2005 with the Spirits Division of Shaw Wallace, and now has a market share of approximately 48%. The respective market shares of other players are 17% (Jagajit), 7% (Mohan Meakins) and 3.5% (International Distilleries Limited).[16] In addition, a number of multinational companies, including Diageo, Pernod Ricard (Seagram) and Bacardi Martini, produce some spirits locally in India.

B.4.2 *Wines*

Indian production of wines started only in the 1980s, and the Indian wine industry is still of modest size. Current domestic production of wines, including red and white table wines and sparkling and fortified wines, is in the range of 700,000 nine-litre cases per year according to industry sources.

[16] Source: *Model Policy/Taxation/Act/Rules For Alcoholic Beverages & Alcohol*, Ministry of Food Processing Industries, February 2006, p. 23.

The table wine industry is dominated by a few major producers including Chateau Indage, Sula Wines, Grover Vineyards. These producers make quality wines from wine grape varieties, and account for most of the domestic production. Chateau Indage is the largest player, producing more than half of all Indian table wine. The three key Indian producers also export to third markets, including to the EC (France, United Kingdom, Italy and Spain). Most of Indian table wines are produced in the States of Maharashtra and Karnataka, with Maharashtra accounting for 1,800 of the approximately total of 2,000 acres of vineyards.

In addition to the above, there is a sizeable production of cheaper wines produced from table grapes, notably in the State of Goa, most of which is consumed locally within the state of production. There is also some production of sweet fortified wine in Andhra Pradesh.

B.5 EXPECTED MARKET GROWTH

The general socio-economic context and demographic trends in India suggest that there is a strong potential for growth in the market for wines and spirits, and for BIO products in particular.

Over the past few years, India has experienced a favourable economic climate. Average annual economic growth rates have been above 4% since 2000[17]. During the period 2003-2005, India has been one of the fastest growing economies in the world with growth rates in the range between 7% and 8.5%. This has translated into rising disposable incomes and a growing consuming middle class.

The increasingly urban population, and the adoption of urban lifestyles, also have an important bearing on the propensity of consumers to purchase BIO products. The current Indian urban population amounts to 286 million which represents approximately 28% of the total population[18], and is expected to increase considerably in the coming years. Moreover, the Indian population continues to grow with the share of the young population increasing proportionally to the total population.

The social perception of consuming alcohol is also changing – notably as regards the consumption of wine - and drinking is as a result becoming more socially acceptable. This change may be enhanced in the coming years by the policy of the Indian Government promoting wine production, and consumption of wine as an alternative to spirits.

Taking into account these socio-economic and demographic factors, increased consumer demand for BIO products can be expected in the coming years. According to EC industry, Indian producers and an independent study carried out for the Indian Government,[19] consumption of wines and spirits and is expected to grow respectively by 20% and 10% per year over the next decade.

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[17] Source: Economic Survey 2005-2006, Ministry of Finance, Government of India.

[18] Source: Statistical Outline of India. Revised 2001 Census data from December 2003.

[19] See above, footnote 6.

B.6 DISTRIBUTION OF IMPORTED WINES AND SPIRITS

Imported BIO wines and spirits are distributed within India through various channels which may, for the purposes of this Report, be divided into three categories: duty paid, duty free and informal (or 'grey').

Duty paid BIO wines and spirits are imported by importers (independent or owned by foreign producers) into bonded warehouses and, after payment of import duties, distributed through wholesalers, retail outlets (wine and liquor shops), hotels, bars and restaurants throughout India. In some Indian States state-trading enterprises have monopolies, or exclusive rights, on wholesale and/or retail distribution of wines and spirits. All importers and distributors (be they wholesalers, retailers, bars, hotels or restaurants) must obtain separate licences from the respective State authorities, and the numbers of outlets is closely regulated in most States. Goods sold through duty paid channels are subject to payment of import duties, as well as various State taxes (see below, Chapter C.3).

Duty free BIO wines and spirits are imported by importers (independent or owned by foreign producers) into bonded warehouses. However, such goods are sold, without payment of import duties, in duty free outlets – either directly in the State of importation or after transportation under bond in a different State. For the purpose of this investigation, three types of duty free schemes are of particular interest:

First, retail outlets within international airports in India are entitled to sell, within certain quantitative limits per passenger making purchases, wines and spirits duty free. Wine and spirits sold in duty free airport outlets are not liable to payment of import duties (Basic Customs Duty, Additional Duty, Extra Additional Duty) nor State taxes.

Second, certain hotels and restaurants have since 2003 been entitled, under what is known as the *Duty Free Credit Entitlement Scheme for Service Providers* (hereinafter "DFCEC scheme"), to import duty free wines and spirits within certain limits linked to the foreign currency earnings of the hotels and restaurants in question. Wines and spirits sold under the DFCEC scheme are not liable to payment of import duties (Basic Customs Duty, Additional Duty, Extra Additional Duty), but are liable to State taxes as other imported wines and spirits.

Third, a number of embassies and international organisations within India are entitled to import and sell to their staff, within certain quantitative limits, wines and spirits duty free. Wines and spirits imported and sold through embassies and international organisations are not liable to payment of import duties (Basic Customs Duty, Additional Duty, Extra Additional Duty) nor State taxes.

Informal, or 'grey', distribution of imported BIO wines and spirits occurs on a considerable scale within India, according to the Indian Government and industry sources[20]. Wines and spirits sold through grey channels are distributed by individuals

[20] See *Model Policy/Taxation /Act/Rules For Alcoholic Beverages & Alcohol*, Ministry of Food Processing Industries, February 2006, p. 25 and the IWSR.

and private operators, which do not have State licences to distribute such goods, directly to consumers. Wines and spirits distributed through this informal network are, generally, imported without payment of import duties (Basic Customs Duty, Additional Duty, Extra Additional Duty). Information collected during this investigation suggests that the informal network is mainly supplied by goods smuggled into India or sold - above the quantitative limits laid down by India law - by duty free outlets in airports. A share of the 'grey' market trade is locally produced counterfeit products. It is, however, difficult to estimate the size of the share of counterfeit in the market.

The majority of EC spirits and, to a lesser extent, of wines is sold in India through duty free and informal channels. Indeed, EC industry estimates that more than 90% of BIO spirits, and approximately 70% of BIO wines, are sold outside the licensed and duty paid retail distribution network. This is consistent with an independent study which (in April 2005) estimated that the sales of duty-paid imported spirits amount to no more than approximately 5,400 nine-litre cases per year (equal to under one per cent of all spirits imports) [21].

C. THE CHALLENGED PRACTICES AND OBSTACLES TO TRADE

C.1 INTRODUCTION

This chapter will set out the Indian measures that are the subject of this complaint and explain their historical background and legal context.

The Complaint challenges, first, the Additional Duty applied by the Central Government of India to imported wines and spirits, secondly, a number of taxes and duties applied by individual Indian State Governments to imported wines and spirits sold in those States and, thirdly, a number of restrictions on the sale of imported wines and spirits applied by a number of Indian State Governments. During the investigation India introduced a further Additional Duty ("Extra Additional Duty") on all products imported into India, including wines and spirits. The investigation was expanded to include that Duty.

The following sections will deal successively with the Additional Duty, the Extra Additional Duty, and the State restrictions.

C.2 HISTORICAL BACKGROUND

Prior to 1 April 2001, India applied, for a period of approximately forty years, non-automatic import licensing provisions to a wide range of agricultural and consumer goods, including wines and spirits. These provisions, which severely restricted the access of EC wines and spirits to the Indian market, were contrary to the WTO obligations of India. In 1998, these provisions were accordingly challenged by the

[21] See above, footnote 6.

European Communities under the dispute settlement procedures of the WTO[22]. As a result of this challenge, India committed to remove all **quantitative restrictions** on the importation of wines and spirits with effect from 1 April 2001. This commitment was implemented in a timely manner. However, India maintained certain other measures[23], and introduced certain new measures, which continued to limit the access of EC wines and spirits to the Indian market.

In particular, India introduced with effect from 1 April 2001 (i.e., the date of removal of the WTO-illegal quantitative restrictions) an Additional (Customs) Duty (hereinafter "**Additional Duty**"). The Additional Duty was, and continues to be, levied on all products under codes 2204, 2205, 2206 and 2208 of the Harmonised System imported into India in bottles or cans or any other packaging for ultimate sale in retail[24]. The Additional Duty is levied in addition to ordinary customs duties (hereinafter "Basic Customs Duty") under the Indian Customs Act, 1962[25] and the Indian Customs Tariff Act, 1975. The purpose, operation and rates of the Additional Duty will be set out below, after an explanation of the Indian system for the taxation of wines and spirits.

Moreover, India maintained a **Special Additional Duty** of four percent *ad valorem* on imported wines and spirits. This Duty had applied, since 1998, to those (limited) imports of wines and spirits which were authorised under India's system of non-automatic import licensing pursuant to Section 3A of the Indian Customs Tariff Act, 1975. The Special Additional Duty was abolished as regards wines and spirits in 2004.

However, clause 72 of the Indian Finance Bill 2005 introduced a legal basis, in Section 3(5) of the Indian Tariff Act, 1975, to apply to all imported products an Additional Duty (of no more than four percent) in addition to any Additional Duty applied under Section 3(1) of the Indian Tariff Act, 1975 (hereinafter, Additional Duty applied under Section 3(5) will for the sake of clarity be referred to as "**Extra Additional Duty**"). Under the Finance Bill 2005, the Extra Additional Duty applied only to certain information technology products. The Indian Finance Bill 2006 expanded the scope of application to cover all products (with certain listed exceptions) including imported wines and spirits. The Extra Additional Duty is levied in addition to the Basic Customs Duty and the Additional Duty under the Indian Customs Act, 1962 and the Indian Customs Tariff Act, 1975. The purpose, operation and rates of the Extra Additional Duty will be set out below, against the background of an explanation of the Indian system for the taxation of wines and spirits.

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[22] *India – Import Restrictions* WT/DS149.

[23] In accordance with India's market access commitments under Article II of the GATT 1994, the applied customs duty on imported wines and spirits should have been reduced from 210% to 198% on 1 March 2001. However, this reduction was implemented only in 2002. India subsequently completed all of its scheduled customs duty reductions, by bringing the applied duty level down to down to 150% for spirits and 100% for wines.

[24] Products imported in bulk for bottling in India are not subject to the Additional Duty, see further below Chapter C.5.

[25] Act no. 52 of 1962.

C.3 THE INDIAN SYSTEM OF TAXATION

The Indian system for the taxation of wines and spirits, and of other alcoholic products, is very complex[26]. The complexity is due to a number of factors including, in particular, the division of responsibility, established by the Constitution of India, between the Central Government and State Governments for the taxation of, on the one hand, domestically produced and, on the other hand, imported alcoholic products.

The following table illustrates the different taxes which apply to wines and spirits, and which are explained more in detail below.

	Wines and spirits produced in India	**Wines and spirits imported in bottle (BIO)**	**Wines and spirits imported in bulk (BII)**
Basic Customs Duty (BCD)	No	Yes	Yes
Additional Duty (AD)	No	Yes	No
Extra Additional Duty (EAD)	No	Yes	Yes
State taxes (excise duty)	Yes	No*	Yes
State taxes (other)	Yes	Yes	Yes

* *Some States apply excise duties to imported BIO products contrary to Indian constitutional law (see below, section C.3.2)*

C.3.1 Wines and spirits produced in India

Under Entry No 84 of List I (Union List) of Schedule VII of the Constitution of India, the Indian Central Government is empowered to collect excise duties[27] on a range of products. Certain products are, however, specifically excluded. Products defined as 'alcoholic liquor for human consumption' are amongst those excluded from the scope of Entry No. 84 of List I (Union List) of Schedule VII. The term 'alcoholic liquor for human consumption' is understood in Indian law to include all wines and spirits under codes 2204, 2205, 2206 and 2208 of the Harmonised System. It is therefore, in principle, the Indian States which have exclusive competence to levy excise duties on wines and spirits, at rates determined by the State Government pursuant to Entry 51 of List II (State List) of Schedule VII of the Constitution of India.

[26] Efforts are currently being made by the Indian Government to streamline the system of taxation through the development of a Model Excise Policy for alcoholic products. See *Model Policy/Taxation /Act/Rules For Alcoholic Beverages & Alcohol*, Ministry of Food Processing Industries, February 2006.

[27] Excise Duty is paid as a tax on consumption and not on manufacture; it is paid in the state of final consumption. Wholesalers are normally responsible for paying the duty unless the manufacturer distributes directly to the retail trade from his own warehouse, in which case he is responsible. In certain states bottled spirits may be stored under bond and only become liable for payment of duty when they are withdrawn from bond.

Each Indian State, accordingly, maintains a separate system for the taxation of wines and spirits. There are twenty eight separate State authorities, including the National Capital Territory of Delhi. In addition there are seven Union Territories, some of which formulate their own policies for the taxation of wines and spirits through a directly elected government, and some of which operate under policies determined by the Central government. A limited number of Indian States maintain a ban on the sale of alcoholic drinks.

Within States which allow the sale of alcoholic drinks, wines and spirits are generally subject to a number of different indirect taxes[28]. The structure and denomination of these taxes varies considerably across the States, as does the resulting overall level of taxation. In terms of structure, some taxes are applied *ad* valorem, others are specific taxes linked to the volume, alcohol content or price of the products concerned. Common denominations of taxes include excise duty, special duty, vend fee, import fee, transport fee, assessment fee, gallonage fee, literage fee, development fee, octroi, sales tax and VAT.

Not all Indian States apply taxes under the denomination “excise duty” (e.g., Delhi as regards wines and spirits, and Maharashtra as regards wines). Amongst those States that apply taxes denominated “excise duty” the level of taxation varies considerably. As regards wines, the level of excise duty varies between 1.4% (in Punjab) and 19% (in Karnataka) and, as regards spirits, between 6.3% (in Goa) and 130.8% (in Uttar Pradesh)[29]. The overall level of indirect taxation (resulting from taxes denominated “excise duty” and other indirect taxes applied by Indian States) also varies considerably. As regards wines, the overall level of indirect taxation varies between 6.0% (in Punjab) and 93.4% (in Delhi) and, as regards spirits, between 9.1% (in Punjab) and 219.7% (in Tamil Nadu)[30].

C.3.2 Imported wines and spirits

The exclusive competence of the Indian States to levy excise duties, under Entry 51 of List II (State List) of Schedule VII, applies only to products produced in India. Indian States may therefore, as a matter of Indian Constitutional law, not apply excise duties to wines and spirits imported from outside the territory of India. More precisely, that Indian States may not apply excise duties to wines and spirits which are imported bottled for final consumption by the end consumer (BIO products).

However, excise duty may, as a matter of Indian constitutional law, be applied by the Indian States to wines and spirits which have been locally vinified, distilled and/or bottled in India. Wines and spirits imported in bulk and bottled in India (BII products) may therefore be, and are in practice, subject to State excise duties.

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[28] In addition to indirect taxes, most States apply fees in connection with licensing of production and distribution of wines and spirits. Those fees are not indirect taxes on products, and they are therefore outside the scope of the present investigation.

[29] Figures based on the tax incidence on Indian wines and spirits at ex-distillery prices of Rs 215.00 and Rs 358.33 respectively. For more detailed calculations and exact references to the legislation of the Indian States, see Annex 1.

[30] *Ibid*.

It is important to note that although the Constitution of India does not grant the Indian States the authority to apply excise duties on BIO products, many States apply a number of indirect taxes to BIO products, such as sales taxes, VAT, special duty, as well as a variety of different fees. The legality of some of these taxes and fees under Indian constitutional law is somewhat unclear. Moreover, the investigation has shown that a number of Indian States apply indirect taxes which, in name and as well as in content, appear to be excise duties within the meaning of Indian law. The compatibility of these excise duties with Indian constitutional law, to the extent that they apply to BIO products, appears doubtful. However, the lack of cooperation by the Indian authorities during the investigation has not allowed to clarify this point.

C.4 IMPORT DUTIES I - BASIC CUSTOMS DUTY

Wines and spirits imported into India are subject to payment, on importation, of "Basic Customs Duty" under Section 12 of the Indian Customs Act, 1962[31] read together with Section 2 of the Indian Customs Tariff Act, 1975[32]. The applied rates of Basic Customs Duty are established by Customs Notifications issued by the Government of India under Section 25 of the Indian Customs Act, 1962[33]. Pursuant to Customs Notification No 5/2004 of 8 January 2004, the applied rate of Basic Customs Duty for spirits (code 2208 of the Harmonised System) is 150% *ad valorem*. Pursuant to Customs Notification No 20/1997 of 1 March 1997, the applied rate of Basic Customs Duty for wines (codes 2204, 2205 and 2206 of the Harmonised System) is 100% *ad valorem*. These rates apply to BII and to BIO products.

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[31] Section 12(1) provides: "Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from India."

[32] Section 12(1) provides: "Except as otherwise provided in this Act, or any other law for the time being in force,2 provides: "Duties specified in the Schedules to be levied. - The rates at which duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (511962 (52 of 1975), or any other law for 1962), are specified in the time being in force, on goods imported into, or exported from IndiaFirst and Second Schedules."

[33] Section 25 provides: "(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.

(3) An exemption under sub-section (1) or sub-section (2) in respect of any goods from any part of the duty of customs leviable thereon (the duty of customs leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of customs chargeable on such goods shall in no case exceed the statutory duty."

C.5 IMPORT DUTIES II - ADDITIONAL DUTY

The purpose, legal basis and operation of the Additional Duty may be summarised as follows.

India claims that the Additional Duty is a border tax adjustment. It is a duty applied by the Central Government to all BIO wines and spirits (but not BII wines and spirits) at the point of importation into India to compensate for excise duties applied to wines and spirits (including BII wines and spirits) produced in India within each of the Indian States.

The legal basis for the Additional Duty is Section 3(1), read in conjunction with Section 3(2), of the Indian Customs Tariff Act, 1975[34]. Section 3(1) was inserted by clause 110(a) of the Indian Finance Bill, 2001 and entered into force on 1 April 2001. Sections 3(1) and (2) were amended and replaced by clause 72 of the Indian Finance Bill, 2005, with effect from 1 April 2005. No further amendments to Sections 3(1) and 3(2) were made by the Indian Finance Bill, 2006. Pursuant to the Indian Provisional Collection of Taxes Act, 1931[35], clause 72 of the Indian Finance Bill, 2005, and thereby Sections 3(1) and 3(2) of the Indian Customs Tariff Act, 1975, as amended, has force of law.

Section 3(1), as amended, provides:

> "Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article:
>
> Provided that in case of any alcoholic liquor for human consumption imported into India, the Central Government may, by notification in the Official Gazette, specify the rate of additional duty having regard to the excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different States or, if a like alcoholic liquor is not produced or manufactured in any State, then, having regard to the excise duty which would be leviable for the time being in different States on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs.
>
> *Explanation*.— In this sub-section, the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty."

[34] Act No. 51 of 1975.

[35] Act No. 16 of 1931.

The text of this provision ("equal to the excise duty for the time being leviable on a like article if produced or manufactured in India") confirms that the purpose of the Additional Duty is to impose a border tax in lieu of excise taxes applied by Indian States, in accordance with Indian constitutional law, on wines and spirits produced in India.

The taxable basis for the Additional Duty is determined by Section 3(2) of the Tariff Act, 1975. According to this provision, the Additional Duty is to be applied on the aggregate of the customs value (CIF value) and applicable Basic Customs Duty of imported wines and spirits.

Section 3(2), as amended, provides in relevant part:

> "For the purpose of calculating under sub-sections (1) and (3), the additional duty on any imported article, where such duty is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of -
>
> (i) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and
> (ii) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include -
>
> (a) the duty referred to in sub-sections (1), (3) and (5) …"

The wording of Section 3(1) of the Customs Tariff Act, 1975 leaves, however, some doubt as to the methodology which is to be applied by the Indian Government to ascertain what rate of Additional Duty is to be regarded as "equal to" "excise duty" applied to "like" domestic products "in different States".

First, Section 3(1) does not define (a) whether "excise duty" is to be understood as including only taxes denominated "excise duty" under the laws of the Indian States or also other (similar) indirect taxes applied by the Indian States, (b) what products are to be regarded as "like", and (c) what States are to be regarded as relevant for determining the equivalent level of Additional Duty. As far as is known to the Commission services, no other provision of Indian law, nor provisions contained in internal administrative circulars, provide clear answers to these questions.

Second, the level of excise duties (and other indirect taxes) applied by the Indian States to wines and spirits produced in India vary considerably. Section 3(1) of the Customs Tariff Act, 1975 does not define how equivalence is to be established in relation to the plethora of State taxes. The "Explanation" included in Section 3(1) of the Customs Tariff Act, 1975 ("where such [State excise] duty is leviable at different rates, the highest duty") might be interpreted to mean that the Additional Duty is to be set at a rate equal to the *highest* tax for "like" domestic products which is applied in *any* Indian State. However, the exact meaning of this “Explanation” leaves some room for doubt.

In practice, it appears that the rates of Additional Duty applied under Section 3(1) of the Tariff Act, 1975 are not determined in accordance with detailed legal criteria or mathematical calculations of tax levels in different States. The rates of Additional Duty appear, rather, to be the result of a process of political negotiation between concerned ministries of the Indian Government conducted as part of the preparation of the annual Budget Bill of India. That conclusion is supported by information obtained in interviews, during the investigation visit to India, with representatives of the Government of India. Moreover, the structure and level of excise duties (and other indirect taxes) on wines and spirits vary – as explained above – between different Indian States and evolve over time. It would therefore be extremely difficult, if not impossible, in practice for the Indian Central Government to apply detailed legal criteria or mathematical calculations of tax levels in different States as a basis for establishing the rates of the Additional Duty.

The rate(s) of the Additional Duty are laid down in Customs Notifications issued by the Indian Government. Since its introduction on 1 April 2001, the Additional Duty has taken the form of an *ad valorem* duty. The *ad valorem* rate of the Additional Duty varies depending on the customs value (CIF) of the products concerned. When the Additional Duty was initially introduced, in April 2001, the rates of the Additional Duty were established by Customs Notification No 37/2001 of 31 March 2001 as follows for wines and spirits (codes 2204, 2205, 2006 and 2008 in the Harmonised System:

- 150% *ad valorem* for products the CIF value of which do not exceed USD 20 per case[36];
- 100% *ad valorem* for products the CIF value of which exceeds USD 20 but does not exceed USD 40 per case); and
- 75% *ad valorem* for products the CIF value of which exceeds USD 40 per case.

According to Customs Notification No 37/2001 of 31 March 2001, “case” means a packaging containing a total volume of nine litres (e.g., 12 bottles of 750 ml capacity).

Since 2001, Customs Notification No 37/2001 of 31 March 2001 has been amended and replaced by, first, Customs Notification 54/2001 of 11 May 2001 and, secondly, Customs Notification 24/2002 of 1 March 2002. The Additional Duty rates currently in force were established by Customs Notification No 32/2003 of 1 March 2003. Customs Notification No 32/2003 replaced all previous Customs Notifications establishing Additional Duty rates for wines and spirits. Under this notification, the *ad valorem* structure is combined with a fixed minimum rate of duty for certain product categories. The rates of the Additional Duty under Customs Notification No 32/2003 are as follows:

Spirits (code 2208 in the Harmonised System):

[36] In this context, “case” means a packaging containing a total volume of nine litres, e.g., 12 bottles of 750 ml capacity.

- 150% *ad valorem* for products the CIF value of which do not exceed USD 10 per case;
- 100% *ad valorem* or USD 40 per case, whichever is higher, for products the CIF value of which exceeds USD 10 but does not exceed USD 20 per case;
- 50% *ad valorem* or USD 53.2 per case, whichever is higher, for products the CIF value of which exceeds USD 20 but does not exceed USD 40 per nine-litre case; and
- 25% *ad valorem* or USD 40 per case, whichever is higher, for products the CIF value of which exceeds USD 40 per case.

Wines: (codes 2204, 2205 and 2206 in the Harmonised System):
- 150% *ad valorem* for products the CIF value of which do not exceed USD 10 per case;
- 100% *ad valorem* or USD 40 per case, whichever is higher, for products the CIF value of which exceeds USD 10 but does not exceed USD 20 per case;
- 50% *ad valorem* or USD 53.2 per case, whichever is higher, for products the CIF value of which exceeds USD 20 but does not exceed UDS 40 per case; and
- 25% *ad valorem* or USD 40 per case, whichever is higher, for products the CIF value of which exceeds USD 40 per case.

According to Explanation (i) to Customs Notification No 32/2003, "case" means a packaging containing a total volume of nine litres (e.g., 12 bottles of 750 ml capacity).

It should be stressed that *no* Indian State applies excise duties (or other indirect taxes) to wines and spirits produced in India with a similar structure to the Additional Duty as set out in Notification No 32/2003 of 1 March 2003. Although certain Indian States apply excise duties (or other indirect taxes) in accordance with a slab structure, slabs are typically used in connection with specific (not *ad valorem*) taxes and no Indian state applies, as far as is known, tax rate slabs that are *inversely* related to the price of the product[37].

C.6 IMPORT DUTIES III - EXTRA ADDITIONAL DUTY

The purpose, legal basis and operation of the Additional Duty may be summarised as follows.

The Extra Additional Duty is, like the Additional Duty, allegedly a border tax adjustment. It is a duty applied by the Central Government to *all* imported products, including all wines and spirits (BII as well as BIO), at the point of importation into India to compensate for the sales taxes, VAT and other local taxes applied pursuant to Indian law to products sold in Indian States.

The legal basis for the Extra Additional Duty is Section 3(5), read in conjunction with Sections 3(6) and 3(7), of the Indian Customs Tariff Act, 1975[38]. Sections 3(5), 3(6) and 3(7) were inserted by clause 72 of the Indian Finance Bill, 2005 and entered into

[37] On the contrary, specific excise duty and other tax rates are generally *higher* for more expensive products in Indian States.

[38] Act No. 51 of 1975.

force on 1 April 2005. Pursuant to the Indian Provisional Collection of Taxes Act, 1931[39], clause 72 of the Indian Finance Bill, 2005, and thereby Sections 3(5), 3(6) and 3(7) of the Indian Customs Tariff Act, 1975, have force of law.

Section 3(5) of the Tariff Act, 1975 provides:

> "(5) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article [whether on such article duty is leviable under sub-section (1) or, as the case may be, sub-section (3) or not] such additional duty as would counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty at a rate not exceeding four per cent. of the value of the imported article as specified in that notification.
>
> *Explanation*.—In this sub-section, the expression "sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India" means the sales tax, value added tax, local tax or other charges for the time being in force, which would be leviable on a like article if sold, purchased or transported in India or, if a like article is not so sold, purchased or transported, which would be leviable on the class or description of articles to which the imported article belongs, and where such taxes, or, as the case may be, such charges are leviable at different rates, the highest such tax or, as the case may be, such charge."

According to Section 3(7) of the Customs Tariff Act, 1975, the Extra Additional Duty "shall be in addition to any other duty imposed under this Act or under any other law for the time being in force."

The <u>taxable basis</u> for the Extra Additional Duty is determined by Section 3(6) of the Tariff Act, 1975. According to this provision, the Extra Additional Duty is to be applied on the aggregate of the customs value (CIF value), Basic Customs Duty of and Additional Duty on imported wines and spirits. Section 3(6) of the Tariff Act, 1975 provides as far as is relevant:

> "(6) For the purpose of calculating under sub-section (5), the additional duty on any imported article, the value of the imported article shall, notwithstanding anything contained in sub-section (2), or section 14 of the Customs Act, 1962, be the aggregate of —
>
> > (i) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and
> >
> > (ii) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include —

[39] Act No. 16 of 1931.

(a) the duty referred to in sub-section (5)….”

The rate of the Extra Additional Duty, and the range of products to which it applies, is determined by Customs Notifications issued by the Indian Government. According to Customs Notification No 19/2006 of 1 March 2006, all products listed in the First Schedule of the Customs Tariff Act, 1975 are liable to an Extra Additional Duty of customs “at the rate of four percent *ad valorem*”. Wines and spirits (under codes 2204, 2205, 2206 and 2208 of the Harmonised System) are listed in the First Schedule. Certain products are exempt from the Extra Additional Duty under Customs Notification No 20/2006 of 1 March 2006. However, the list of exempted products does not include wines or spirits. It follows that all wines and spirits (BII and BIO) are liable now to the Extra Additional Duty on importation into India.

C.7 IMPORT DUTIES IV – OVERALL DUTY BURDEN

The cumulative application of Basic Customs Duty, Additional Duty and Extra Additional Duty entails the following overall duty burden in respect of imported BIO wines and spirits:

WINES

	BCD	***AD***	***EAD***	***TOTAL***
CIF value 0-25 USD	100%	75%	4%	*264%*
Example: CIF 25 USD	25 USD	37.5 USD	3.5 USD	66 USD
CIF value 25-40 USD	100%	50%	4%	*212%*
Example: CIF 40 USD	40 USD	40 USD	4.8 USD	84.8 USD
CIF value 40- USD	100%	20%	4%	*177.33%*
Example: CIF 60 USD	60 USD	40 USD*	6.4 USD	106.4

SPIRITS

	BCD	***AD***	***EAD***	***TOTAL***
CIF value 0-10 USD	150%	150%	4%	*550%*
Example: CIF 10 USD	15 USD	37.5 USD	2.5 USD	55 USD
CIF value 10-20 USD	150%	100%	4%	*420%*
Example: CIF 20 USD	30 USD	50 USD	4 USD	84 USD
CIF value 20-40 USD	150%	50%	4%	*298.33%*
Example: CIF 40 USD	60 USD	53.2* USD	6.13 USD	119,33 USD
CIF value 40- USD	150%	25%	4%	*252.22%*
Example: CIF 60 USD	90 USD	53.2* USD	8.13 USD	151.33 USD

** Fixed minimum rate of Additional Duty applied under Customs Notification No 32/2003.*

C.8 FINAL REMARKS ON THE INDIAN SYSTEM OF TAXATION

As a result of the above-mentioned legal framework, wines and spirits are subject to a highly complex system of taxation in India. This complexity manifests itself at three levels. First, wines and spirits produced *in India* are subject to indirect taxes at the State level; *imported BII* wines and spirits are subject to indirect taxes at the State level, Basic Customs Duty and Extra Additional Duty applied at the Central level; *imported BIO* wines and spirits are subject to indirect taxes at the State level, Basic Customs Duty, Additional Duty and Extra Additional Duty at the Central level. Second, indirect State taxes vary considerably as *amongst the States*, in terms of structure, denominations and applicable rates. Third, *within* each Indian State some indirect taxes apply only to wines and spirits produced in India, some apply only to BIO wines and spirits, and some apply to both wines and spirits produced in India and BIO wines and spirits.

The measures challenged in the Complaint form part of, and must be analysed in the context of, this complex system of taxation.

C.9 INDIRECT TAXES APPLIED BY INDIAN STATES

The Complaint challenges a number of taxes and duties as applied by Indian States to wines and spirits imported into India and sold within those States. During the investigation, the taxation policies of a number of Indian States evolved, and this process appears to be continuing. In those circumstances, it was considered more useful to monitor the developments taking place at State level than to conduct, in this Report, an assessment of the taxation regimes at State level as they stand at this point in time. The complainants withdrew from the Complaint claims relating to State taxes.

C.10 RESTRICTIONS ON SALE APPLIED BY INDIAN STATES

The Complaint challenges a number of alleged restrictions on the sale of imported wines and spirits applied by individual Indian State Governments. More specifically, it is alleged that the States of Andhra Pradesh, Bihar, Daman & Diu, Jharkand, Kerala, Tamil Nadu and Uttaranachal have not laid down rules and procedures for the taxation and licensing for sale of imported BIO wines and spirits and that importation and sale of such products in those States is therefore either impossible or severely impeded.

There are serious indications that some of these States, notably Bihar, Daman & Diu, Jharkand, Tamil Nadu and Uttaranachal, either prohibit or restrict importation and sale of BIO wines and spirits. However, the Commission services are not in a position, at the time of writing this Report, to conduct a legal analysis of the State licensing and taxation regimes in question. These issues may be investigated further, subject to the availability of additional evidence.

D. LEGAL ASSESSMENT

D.1 ADDITIONAL DUTY

D.1.1 Duty or internal tax?

In order to assess the legality, as a matter of WTO law, of the Additional Duty, it is necessary, first of all, to determine whether it is an import tariff (customs duty) falling within the scope of Article II of the GATT 1994 or an internal tax within the meaning of Article III of the GATT 1994.

The Additional Duty is due on importation, as a condition for importation. It is calculated and collected by the Central Indian Customs authorities pursuant to the basic Indian legislation on customs duties, *i.e.* the Customs Act, 1962 and the Customs Tariff Act, 1975 and applies - according to the clear terms of Section 3(1) of the Customs Tariff Act, 1975 - exclusively to imported products, not to products produced in India. For these reasons, the Additional Duty must be regarded as a customs duty within the meaning of Article II:1(b) of the GATT 1994[40].

D.1.2 Article II:1 of the GATT 1994

Under Article II:1(a) of the GATT 1994, India is obliged to accord to commerce from the EC treatment no less favourable than that provided for in the tariff schedule of India. As a more specific expression of the same obligation, under Article II:1(b) India is obliged to exempt BIO wines and spirits imported from the EC from 'ordinary customs duties' in excess of those set forth in India's tariff schedule and from 'all other duties and charges' unless listed in India's tariff schedule[41].

India's tariff schedule specifies as regards wines and spirits (codes 2204, 2205, 2206 and 2208 of the Harmonised System) a bound rate of 'ordinary customs duty' of 150% *ad valorem*. India's tariff schedule lists no 'other duties or charges' as regards wines and spirits.

The question thus arises whether the Additional Duty is an 'ordinary customs duty' or an 'other duty or charge'. There is however no definition of 'other duty or charge' in the GATT 1994, and the interpretation of this notion is subject to some uncertainty. According to the Complaint, the Additional Duty is to be regarded as an 'ordinary customs duty'.

The evidence collected as part of the investigation provides some support for this view. In particular, WTO panel practice suggests that in order to distinguish between 'other duties or charges' and 'ordinary customs duties', it is necessary to examine, in particular, the structure of the Additional Duty in the light of the structure of ordinary

[40] See in this respect *Ad Note* to Art. III of the GATT 1994.

[41] See Understanding on the Interpretation of Article II:1(b) of the General Agreement on Trade and Tariffs 1994. See also Panel Report – *Dominican Republic – Cigarettes*, para 7.88.

customs duties generally applied by WTO Members. WTO Members, including India, invariably express commitments in the 'ordinary customs duties' column of their tariff Schedules as *ad valorem* or specific duties, or combinations thereof. 'Ordinary customs duties' differ, in this respect, from 'other duties and charges' which are applied on the basis of factors of an exogenous nature such as, for example fluctuating world prices[42]. The Additional Duty is not applied on the basis of exogenous factors, and it is structured as a combination of *ad valorem* rates and minimum specific duties.

On the other hand, the applicable rates of Additional Duty are decreasing in "slabs" depending on the price (CIF value) of the imported goods. This slab structure is more complex than the 'ordinary customs duty' commitments set out in the schedules of WTO Members. This may suggest that the Additional Duty is to be regarded as an 'other duty or charge'. It may also be relevant in this context that (a) the Additional Duty is applied under a separate legal basis from that under which Indian Basic Customs Duty is collected, (b) it is levied and calculated separately from Basic Customs Duty (on the aggregate of customs value (CIF value) and Basic Customs Duty) and (b) according to Section 3(1) of the Customs Tariff Act, 1975 serves a specific purpose - different from that of Basic Customs Duty - which is to ensure equivalence in the tax treatment of imported and domestically produced wines and spirits[43].

On the basis of the above, the exact characterisation of the Additional Duty can be subject to some discussion. The remainder of this Report will be based on the view, expressed in the Complaint, that the Additional Duty is an 'ordinary customs duty' within the meaning of the first sentence of Article II:1(b) of the GATT 1994. In any event, as will be seen below, the Additional Duty would be inconsistent with Article II the GATT 1994 whether it is assessed as an 'ordinary customs duty' or as an 'other duty or charge'.

The cumulative application of Basic Customs Duty and Additional Duty entails the following overall duty burden in respect of imported BIO wines and spirits:

WINES			
	BCD	***AD***	***TOTAL***
CIF value 0-25 USD	100%	75%	*250%*
Example: CIF 25 USD	25 USD	37.5 USD	62.5 USD
CIF value 25-40 USD	100%	50%	*200%*
Example: CIF 40 USD	40 USD	40 USD	80 USD
CIF value 40- USD	100%	20%	*166.67%*
Example: CIF 60 USD	60 USD	40 USD*	100
SPIRITS			
	BCD	***AD***	***TOTAL***

[42] See in this respect Panel Report – *Chile – Price Band System*, para 7.51 and 7.52.

[43] See in this respect Panel Report – *Dominican Republic – Cigarettes*, para 7.115 where an *ad valorem* duty ("foreign exchange fee") was regarded as an 'other duty or charge'.

CIF value 0-10 USD	150%	150%	*525%*
Example: CIF 10 USD	15 USD	37.5 USD	52.5 USD
CIF value 10-20 USD	150%	100%	*400%*
Example: CIF 20 USD	30 USD	50 USD	80 USD
CIF value 20-40 USD	150%	50%	*283%*
Example: CIF 40 USD	60 USD	53.2* USD	113.2 USD
CIF value 40- USD	150%	25%	*238.67%*
Example: CIF 60 USD	90 USD	53.2* USD	143.2 USD

** Fixed minimum rate of Additional Duty applied under Customs Notification No 32/2003.*

As is clear from the above, the cumulative application of Basic Customs Duty and Additional Duty to BIO wines and spirits implies the application of 'ordinary customs duty' in excess of the level set forth in the tariff schedule of India. As regards BIO spirits, in respect of which the Basic Customs Duty is applied at the bound level of 150% *ad valorem*, any Additional Duty applied is in excess of the duties set forth in the schedule. As regards BIO wines, in respect of which the Basic Customs Duty is applied at the level of 100% *ad valorem*, Additional Duty applied at a rate of above 25% *ad valorem*, is in excess of the duties set forth in the schedule because the Additional Duty is calculated on the basis of a formula that includes the 100% *ad valorem* Basic Customs Duty[44].

The Additional Duty, as applied by Customs Notification 32/2003 pursuant to Section 3(1) of the Customs Tariff Act, 1975, is therefore *prima facie* incompatible with Article II:1(b) and Article II:1(a) of the GATT 1994[45].

It may be added that a similar conclusion would apply if the Additional Duty were to be regarded as an 'other duty or charge': since India's tariff schedule lists no 'other duties or charges' as regards wines and spirits, the application of any Additional Duty would be contrary to the obligations of India under the second sentence of Article II:1(b) of the GATT 1994 and Article II:1(a) of the GATT 1994.

In the light of this preliminary conclusion, it must be examined whether the Additional Duty can be justified under Article II:2(a) of the GATT 1994 on border tax adjustments.

D.1.3 Article II:2(a) of the GATT 1994

According to Article II:2(a) of the GATT 1994, WTO Members may impose on the importation of any product "a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III in respect of the like

[44] In other words, 25% Additional Duty applied to the *aggregate* of CIF value and Basic Customs Duty of 100% is equal to Basic Customs duty of 150% (CIF + BCD (150%) = CIF + BCD (100%) + (CIF + BCD (100%)) x 25%).

[45] Compare Appellate Body Report *Argentina – Textiles and Apparel*, para 45.

domestic product or in respect of an article from which the imported products has been manufactured or produced in whole or in part". The essential purpose of this provision is to allow WTO Members to collect at the border, in the form or customs duties in excess of bound rates, a tax on imported products which the Member would otherwise be entitled to collect through internal taxation under Article III:2 of the GATT 1994. It preserves the freedom of WTO Members to decide *where* to collect taxes on imported products. However, Article II:2(a) does not give WTO Members freedom to depart from the obligations laid down in the WTO Agreement relating to *how much* tax may be applied to imported products. Indeed, as is clear from the wording of Article II:2(a), an import duty (in excess of bound rates) cannot be regarded as "equivalent" unless its is also "in accordance with" Article III:2 of the GATT 1994 on national treatment in internal taxation. In other words, Article II:2(a) allows WTO Members to apply, in the form of customs duties in excess of bound rates, a tax adjustment in respect of indirect taxes on domestic products, and physical inputs used to produce them, that are not applied to like imported products, provided that the adjustment does not entail taxation of like imported products in excess of the internal taxation of domestic products and inputs[46].

However, Section 3(1) of the Customs Tariff Act, 1975, as applied by Customs Notification No 32/2003, is not justified under Article II:2(a) of the GATT 1994. Three preliminary comments must be made in this respect.

D.1.3.1 Internal taxes on products

First, it is clear from the wording ("in respect of the like domestic *product*"[47]) of Article II:2(a) that a customs duty (in excess of bound rates) may be justified by reference to internal taxes that are applied exclusively to domestic *products*. In other words, Article II:2(a) allows WTO Members to impose border tax adjustments in respect of *indirect* taxes on products. Direct taxes, such as income taxes and social security taxes, are irrelevant for the purpose of Article II:2(a). Indirect taxes on products include, for example, specific excise duties, sales taxes, and VAT[48]. However, taxes levied in the form of fixed (annual or one-off) licensing fees on producers, distributors and retailers are not covered. Such licensing fees applied by Indian States will, therefore, not be considered in the analysis below.

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[46] Taxes on inputs used for the production of Indian wines and spirits (e.g., molasses, bottles, labels) are irrelevant for the purposes of the current investigation: The Additional Duty and the Extra Additional Duty is, according to Sections 3(1) and 3(5) of the Customs Tariff Act, 1975, applied to compensate for excise duties on products ("articles"). The Additional Duty and the Extra Additional Duty is *not* based on Section 3(3) of the Customs Tariff Act, 1975 which provides a legal basis for Additional Duty to be levied in lieu of "excise duty leviable on any raw materials, components and ingredients". In any event, there is no evidence that Indian States apply taxes to inputs used for the production of Indian wines and spirits, or that any such taxes would appreciably affect the overall tax burden on Indian wines and spirits.

[47] Emphasis added.

[48] *Report by the Working Party on Border Tax Adjustments*, L/3464, of 20 November 1970. See also *GATT Analytical Index*, p. 146.

D.1.3.2 Internal taxes on domestic *products*

Second, it is equally clear from the wording ("in respect of the like *domestic* product"[49]) of Article II:2(a) that a customs duty (in excess of bound rates) may be justified only by reference to internal taxes that are applied either exclusively to *domestic* products, or to domestic products at rates in excess of those applied to imported products[50]. Internal taxes which apply exclusively to *imported* products obviously do not fall within the range of taxes which may be subject to border tax adjustment under Article II:2(a). On the contrary, border tax adjustments are allowed only to the extent that internal taxes which apply exclusively to *domestic* products exceed internal taxes applied exclusively to *imported* products. Taxes that apply *equally* to domestic and imported products are irrelevant for the purpose of Article II:2(a). Thus, in so far as certain taxes – such as sales taxes, VAT and various fees - are applied by Indian States equally to imported and domestic wines and spirits, they will not be considered in the analysis below.

D.1.3.3 Equivalence

The possibility for WTO Members to justify a border tax adjustment under Article II:2(a) of the GATT 1994 is available only in so far as that tax is "equivalent" to relevant internal taxes on like domestic products. This means, as explained just above, that a border tax adjustment can be justified only if it meets the requirements of Article III:2 of the GATT 1994 in the sense that it must not imply taxation of imported products which is in excess of that applied to like domestic products or dissimilar to that applied to directly competitive or substitutable products domestic products as a result of relevant internal taxes.

As explained above (Chapter C.3), excise duties on wines and spirits vary greatly both in terms of structure and overall level amongst Indian States. Some States apply specific excise duties (e.g., Andhra Pradesh, Assam, Goa, Karnataka, Punjab, Rajasthan, Uttar Pradesh), some States apply *ad valorem* excise duties (e.g. Maharashtra), and some States apply no tax denominated "excise duty" at all (e.g, Delhi). Moreover, no Indian State applies an excise duty (or any other tax) which is structured in a similar manner to the Additional Duty, i.e. as a combination of *ad valorem* and specific rates of duty in different slabs with rates inversely proportional to the import price. There is, therefore, no *structural* equivalence between the Additional Duty and the plethora of excise duties applied by the Indian States.

Whereas the absence of such structural equivalence may not, in theory, preclude the possibility that the Additional Duty could be legally justified under Article II:2(a) of the GATT 1994, the fact that Indian States have competence under Indian law to determine the taxation of Indian wines and spirits and the tax structures accordingly vary from State to State is in practice very likely to lead to a situation in which the application of the Additional Duty will entail taxation of imported products in excess of (and, therefore, not quantitatively equivalent to) taxation of domestic products

[49] Emphasis added.

[50] In this case, the equivalence of the customs duty must be assessed by reference to the difference between the internal taxation of domestic and imported products.

within the meaning of Article III:2 of the GATT 1994. Indeed, the complete absence of any structural equivalence between the Additional Duty and State indirect taxes on wines and spirits provides a very strong indication that the Additional Duty is in violation of Article III:2 of the GATT 1994 and therefore not justifiable under Article II:2(a) of the GATT 1994. The evidence collected as part of this investigation confirms, as explained below, this conclusion.

D.1.4 Article III:2 in conjunction with Article II:2(a) of the GATT 1994

D.1.4.1 Preliminary comments

A customs duty (in excess of bound rates) may, as noted above, be justified under Article II:2(a) of the GATT 1994 only if it is imposed consistently with Article III:2 of the GATT 1994. Section 3(1) of the Customs Tariff Act, 1975, as applied by Customs Notification No 32/2003, is consistent with Article III:2 only if the application of the Additional Duty, compared to *indirect* taxes applied by Indian States (a) does not result in taxation of imported wines and spirits in excess of taxation of *like* domestic wines and spirits (within the meaning of the first sentence of Article III:2) *and* (b) does not result in taxation of imported wines and spirits which affords protection to *directly competitive or substitutable* domestic wines and spirits (within the meaning of the second sentence of Article III:2).

The Additional Duty must be considered, in the first place, under <u>Article III:2, first sentence</u>. In order to assess whether the Additional Duty is consistent with this provision it must be examined, first, whether imported BIO wines and spirits (subject to the Additional Duty) are "like" Indian wines and spirits (subject to indirect State taxes) and, second, whether the application of the Additional Duty results, directly or indirectly, in taxation "in excess of" the taxation of domestic wines and spirits[51].

D.1.4.2 Article III:2, first sentence: like products

The Additional Duty and indirect taxes applied by Indian States apply, according to the Complaint, to "like" products within the meaning of Article III:2, first sentence. The Commission services share that legal assessment, for the following reasons.

The Additional Duty applies to *all* wines and *all* spirits falling within codes 2204, 2205, 2206 and 2208 of the Harmonised System. Thus, it covers an extremely broad range of EC wines and spirits. As regards this broad range of products, the Additional Duty makes no distinctions between different types of wines or spirits based on, e.g., physical characteristics, production methods, or sub-headings in the Harmonised System. Internal indirect State taxes on Indian wines and spirits also apply, in principle, to *all* wines and *all* spirits. Thus, these taxes cover the very broad range of wines and spirits produced in India. With a few exceptions, internal State taxes also make no distinctions based on physical characteristics, production methods, or sub-headings in the Harmonised System.

[51] Appellate Body Report, *Canada – Periodicals*, pp. 22-23 and Appellate Body Report *Japan – Taxes on Alcoholic Beverages*, p. 19.

It follows that - irrespectively of whether all EC spirits are "like" all Indian spirits and whether all EC wines are "like" all Indian wines - each of these broad categories will inevitably feature a (substantial) number of products which are indeed "like" one another within the meaning of Article III:2, first sentence[52]. This conclusion is supported by the following observations and findings.

In accordance with the practice of the Appellate Body, the 'likeness' of products within the meaning of Article III:2, first sentence, depends on a case-by-case assessment of, in particular, (i) the products' end-uses in the (Indian) market; (ii) the tastes and habits of (Indian) consumers; (iii) the products' properties, nature and quality; as well as (iv) customs tariff classification.

With regard to end-uses, the investigation has provided no evidence that EC wines and spirits have significantly different end uses in the Indian market to Indian wines and spirits. Irrespectively of their origin, wines and spirits are consumed as beverages - with meals or on their own - at home, in restaurants or in bars for the appreciation, primarily, of their taste and, secondarily, of their effect.

With regard to consumer tastes and habits, three characteristics of the Indian market should be noted. First, Directive Principle number 47 of the Constitution of India stipulates that "the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks". The Central Indian Government as well as many State Governments have, in accordance with this Directive Principle, actively sought to limit the consumption of all alcoholic products through outright prohibitions on sale, limitations on production and distribution operated through licensing laws and other measures. Second, Indian production of bottled and branded wines and spirits is a relatively recent phenomenon. Whereas wines and spirits have been produced in the EC - and production practices gradually evolved - over a period of several hundred years, industrial production of wines and spirits developed in Indian only since the 1980s and the 1930s respectively. Third, Indian legislation does not lay down mandatory standards for production and labelling of wines and spirits. The Indian Government has developed - through the Bureau of Indian Standards - standards for the production of table wines (still and sparkling)[53], fortified wines[54], gin[55], rum[56], vodka[57], whisky[58] and wine spirits[59]. However,

[52] In this context, it is even irrelevant whether the wines and spirits which are *at present* traded between the EC and India include products that are "like" Indian wines and spirits. The extremely broad scope of the Additional Duty, and of the internal State taxes, inevitably means that there are *hypothetically* some EC products which, if exported to India, would be "like" some Indian products within the meaning of Article III:2, first sentence. See in this respect Appellate Body Report, *Canada – Periodicals*, pp. 21-22. See also Panel Report *Argentina – Hides and Skins*, para 11.169.

[53] Indian Standard – Table Wines – Specification (Second revision), IS 7058:2005.

[54] Indian Standard – Fortified Wines – Specification (First revision), IS 14398:2005.

[55] Indian Standard – Alcoholic Drinks – Gin – Specification (Second revision), IS 4100:2005.

[56] Indian Standard – Alcoholic Drinks – Rum – Specification (Third revision), IS 3811:2005.

[57] Indian Standard – Alcoholic Drinks – Vodka - Specification (Second revision), IS 5286:2005.

[58] Indian Standard – Alcoholic Drinks – Whiskies Specifications (Fourth revision), IS 4449:2005.

compliance with these standards is not mandatory and it appears that not all products on the market comply with them. Indian consumers have, mainly as a consequence of these three factors, limited knowledge of wines and spirits in general and consumer expectations as to production methods, the source of alcohol, and the exact composition of the final products are not very clearly defined. Products which might not be regarded as "like", within the meaning of Article III:2, first sentence, in the EC (or other comparable WTO Members' markets) may, therefore, none the less be "like" on the Indian market.

With regard to <u>properties, nature and quality</u>, the assessment of likeness must take account of relevant productions standards for EC as well as Indian wines and spirits. As regards EC products, mandatory and detailed production standards are laid down in EC legislation[60]. As regards Indian products, the standards developed by the Indian Bureau of Standards may, although compliance is not mandatory, be regarded as broadly representative of the wines and spirits which are actually produced. Indian standards are in some respects more lax than EC standards, in particular, as regards the type of grapes which may be used to produce wines and the source of alcohol used to produce spirits. None the less, products produced under either set of standards share key properties and similarities in nature. Thus, EC BIO wines as well as Indian wines consist of a mixture of water and alcohol derived from the fermentation of grapes which is bottled and sold to consumers under the denomination "wine". Each category of wine (table, sparkling, fortified) produced in India looks similar, in colour and viscosity, to EC wines in the same categories. Indian wines produced from wine grape varieties share the broad taste characteristics of EC wines in the same categories. BIO spirits and Indian IMFL spirits consist of a mixture of water and alcohol derived from the fermentation of carbohydrate sources as well as, for some spirits, colouring and flavouring agents. EC BIO and Indian IMFL spirits are bottled and sold to consumers under identical denominations (e.g., whisky, gin, rum, vodka) or similar denominations (e.g., brandy). Each category of IMFL (whisky, gin, rum, vodka, wine spirit) looks very similar, in colour and viscosity, to EC spirits in the same categories. They also share the same broad taste characteristics, although this is as regards some Indian products achieved through the addition of flavouring agents.

With regard to <u>customs classification</u>, it may be noted that under Section 3(1) of the Customs Tariff Act, 1975 and Customs Notification No 32/2003, Additional Duty applies to all EC wines (in codes 2204, 2005 and 2006 of the Harmonised System) and, at different rates, to all EC spirits (in code 2208 of the Harmonised System). Indian wines and spirits are covered by the same four-digit codes within the Harmonised system. Customs classification of the products covered by the Complaint and Indian products is thus broadly similar.

Finally, the Commission services' analysis of, on the one hand, a range of specific products actually exported from the EC to India between 2001 and 2005 and, on the

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[59] No specific Indian standard exists as regards wine spirits. However, the standard for "Brandy" is found in Indian Standard – Alcoholic Drinks – Brandies - Specification (Third revision), IS 4450:2005.

[60] Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine (OJ L 179, 14.7.1999, p. 1), as amended and Council Regulation (EEC) No 1576/89 of 29 May 1989 laying down general rules on the definition, description and presentation of spirit drinks (OJ L 160, 12.6.1989, p. 1), as amended.

other, an equivalent range of products made and sold in India during the same period confirms that the Additional Duty applies to "like" products. For the purpose of illustration in this Report, an analysis of one type of wines (still tables wine) and one type of spirit (whisky) is provided.

As regards still table wines, EC BIO wines, such as Maison Albert Cabernet and Maison Laroche Languedoc[61], and Indian wines produced from wine grape varieties, such as the wines produced by Grover, Sula and Indage[62], have identical or extremely similar end uses, are produced by the fermentation of grapes and subsequent maturation, have similar physical composition and chemical properties, are marketed to consumers in bottles of 750 millilitres content under the denomination "wine", are classified under the same eight-level code of the Harmonised System, and are perceived by Indian producers as essentially similar products. This is sufficient to establish that (some) EC BIO wines and (some) Indian wines are "like products". This conclusion is not affected by the fact that production (oenological) practices in India may differ to some extent from those prevailing in the EC[63].

As regards whiskies, EC BIO whiskies, such as Johnny Walker Red Label, J&B and Chivas Regal 12 years old[64], and Indian whiskies produced from grains, such as Amrut Single Malt (Amrut Distilleries), Blenders' Pride (Seagram India), Curtis No 1 (Allied Domecq), McDowell's Single Malt (UB Group), and Royal Stag (Seagram India),[65] have identical or extremely similar end uses, are produced by the fermentation of grain (without or without or other cereals), have similar physical composition and chemical properties, are marketed to consumers in bottles of 750 millilitres content under the denomination "whisky" (with, for some products, allusions in the brand name and labelling to Scotland), are classified under the same eight-level code of the Harmonised System, and are perceived by Indian producers as essentially similar products. This is sufficient to establish that (some) EC BIO whiskies and (some) Indian whiskies are "like products". This conclusion is not affected by the presence on the Indian market of some Indian whiskies which are produced (partly or wholly) from molasses rather than from cereals[66]. Irrespectively

[61] These wines were found by Commission officials on sale in retail shops in New Delhi in January 2006. For information on their retail prices, see below chapter E.3.

[62] These wines were found by Commission officials on sale in retail shops in New Delhi in January 2006. See also Chapter B.4.2 and, for information on retail prices, below Chapter E.3.

[63] The Indian Standard on Table Wines, cited above, differs from the EC standard laid down in Regulation (EC) No 1493/99, cited above, in respect of the requirements relating to raw materials, acidity content and oenological practices: table wines produced in India may be produced from any variety of grapes and are not subject to minimum acidity requirements or specific rules on oenological practices, whilst Article 45 and paragraph 13 of Annex I to (EC) No 1493/99 provide that table wines are to be derived exclusively from certain vine varieties, have a minimum acidity content of no less that 3,5 grams per litre and be produced in accordance with detailed EC rules on oenological practices.

[64] These whiskies were found by Commission officials on sale in retail shops in New Delhi in January 2006. For information on their retail prices, see below chapter E.3.

[65] Some of these whiskies may also contain some imported (BII) whisky from the EC. Some of the mentioned products were found by Commission officials on sale in retail shops in New Delhi in January 2006. See also Chapter B.4.1 and, for information on retail prices, below Chapter E.3.

[66] The Indian Standard on whiskies, cited above, differs from the EC standard laid down in EC Regulation (EC) No 1576/89, cited above, in respect of the requirements to raw material, ageing and maturation: there is no requirement to use (only) grain as raw material and no maturation requirement

of whether such whiskies are to be regarded as "like" EC BIO whiskies, the fact is that *some* whiskies subject to the Additional Duty are "like" *some* Indian whiskies.

It may be concluded from the above that the Additional Duty and indirect State taxes apply to "like" products within the meaning of Article III:2, first sentence.

D.1.4.3 Article III:2, first sentence: taxation in excess

The Additional Duty applies according to Section 3(1) of the Customs Tariff Act, 1975 exclusively to imported products. In other words, the Additional Duty is applied on the basis the origin of the goods affected.

Such a tax must be regarded as resulting in taxation of imported wines and spirits "in excess" of taxation of Indian wines and spirits within the meaning of Article III:2, first sentence, if it leads to higher taxation of imported products falling within *one* (or more) of the categories (price "slabs") of imported wines and spirits laid down in Customs Notification No 32/2003 as compared to the taxation resulting from the application of indirect taxes to like domestic wines and spirits in the same "price slabs" and in *one* (or more) Indian States.

In this respect, it is irrelevant whether the Additional Duty (also) leads to *lower* taxation of imported products falling within one or more of the other categories (price "slabs") of imported wines and spirits laid down in Customs Notification No 32/2003, or whether it leads to *lower* taxation of the imported products in the same category (price "slab") in one or more other Indian States: with regards to measures - such as the Additional Duty - which explicitly distinguish on the basis of the origin of the goods to which they apply, more favourable treatment as to some products cannot be balanced against less favourable treatment as to others[67].

Moreover, *any* taxation in excess, no matter how small in amount, is sufficient to constitute "taxation in excess" within the meaning of Article III:2, first sentence, since this provision is not subject to a trade effects test or a *de minimis* standard[68].

A comparison of the taxation resulting from, on the one hand, the Additional Duty and, on the other, indirect taxes applied by a number of Indian States has been conducted by the Commission services as part of the investigation. Before

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for whiskies produced in India, whilst Article 1(4)(b) of Regulation (EC) No 1576/89 provides that whiskies are to be made from cereals and matured in wooden casks for at least three years.

[67] Appellate Body Report, *United States – Section 211 Omnibus Appropriations Act of 1998*, paras 262 and 264 and GATT Panel Report, *United States – Section 337 of the Tariff Act of 1930*, para 5.12 and, by analogy, Appellate Body Report, *Argentina – Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items*, para 53. See also Panel Report – *United States – Measures affecting the importation, internal sale and use of tobacco*, para 98 and GATT Panel Report, *United States – Taxes on petroleum and certain imported substances*, para 5.2.9.

[68] Appellate Body Report, *Japan – Taxes on Alcoholic Beverages*, page 24 confirming GATT Panel Reports *United States - Measures Affecting Alcoholic and Malt Beverages*, BISD 39S/206, para 5.6. See also GATT Panel Reports *Brazilian Internal Taxes*, BISD II/181, para 16; *United States - Taxes on Petroleum and Certain Imported Substances*, BISD 34S/136, para 5.1.9; *Japan - Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages*, BISD 34S/83, para 5.8.

proceeding to that comparison it is, however, worth noting that according to Section 3(1) of the Customs Tariff Act, 1975 the Additional Duty is to be equivalent to "excise duty" applied by Indian states to domestic wines and spirits. More precisely, the "explanation" to Section 3(1) (cited above, Chapter C5) provides that where excise duty "is leviable at different rates", the Additional Duty must be equivalent to "the highest [excise] duty". This explanation appears to mean that the Additional Duty must be applied at a level corresponding to that of the excise duty applied to Indian wines and spirits in the Indian State which, at any point in time, applies the *highest* excise duty of all India States. If this interpretation is correct, Section 3(1) would appear to be *per se* contrary to Article III:2, first sentence, and therefore not justified under Article II:2(a) of the GATT 1994.

The evidence collected as part of the investigation has confirmed that the Additional Duty, as applied by Customs Notification No 32/2003, <u>exceeds by a large margin</u> the taxation resulting from taxes <u>denominated</u> "excise duty" in the legislation of most Indian States. Indeed, the Additional Duty is as far as is known applied at levels which exceed the level of taxes denominated "excise duty" in *all* Indian states, which goes *even further* than what the text of the "explanation" to Section 3(1) appears to suggest.

This finding was further confirmed by the Indian Government in a recent report entitled *Model Policy/Taxation/Act/Rules For Alcoholic Beverages & Alcohol*[69]. That report contains the following table which indicated that the Additional Duty results - for *all of the price category slabs* in Customs Notification No 32/2003 - in taxation in excess of that resulting from excise duties in the Indian State which according to the report applies the *highest* excise duty of all India States (Karnataka)[70].

[69] Ministry of Food Processing Industries, 2006.

[70] Information relating to the impact of Additional Duty under previous Customs Notification have been removed from the Table here.

Table 8.1

STATEMENT SHOWING EFFECT OF [EXISE DUTY] (ED) ON DOMESTIC LIQUOR AND [ADDITIONAL DUTY] (ACD) ON IMPORTED SPIRITS

Domestic		Imported	
EFP (Rs./ case)	**Effect of ED (in Rs.)**	**CIF Value {Rs.per case)**	**Effect of ACD in budget 2004-05& 2005-06**
500	500+2209 = **2709**	500 (>USD 5 but up to USD 10)	500+750 (@150% BCD)=1250 1250+1875 (@150% AD)=**3125**
501	501+2209 =**2710**	501 (>USD 10 but up to US $ 20)	501+751(@150% BCD)=1252 1252+1252(@100%AD)=**2504**
1001	1001+3010**=4011**	1001 (> US $ 20 but up to US $ 30)	1001+1501(@ 150% Duty)=2502 2502+1251(@50% AD) AD s.to min. of Rs.2660=**5162**
1501	1501+3932= **5433**	1501 (>US $ 30 but up to US $ 40)	1501+2251(@150% Duty) = 3752 3752+ 1876(@50% ACD) AD s.to min. of Rs.2660=**6412**
2001	2001+4549**=6550**	2001 (>US $ 40)	2001+3001(@150% Duty)=5002 5002+ 1250(@25% AD) AD s.to min. of Rs.2660=**7662**
7500^		7500 (USD 150)	7500+11250(@150% Duty)=18750 18750+ 4687.5(@25% AD) AD s.to min. of Rs.2660=**23437.5**

*** Actual figures of Excise Duty of State of Karnataka having highest Excise Duty taken** **Note: US $1 = Rs. 50/-**

BCD=150%, ACD=150% (<$10), 100% (>$10 up to $20), 50% or minimum of $53.2 (>$20 up to $40), 25% or of $53.2 (>$40)

EFP = Ex- factory price

Table 8.2 **STATEMENT SHOWING EFFECT OF [EXCISE DUTY] (ED) ON DOMESTIC WINE AND [ADDITIONAL DUTY] (ACD)**			
DOMESTIC		**IMPORTED**	
EFP (Rs./ case)	**Effect of ED (f in Rs.)**	**CIF Value (Rs. per case)**	**Effect of ACD in budget 2004-05[3] and 2005-06**
500	500+297=797	500**f> $5,** but up to $ 10	500+500 (@ 100% Duty) = **1000** 1000 + 750 (@75% ACD) = **1750**
501	501+297= **798**	501 **(>$10** but up to **$20}**	501 +501 (@100%Duty) = **1002** 1002 +751 (@75% Add. Duty) =**1753**
1001	1001 + 414= **1415**	**1001** (> $20 but up to **$25)**	1001+1001 (@1Q0% Duty} = **2002** 2002+1501 (@75% ACD) **= 3503**
1251	**1251 +** 738**=1989**	1251 (> $25 but up to $40)	1251+1251 (@ 100% Duty) =**2502** 2502+1850(@ 50% ACD) ACD s.to min.of Rs.1850 =**4352**
1501	1501+738 = 2239	1501 (>$25 to $ 40)	1501+1501 (@ 100% Duty) = **3002** 3002+1850 (@50% (Add. Duty) ACD s.to min. of Rs.1850=**4852**
2001	2001+738 = 2739	2001 (> $ 40)	2001+2001 (@ 100% Duty)= **4002** 4002+2000 (@20% (ACD) =**6002** s.to min of Rs. 2000=**6002**
2500^		2500 (US $50)	2500+2500 (@ 100% Duty)= **5000** 5000+1000 (@20% (ACD) s.to min of Rs. 2000=**7000**

*** Actual figures of Excise Duty of State of Karnataka having highest Excise Duty taken Note: US $ 1 =Rs. 50/-**
[3] BCD= 100%, ACD=75% (up to $25), 50% (>$25 up to $40 s. to minimum $37), 20% (>$40 or minimum $40)

As part of the investigation, the Commission services have conducted a comparison of the taxation resulting from, on the one hand, the application of Additional Duty by the Central Government of India and the application by Indian States of indirect taxes *exclusively* to imported wines and spirits[71] and, on the other hand, the application of indirect taxes by Indian States *exclusively*[72] to domestic wines and spirits in respect of <u>all</u> of the categories (price "slabs") of wine and spirits laid down in Customs

[71] Or at rates which exceed the rates applied in respect of like domestic wines and spirits.

[72] Or at rates which exceed the rates applied in respect of like imported wines and spirits.

Notification 32/2003. That comparison shows that the Additional Duty leads to taxation of imported wines and spirits which is (substantially) higher in amount than the taxation of Indian wines and spirits as regards all of the categories (price "slabs") in several Indian States. There is, therefore, ample evidence that the Additional Duty leads to "taxation in excess" within the meaning of Article III:2, first sentence.

In order to illustrate the methodology applied by the Commission services to compare the taxation of imported and Indian wines and spirits, Annex 1 to this report sets out in detail the basis – including references to the relevant State tax legislation – for the calculation of taxation in respect of a wine falling within one of the categories of wines and a spirit falling within one of the categories of spirits covered by Customs Notification 32/2003. The content of Annex 1 may be summarised as follows.

Tax burden in ten Indian States (summary of Annex 1)

		Indian wine	***Imported BIO wine***
		EDP = 215	CIF value = 107.05 CIF+BCD = 215.00
		AD = 0	AD (25%) = 53.75
		Total tax burden	*Total tax burden*
Andhra Pradesh		0.00	53.75
Assam		11.25	95.42
Delhi		117.35	203.75
Goa		4.50	68.75
Karnataka		39.00	151.35
Maharashtra		0.00	203.75
Punjab		3.00	53.75
Rajasthan		60.63	115.38
Uttar Pradesh		52.00	153.75
West Bengal		30.78	302.75

		Indian Spirit	***Imported BIO spirit***
		EDP = 358.33	CIF value = 143.33 CIF+BCD = 358.333
		AD = 0	AD (USD 53.2/case = Rs 190.63/bottle)*
		Total tax burden	*Total tax burden*
Andhra Pradesh		0.00	192.13
Assam		144.25	257.30
Delhi		384.54	490.63
Goa		22.50	265.63
Karnataka		146.25	344.89
Maharashtra		332.00	340.63
Punjab		14.06	194.57
Rajasthan		281.25	316.52
Uttar Pradesh		372.00	490.63
West Bengal		227.81	439.63

** Minimum Additional Duty per case of nine litres under Customs Notification No 32/2003*

Note: All values are in Rs per bottle of 0.75 litres

The above table and Annex 1 should be read in the light of the following explanations. First, equally priced imported BIO wines/Indian wines and equally priced imported BIO spirit/Indian spirits (Ex-distillery price (EDP) of Indian product = CIF value + Basic Customs Duty of imported product) are compared in order to establish whether there is "taxation in excess" in absolute numbers.

Second, the price of the products compared is representative of the products imported into India from the EC in the three year period preceding this investigation (i.e. wines with a CIF value of 30 USD/case = Rs 107.50/bottle; spirits with a CIF value of 40 USD/case = Rs 143.33/bottle).

Third, the spirits compared fall within the price slab which is subject to the lowest rate of Additional Duty under Customs Notification No 32/2003 (i.e. 25% *ad valorem* or USD 40 per nine-litre case, whichever is higher). The wines compared fall within the price slab which is subject to the second lowest rate of Additional Duty under Customs Notification No 32/2003 (i.e. 50% *ad valorem or* USD 53.2 per nine-litre case, whichever is higher). Obviously, if the application of these rates of Additional Duty lead to taxation of imported BIO products in excess of taxation of like Indian products it is very likely that less expensive imported products, which are subject to higher rates of Additional Duty under Customs Notification No 32/2003, will subject to be *even greater* taxation "in excess" of taxation of like Indian products.

Fourth, since the Additional Duty must be regarded as an import duty within the meaning of Article II of the GATT 1994, India may apply Additional Duty in so far as this does not entail treatment less favourable than that set forth in the tariff schedule of India. As regards wines, Basic Customs Duty is applied at a rate of 100% *ad valorem*, whereas the bound rate set forth in the schedule is 150% *ad valorem*. It follows that India is entitled, irrespectively of the existence (or not) of internal 'equivalent' taxes, to apply an Additional Duty of 25% *ad valorem* to the aggregate of customs value (CIF value) and Basic Customs Duty[73]. In Annex 1 and the table above, a hypothetical Additional Duty rate of 25% *ad valorem* has therefore been used, since this equals the rate by which the Additional Duty as applied to products in the relevant price category under Customs Notification No 32/2003 (i.e. 50% *ad valorem*) exceeds the bound rate of customs duty set forth in India's tariff schedule.

Finally, as noted above, the Additional Duty must be regarded as resulting in taxation "in excess" within the meaning of Article III:2, first sentence, if it leads to higher taxation of imported wines or spirits than the taxation of like domestic wines or spirits in even just one Indian State. The Commission services have none the less, for sake of completeness, compared the taxation of imported and Indian wines and spirits in ten Indian States which together account for approximately 91% of the Indian market for wines and approximately 55% of the market for spirits (see Chapter B.2)[74].

[73] 25% Additional Duty applied to the *aggregate* of CIF value and Basic Customs Duty of 100% is equal to Basic Customs duty of 150%, i.e. CIF + BCD (150%) = CIF + BCD (100%) + (CIF + BCD (100%)) x 25%.

[74] The taxation regime of the State of Tamil Nadu has been examined as part of the investigation, but is excluded from the comparison due to the fact that sale through ordinary duty-paid retail distribution

As can be seen from Annex 1 and the above table, the Additional Duty results in taxation of imported wines and spirits in excess of taxation of like Indian wines and spirits in *all* of the ten States. In most States, including Delhi and Maharashtra which presently account for more than 60% of all sales of BIO products (see Chapter B.2), imported wines and spirits are taxed much more heavily than Indian wines and spirits. It may be added that the evidence collected as part of the investigation does not suggest that imported products are taxed significantly less heavily in other States.

D.1.4.4 Conclusion on Article III:2 in conjunction with Article II:2(a) of the GATT 1994

It follows from the above that the Additional Duty, as applied by Customs Notification 32/2003 pursuant to Section 3(1) of the Customs Tariff Act, 1975, does not meet the requirements of Article III:2 of the GATT 1994 and, therefore, cannot be justified under Article II:2(a) of the GATT 1994. In view of that conclusion, it is not necessary to examine whether the Additional Duty results (also) in protection of Indian wines and spirits which are substitutable or competing with imported wines and spirits within the meaning of Article III:2, second sentence.

D.1.5 Conclusion on the Additional Duty

It may be concluded from the above that, even taking the most conservative approach, the Additional Duty, as applied by Customs Notification 32/2003 pursuant to Section 3(1) of the Customs Tariff Act, 1975, is incompatible with Article II:1(b) and Article II:1(a) of the GATT 1994[75].

There is therefore evidence of an obstacle to trade within the meaning of Articles 2(1) and 4(1) of the TBR.

D.2 EXTRA ADDITIONAL DUTY

D.2.1 Article II:1 of the GATT 1994

The Extra Additional Duty as applied by Customs Notification No 19/2006 of 1 March 2006 pursuant to Section 3(5) of the Customs Tariff Act 1975 must, for reasons analogous to those set out above in relation to the Additional Duty, be regarded as an ordinary customs duty within the meaning of Article II:1 of the GATT 1994. Like the Additional Duty, the Extra Additional Duty is due on importation, as a condition for importation, and is applied, calculated and collected by the Central Indian Customs authorities pursuant to the basic Indian legislation on customs duties. It applies - according to the clear terms of Section 3(5) of the Customs Tariff Act, 1975 - exclusively to imported products, not to products imported in India. It is an *ad*

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channels appears to be impossible due to restrictions applied by the authorities of Tamil Nadu to such sales.

[75] Appellate Body Report *Argentina – Textiles and Apparel*, para 45.

valorem tax imposed, in principle, on all imported products at a rate of 4%. It must, for these reasons, be regarded as an ordinary customs duty within the meaning of Article II:1 of the GATT 1994.

According to Section 3(6) of the Customs Tariff Act, 1975, the Extra Additional Duty is applied to the aggregate of customs (CIF) value, Basic Customs Duty and Additional Duty. However, to determine whether the Extra Additional Duty violates Article II:2 separately from the violation of Article II:2 caused by the application of the Additional Duty, it necessary to consider whether the cumulative application of the Basic Customs Duty and the Extra Additional Duty (at the rate of 4 % *ad valorem*) without the application of Additional Duty would entail the application of ordinary customs duties in excess of the bound rate of 150% *ad valorem* set forth in the tariff schedule of India.

WINES			
	BCD	***EAD***	***TOTAL***
CIF value 0-25 USD	100%	4%	108%
Example: CIF 25 USD	25 USD	2 USD	27 USD
CIF value 25-40 USD	100%	4%	108%
Example: CIF 40 USD	40 USD	3.20 USD	43.20 USD
CIF value 40- USD	100%	4%	108%
Example: CIF 60 USD	60 USD	4.80 USD	64.80 USD
SPIRITS			
	BCD	***AD***	***TOTAL***
CIF value 0-10 USD	150%	4%	160%
Example: CIF 10 USD	15 USD	1 USD	16 USD
CIF value 10-20 USD	150%	4%	160%
Example: CIF 20 USD	30 USD	2 USD	32 USD
CIF value 20-40 USD	150%	4%	160%
Example: CIF 40 USD	60 USD	4 USD	64 USD
CIF value 40- USD	150%	4%	160%
Example: CIF 60 USD	90 USD	6 USD	96 USD

As is clear from the above, the cumulative application of the Basic Customs Duty and the Extra Additional Duty would entail the application of ordinary customs duties in excess of those set forth in the tariff schedule of India. As regards BIO **spirits**, in respect of which the Basic Customs Duty is applied at the bound level of 150% *ad valorem*, any Extra Additional Duty applied is in excess of the duties set forth in the schedule. The application of the Extra Additional Duty to **wines** does not however, separately from application of the Additional Duty, imply the application of ordinary customs duties in excess of those set forth in the tariff schedule of India.

The Extra Additional Duty, as applied by Customs Notification No 19/2006 pursuant to Section 3(5) of the Customs Tariff Act, 1975, to spirits is therefore *prima facie* incompatible with Article II:1(b) and Article II:1(a) of the GATT 1994[76].

D.2.2 Article II:2(a) of the GATT 1994

The preliminary comments made above on the legal assessment of the Additional Duty in relation to Articles II:2(a) and III:2 (read in conjunction with Article II:2(a)) of the GATT 1994 apply also to the legal assessment of the Extra Additional Duty.

Like the Additional Duty, the Extra Additional Duty is allegedly a border tax adjustment. According to the very terms of Section 3(5) of the Customs Tariff Act, 1975, the Extra Additional Duty is intended to be equivalent to "sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India".

However, as explained above (Chapter C.3), imported wines and spirits (BII and BIO) are *not* systematically exempt from the plethora of different sales taxes, value added taxes, and other indirect taxes applied by Indian States. Thus, imported wines and spirits are liable to availability fees (e.g., in Assam), import fees (e.g., in Assam, Goa, Punjab, Uttar Pradesh, West Bengal), library cess (e.g., in Goa), literage fee (e.g., in Assam, Karnataka), octroi (e.g., in Maharashtra), privilege fees, sales tax (e.g., in Rajasthan, Uttar Pradesh, West Bengal), special duty (e.g., in Goa, Punjab), special fees (e.g., in Karnataka, Maharashtra), tax department development fees (e.g., in Punjab), transport fees (e.g., in Maharashtra), vend fees (e.g., in Delhi), and value added tax (e.g., in Assam, Delhi, Goa, Maharashtra, Punjab)[77]. The Extra Additional Duty – which is an across-the-board 4% *ad valorem* duty – therefore cannot be claimed to offset the various taxes mentioned in Section 3(5) of the Customs Tariff Act, 1975 nor, *a fortiori*, to be the equivalent adjustment of such taxes.

It is, already for this reason, very likely that the application of Extra Additional Duty will lead to a situation in which imported products are taxed in excess of like domestic products within the meaning of Article III:2 of the GATT 1994 and in which the Extra Additional Duty is therefore not justified under Article II:2(a) of the GATT 1994. The evidence collected as part of this investigation confirms, as explained below, this conclusion.

D.2.3. Article III:2 in conjunction with Article II:2(a) of the GATT 1994

D.2.3.1 Article III:2, first sentence: like products

Like the Additional Duty, the Extra Additional Duty applies, according to Section 3(5) the Customs Tariff Act, 1975, to all imported products, including all wines and spirits (BIO and BII). The Extra Additional Duty and internal indirect taxes applied

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[76] *Ibid*.

[77] See further Annex 1 to this Report for the applicable rates and references to the tax legislation of these States.

by Indian States to wines and sprits must accordingly, for the reasons set out above in the analysis of the Additional Duty, be regarded as applying to “like” products within the meaning of Article III:2, first sentence.

D.2.3.2 Article III:2, first sentence: taxation in excess

Like the Additional Duty, the Extra Additional Duty applies - according to Section 3(5) of the Customs Tariff Act, 1975 - exclusively to imported products. In other words, the Extra Additional Duty is applied on the basis the origin of the goods affected. Such a tax must, as explained above in relation to the Additional Duty, be regarded as resulting in taxation of imported wines and spirits “in excess” of taxation of Indian wines and spirits within the meaning of Article III:2, first sentence, if it leads to higher taxation of imported products as compared to the taxation resulting from the application of indirect taxes to like domestic wines and spirits in <u>one</u> (or more) Indian States. In this respect, it is irrelevant whether the Extra Additional Duty (also) leads to *lower* taxation of imported products falling in one or more other Indian States[78].

As part of the investigation, the Commission services have conducted a comparison of the taxation resulting from, on the one hand, the application of Extra Additional Duty by the Central Government of India and the application by Indian States of indirect taxes *exclusively* to imported wines and spirits[79] and, on the other hand, the application of indirect taxes by Indian States *exclusively*[80] to domestic wines and spirits. Before proceeding to that comparison it should be noted that according to the “Explanation” to Section 3(5) of the Customs Tariff Act, 1975 (cited above, Chapter C.6) where “sales tax, value added tax, local tax or any other charges” applied by Indian states to imported products “are leviable at different rates”, the Extra Additional Duty must be applied at a level corresponding to that of “the highest such tax or, as the case may be, such charge”. This explanation appears to mean that the Extra Additional Duty must be applied at a level corresponding to that of the (sum of) taxes applied to Indian wines and spirits in the Indian State which, at any point in time, applies the *highest* taxes of all India States. If this interpretation is correct, Section 3(5) would be *per se* contrary to Article III:2, first sentence, and therefore not justified under Article II:2(a) of the GATT 1994.

The comparison of the taxation resulting from, on the one hand, the application of the Extra Additional Duty by the Central Government of India and the application by Indian States of indirect taxes conducted as part of the investigation confirms that <u>the Extra Additional Duty leads in practice to taxation of imported wines and spirits which is higher in amount than the taxation of Indian wines and spirits in several Indian States</u>. There is, therefore, evidence that the Extra Additional Duty as applied leads to “taxation in excess” within the meaning of Article III:2, first sentence.

[78] See above, footnote 67.

[79] Or at rates which exceed the rates applied in respect of like domestic wines and spirits.

[80] Or at rates which exceed the rates applied in respect of like imported wines and spirits.

In order to illustrate the methodology applied by the Commission services to compare the taxation of imported and Indian wines and spirits, Annex 2 to this report sets out in detail the basis – including references to the relevant State tax legislation – for the calculation of taxation in respect of a spirit representative of products imported from the EC in the period of 2001 to 2004. The content of Annex 2 may be summarised as follows.

Tax burden in Indian States (summary of Annex 2)

		Indian Spirit	***Imported BIO spirit***
		EDP= 358.33	CIF value = 143.33 CIF+BCD = 358.33
		EAD = 0	EAD (USD 4/case = Rs 14.33/bottle)
		Total tax burden	*Total tax burden*
Andhra Pradesh		0.00	15.83
Goa		22.50	89.33
Punjab		14.06	18.27
West Bengal		227.81	263.33

Note: All values are in Rs per bottle of 0.75 litres

The above table and Annex 2 should be read in the light of the explanations provided above in relation to the Additional Duty. Thus, the comparison relates to equally priced imported BIO spirits/Indian spirits; the price of the products compared is representative of the products imported into India from the EC in the three year period preceding this investigation. It should also be noted that since the Extra Additional Duty must be regarded as an import duty within the meaning of Article II of the GATT 1994, India may apply the Extra Additional Duty in so far as this does not entail treatment less favourable than that set forth in the tariff schedule of India. As regards wines, the Basic Customs Duty is applied at a rate of 100% *ad valorem*, whereas the bound rate set forth in the schedule is 150% *ad valorem*. It follows that India is, irrespectively of the existence (or not) of internal 'equivalent' taxes, entitled to apply to imported wines Extra Additional Duty at a rate of 4% *ad valorem* to the aggregate of customs value (CIF value) and Basic Customs Duty. Annex 2 and the table above therefore compares only imported and Indian spirits.

As can be seen from Annex 2 and the above table, the Extra Additional Duty, as applied by Customs Notification No 19/2006 pursuant to Section 3(5) of the Customs Tariff Act, 1975, results – as such and thus even without the application of the Additional Duty - in taxation of imported spirits in excess of taxation of like Indian spirits within the meaning of Article III:2, first sentence of the GATT 1994 in at least four Indian States. In two of those States (Andhra Pradesh and Goa), imported wines and spirits are taxed much more heavily than Indian wines and spirits.

D.2.3.3 Conclusion on Article III:2 in conjunction with Article II:2(a) of the GATT 1994

It follows from the above that the Extra Additional Duty does not meet the requirements of Article III:2 of the GATT 1994. It is therefore not justified under Article II:2(a) of the GATT 1994. In view of that conclusion, it is not necessary to examine whether the Extra Additional Duty results (also) in protection of Indian wines and spirits which are substitutable or competing with imported wines and spirits within the meaning of Article III:2, second sentence.

D.2.3 Conclusion on the Extra Additional Duty

It may be concluded from the above that the Extra Additional Duty, as applied by Customs Notification Customs Notification No 19/2006 to imported spirits, is incompatible with Article II:1(b) and Article II:1(a) of the GATT 1994.

There is therefore evidence of an obstacle to trade within the meaning of Article 2(1) and 4(1) of the TBR.

E. ADVERSE TRADE EFFECTS

E.1 INTRODUCTION

The investigation has shown that the challenged measures cause adverse trade effects within the meaning of the TBR. Despite the elimination of India’s non-automatic import licensing regime (quantitative restrictions) in 2001, imports of BIO wines and spirits from the EC *decreased* in 2002, and since 2003 imports have increased only gradually in line with the overall growth in consumption in India of wines and spirits leaving the market share of imported BIO wines and spirits virtually unchanged. Thus, none of the effects that could be reasonably expected to flow from the elimination of the (WTO-illegal) quantitative restrictions have appeared, and he Indian market for duty-paid BIO products has remained virtually closed as a result of the application of high Basic Customs Duty and Additional Duty since 2001. There is, however, a large potential Indian market for duty-paid BIO products, provided that retail prices be reduced significantly. An elimination of the Additional Duty (and of the Extra Additional Duty as regards spirits) would result in a substantial reduction in retail prices for duty-paid wines and spirits. It is reasonable to assume that such a reduction would increase demand for BIO products given Indian consumer preferences, and taking account of expected growth of the Indian market.

E.2 TRADE FLOWS AND MARKET PENETRATION

Despite the large size of the Indian market in spirits and the fast growing Indian market for wines, EC-India trade remained at very low levels during the period of 2000 to 2004 (see Chapter B.3). Following the elimination of the WTO-illegal quantitative restrictions, and the simultaneous introduction of the Additional Duty in 2001, trade flows *decreased* in 2002 (see Chapter B.3). The market share of imported BIO wines and spirits in India has remained almost constant during the period of 2000 to 2004 (see Chapter B.3). Thus, the Indian market has remained essentially closed for imported BIO wines and spirits, contrary to reasonable expectations that the EC industry would take a greater share of the market after the elimination of the WTO-illegal quantitative restrictions in 2001. This suggests that the Additional Duty has had a substantial and adverse effect on trade since its introduction in 2001.

That conclusion is consistent with a comparison of the market share of imported BIO products in India and in other markets, including markets such as Brazil and Chile which have a significant domestic spirits industry. Whereas imported spirits account for 0.44% of the market in India (see Chapter B.3.1), the market share is approximately 8% in Argentina, 2% in Brazil, 10% in Chile, 18% in Ecuador, 16% in Mexico, 3% in South Korea, 2% in the Philippines, 25% in South Africa, and 10% in Thailand[81]. The available data on wines is less comprehensive, but it is noteworthy that whereas imported wines account for 14.3% of the market in India (see Chapter B.3.2), the market share is approximately 60% in Ecuador, 62% in Mexico, 59% in Venezuela and 87% in Thailand[82].

E.3 MARKET FOR BIO PRODUCTS

As explained in Chapter B.5, most of BIO wines (70%) and spirits (90%) from the EC are sold in India through duty free and informal (‘grey’) channels. Indeed, the fact that EC exports gradually increased after 2003 (see Chapter B.3), appears to be explained to a large extent by, first, the introduction of the duty free entitlement scheme for hotels and restaurants (DFCEC scheme) in 2003 (see Chapter B.5) and, secondly, increased sales in duty free outlets in airports. The establishment of more duty free shops in airports, a relaxation of the quantitative limits on duty free purchases by passengers (from 1 litre to 2 litres per passenger per voyage), growing tourism and business travel and an overall favourable economic climate in India since 2003 are factors which appear to have contributed to the increase in duty free sales.

The importance of duty free (and grey market) sales reflects the fact that duty-paid retail prices are, as a result of the application of Basic Customs Duty, Additional Duty and Extra Additional Duty, much higher than duty free and grey market prices. The tables below set out the average prices in duty free (airport) shops and duty-paid retail outlets for key categories of BIO products, and average prices in retail outlets of Indian wines and spirits. As can be seen, there is a large differential between duty free prices and average prices in retail outlets for the same BIO products. Indeed, duty free airport prices are on average 50% or more lower than duty-paid retail prices. Moreover, Indian wines and spirits retail at considerably lower prices than imported BIO wines and spirits. Detailed information on grey market prices is not available, but interviews conducted during the investigation suggest that grey market prices are approximately 25-40% below duty-paid retail prices.

Retail prices - European and Indian spirits

[81] Source: IWSR (2004) and the Report cited above in footnote 6 at p. 190. Figures for the Philippines and Thailand are based on the IWSR (2003).

[82] Source: IWSR (2004), except Thailand (based on the IWSR (2003)).

Spirits *(750 ml bottle)*	**Prices in duty free airport shops**	**Prices in duty-paid liquor shops**
European BIO spirits	*In USD*	*In USD*
Johnnie Walker Red Label whisky	11	33.5-34
Johnnie Walker Black Label whisky	22	58-73
J & B whisky	11	31.1-31.8
Chivas Regal 12 year old whisky	22	55
Famous Grouse whisky	11	32
Absolut Vodka	12.9	29
Gordon's Gin	12.9	*
Indian spirits (IMFL)		
Antiquity whisky	NA	11-14
Blender's Pride whisky	NA	9-12
Royal Challenge whisky	NA	9-13
Royal Stag whisky	NA	6-7
Bagpipers whisky	NA	5
Director's Special whisky	NA	4-5
Raffles Vodka	NA	4
Blue Moon Premium Vodka	NA	7
Contessa Rum	NA	3.5
Old Monk Rum	NA	3.5 -6
Blue Riband Gin	NA	4-5

* Not available in retail shops visited by Commission officials.
Exchange rate 1 USD = 44 Rs (monthly average January 2006).

Source duty free airport shops: Prices noted by Commission officials at New Delhi Airport, January 2006. Duty-free prices quoted were for 1000 ml bottles, but prices have been converted to 750 ml bottles for the purpose of comparison with spirits sold in duty-paid prices. (Wines were not for sale in the airport shop visited by Commission officials.)
Source duty-paid liquor shops: Prices noted in retail shops in Delhi and Mumbai by officials of the European Commission (January 2006). The lower prices quoted apply to Delhi.

Retail prices - European and Indian wines

Wines (750 ml bottle)	**Prices in duty-paid liquor shops**
European BIO Wines	*In USD*
Castel Shiraz (France)	21
Maison Albert Rouge Cabernet	16
Chablis, Laroche	27
Languedoc, Laroche,	17
Antinori	25-34
Indian Wines	
Sulla Savignon White	10.2-10.9

Sulla Satori Red	10-10.2
Grover Red	8
Grover White	8
Sulla Sparkling	13

Exchange rate 1 USD= 44 Rs (monthly average January 2006).
Source: Prices noted by Commission officials in retail shop in New Delhi and interviews with private operators, January 2006.

The importance of duty free and grey market sales in India, combined with the large price differential between duty free/grey market and duty-paid channels, suggest that there is strong consumer interest in imported BIO products, but that the current import duty structure effectively prices BIO products out of the duty paid retail market. This is consistent with statements made in interviews with Commission officials, as well as studies carried out on behalf of EC industry,[83] suggesting that the higher segment of Indian consumers are very internationally brand and status conscious, but also highly price-sensitive, and therefore ready to purchase BIO products through duty free and grey market channels despite the obvious inconvenience and (as regards grey market) risk of counterfeit products associated with purchasing through these channels.

There would therefore appear to be a large potential Indian market for duty-paid BIO products if prices were reduced significantly, e.g., by an elimination of the measures found to be contrary to the WTO obligations of India in this investigation.

E.4 PRICE EFFECT OF ELIMINATION OF ADDITIONAL DUTY AND EXTRA ADDITIONAL DUTY

An elimination of the Additional Duty and (as regards spirits the Extra Additional Duty) would entail a substantial reduction in duty paid retail prices. Depending on the tax structure of the State in question, prices could be reduced by between 23% and 48% for spirits and between 22% and 35% for wines. The effect on prices of eliminating the Additional Duty and (as regards spirits the Extra Additional Duty) may be summarised as follows.

Price effect of elimination of the Additional Duty and the Extra Additional Duty – Spirits

State	Reduction of duty paid retail price	Resulting duty paid retail price in USD
Andhra Pradesh	32 %	27.7
Delhi	23 %	19.7
Goa	33 %	15.0
Karnataka	34 %	14.2
Maharashtra	29 %	16.2
Punjab	48 %	11.0
Rajasthan	35 %	13.8
West Bengal	25 %	22.3

[83] Research Conducted by IMRB for IMA-India, *Price Elasticity for BIO Scotches, January 2002*

Exchange rate 1 USD= 44 Rs (monthly average January 2006).

Price effect of elimination of the Additional Duty - Wines

State	Reduction of duty paid retail price	Resulting duty paid retail price in USD
Andhra Pradesh	33 %	20.8
Delhi	26 %	13.4
Goa	34 %	10.9
Karnataka	33 %	12.1
Maharashtra	25 %	14.27
Punjab	33 %	9.5
Rajasthan	35%	11.3
West Bengal	22 %	20.0

Exchange rate 1 USD= 44 Rs (monthly average January 2006).

Note: The above percentages are calculated with respect to products representative of those imported into India from the EC in the three year period preceding this investigation, i.e. wines and spirits imported at CIF prices of USD 40 per nine-litre case.

It is reasonable to assume that a reduction in retail prices of this magnitude would substantially increase demand for BIO wines and spirits in India. An additional benefit would arise from a significant shift from current grey market sales to officially recorded duty paid sales, to the advantage of Indian consumers as well as the Indian Government through increased revenue collection. In the context of such a shift from grey market to duty paid distribution channels, it may be expected that sales of counterfeit wines and spirits would be reduced and the demand for genuine BIO products accordingly increased.

It is also reasonable to assume that such a reduction in prices would enable EC industry to access a number of Indian States – such as West Bengal (Calcutta), Andhra Pradesh (Hyderabad) and Punjab – which are regarded as having considerable potential, but are today of minor importance (see, on the geographical concentration of current sales of BIO products in Delhi and Maharashtra, Chapter B.2).

E.5 EXPECTED MARKET GROWTH

The general socio-economic context and demographic trends in India must also be taken into account. As explained in Chapter B.5, these trends suggest that there is a strong potential for growth in the market for wines and spirits, and for BIO products in particular. A reduction in prices due to the elimination of the Additional Duty and (as regards spirits) the Extra Additional Duty would allow the EC wine and spirits industries to benefit fully from this expected growth.

E.6 CONCLUSION

On the basis of the above, it may be concluded that India is an important potential market for European BIO wines and spirits and that the Additional Duty, as well as the recently introduced Extra Additional Duty, has prevented and continues to prevent EC producers of wines and spirits from realising this market potential. There is therefore evidence of adverse trade effects within the meaning of Articles 2(4) and 4(1) of the TBR.

F. COMMUNITY INTEREST

The Complainants in this case represent a major sector of the European economy, consisting of producers of wines and spirits in respectively 11 EC and 21 Member States. Those producers exported in 2005 goods amounting to € 10.45 billion to some 150 third country markets and employed over 600,000 people directly.

As shown above, the Complainants have for the past five years been suffering, and continue to suffer, adverse trade effects as a result of the Additional Duty. The introduction in 2006 of the Extra Additional Duty only adds to those adverse effects. Indeed, it may be concluded that the introduction on 1 April 2001 of the Additional Duty has prevented EC producers from gaining effective access to the potentially very large Indian market for imported bottled wines and spirits despite the abolition (also on 1 April 2001) of WTO-incompatible quantitative restrictions on imports of wines and spirits.

The investigation has, moreover, confirmed that the Additional Duty and the Extra Additional Duty constitute blatant violations of the WTO obligations of India.

Despite the evident WTO-illegality of the Additional Duty (and the Extra Additional Duty), the Community has pursued diplomatic means in trying to resolve the situation with the Indian authorities over the last five years. However this route has failed to resolve the problem.

At this stage, the Community must therefore defend its rights, negotiated in the WTO, to obtain market access for Community producers of BIO wines and spirits in India, and uphold the Community’s systemic interest in ensuring that all of its trading partners observe the international trade rules, and the obligations contained in the WTO Agreement.

On the basis of the above, it can be concluded that it is in the Community’s interest in the sense of Article 12(1) of the TBR to take action, within the WTO framework, to seek a rapid removal of the Additional Duty and (as regards spirits) the Extra Additional Duty which represent blatant cases of breaching fundamental WTO rules.

ANNEX 1

COMPARISON OF TAXATION RESULTING FROM THE APPLICATION OF <u>ADDITIONAL DUTY</u> AND INTERNAL TAXES TO IMPORTED BIO WINES AND SPIRITS AND TO LIKE INDIAN WINES AND SPIRITS IN THE STATES OF ANDHRA PRADESH, ASSAM, DELHI, GOA, KARNATAKA, MAHARASHTRA, PUNJAB, RAJASTHAN, UTTAR PRADESH, AND WEST BENGAL.

This Annex calculates the level of taxation resulting from, on the one hand, the application of <u>Additional Duty</u> by the Central Government of India and the application by Indian States of indirect taxes *exclusively* to imported wines and spirits (or at rates which exceed the rates applied in respect of like domestic wines and spirits) and, on the other hand, the application of indirect taxes by Indian States *exclusively* (or at rates which exceed the rates applied in respect of like imported wines and spirits) to domestic wines and spirits.

It should be noted that the calculations relate to equally priced imported BIO wines/Indian wines and equally priced imported BIO spirit/Indian spirits (EDP of Indian product = CIF value + BCD of imported product). The prices are representative of products imported into India from the EU in the three year period preceding this investigation (wines C.I.F value of 30 USD/case = Rs 143.33 per 75 cl bottle; spirits C.I.F value of 40 USD/case = Rs 143.33 per 75 cl bottle).

As regards wines, an Additional Duty rate of 25% *ad valorem* has been used for the purposes of the calculations, since this equals the rate by which the Additional Duty as applied to products in the relevant price category (50% *ad valorem*) exceeds the bound rate of customs duty set forth in India's tariff schedule.

The following explanations and glossary of terms are intended to clarify the information contained in this Annex (see also the list of acronyms in the TBR Report).

<u>Bottle</u>	The term bottle is used to describe a bottle of 750 millilitres.
<u>Bulk Litre (BL)</u>	The term bulk litre is used to describe a litre of liquid irrespective of its alcoholic strength.
<u>Case</u>	A case, often described as a 9 litre case, is a carton containing 12 standard size (750ml) bottles, giving a total of 9 liquid litres. Internal taxes are often levied in Rs per case.
<u>Declared Manufacturing Cost</u>	In the State of Maharashtra the declared manufacturing cost is used as the basis for applying a (200% *ad valorem*) excise duty. This cost is invariably below the EDP in order to minimise liability for tax. However, because the declared manufacturing cost is directly linked to the MRP fixed by the Government of Maharashtra, producers must strike a balance between reducing their tax liability and positioning their brands at an appropriate price point in the market.

<u>EDP</u>	Ex distillery price or the price at the distillery gate, i.e. the first point of sale.
<u>Import Fee</u>	A number of Indian States apply Import Fees to the importation of Indian wines and spirits from other Indian States. These are included in the calculations in this Annex only for States in which there is no local production of wines and spirits respectively.
<u>Landed Cost (LC)</u>	Cost, including all applicable duties, at a particular point (usually to the importer/distributor) in the distribution chain. In the case of BIO products the landed cost includes both the Basic Customs Duty (BCD), the Additional Duty (AD), and the Extra Additional Duty (EAD).
<u>Pint</u>	A pint is 375ml.
<u>Proof Litre (PL) and</u> spirits at <u>London Proof Litre (LPL)</u>	These terms are used interchangeably and describe a litre of 57.1% alcohol by volume (% vol).
<u>Quart</u>	A quart is two pints or 750 ml.
<u>Relevant internal taxes</u> domestic wines (Indian wines and spirits) applied in respect of like	Indirect taxes applied by Indian States exclusively to and spirits, or at rates which exceed the rates imported wines and spirits.
<u>Relevant internal taxes</u> imported wines (imported wines and spirits) applied in respect of like	Indirect taxes applied by Indian States exclusively to and spirits, or at rates which exceed the rates domestic wines and spirits.
<u>Rs</u>	Indian Rupees. For the purpose of calculating Basic Customs Duty, Additional Duty and Extra Additional Duty an exchange rate of Rs 43 per US Dollar is used.
<u>Rs/BL</u>	Certain States apply excise duties on the basis of the volume of liquid (volume specific or unitary taxation), where the rates are expressed in terms of Rupees per (bulk) litre of spirit. Since the standard bottle size in India is 750ml, the tax rate must be multiplied by 0.75 to determine the amount of tax payable.
<u>Rs/PL and Rs/LPL</u>	Many Indian States apply excise duties and other internal taxes on the basis of alcohol content (alcohol specific taxation), where the rates are expressed in terms of Rupees (Rs) per litre of spirit at full 'proof' of 57.1% vol. Since the standard bottle size in India is 750ml and the standard bottling strength is 42.8% vol, the tax rate must be multiplied by 0.5625 to determine the amount of tax payable. Wine is subject to internal taxation on the same (Rs/PL) basis as spirits in many States. For the standard 750ml bottle at a typical

strength of 13% vol, the tax rate must be multiplied by 0.1708 in order to calculate the amount of duty payable.

Under Proof

If a spirit is described as '25 under proof' this means it is at 75% of full 'proof', i.e. its alcoholic strength is 75% of 57.1% vol (see above). This figure is 42.8% vol and is the normal bottling strength for IMFL.

State	Tax Burden IMFL	Tax Burden BIO Spirits[84]
	(EDP = Rs 358.33/bottle)	CIF = Rs 143.33/bottle. CIF + BCD @ 150% = Rs 358.33; AD @ 53 USD/case = 190.63; CIF + BCD + AD = 548.96; EAD @ 4% = 21.96 Landed Cost (inc AD & EAD) = Rs 570.93/bottle
Andhra Pradesh	<u>Relevant indirect taxes</u> *None* Total Tax Burden = **<u>Rs 0.00</u>** <u>Other indirect taxes</u> Import Fee (only out-of-State IMFL) = NA Excise Duty (Rs 80/PL) = Rs 45.00 EAL Fee (Rs 0.10/bottle) = Rs 0.10 Special Privilege Fee (10% of basic price[85]) = Rs 40.00 VAT (70% of cost to APBCL[86]) = Rs 336.00 Total Tax Burden = <u>Rs 421.10</u>	<u>AD and relevant indirect taxes</u> Additional Duty (AD) = Rs 190.63 Import Fee (Rs 2/BL) = Rs 1.50 Total Tax Burden = **<u>Rs 192.13</u>** <u>EAD and other indirect taxes</u> EAD (548.97 x 4%) = Rs 21.96 Excise Duty (Rs 80/PL) = Rs 45.00 EAL Fee (Rs 0.10/bottle) = Rs 0.10 Special Privilege Fee (10% of basic price[87]) = Rs 59.00 VAT (70% of cost to APBCL[88]) = Rs 495.60 Total Tax Burden = <u>Rs 813.79</u>

[84] The Government has announced its intention to develop a separate policy for BIO products, but the applicable taxes have not yet been notified. In the interim, the retail sale of BIO products is permitted subject to payment of all internal taxes applicable to domestic products.

[85] Basic Price is EDP + cost of bottles, packaging, freight, insurance, handling charges, import and export fee (if applicable) & EAL (estimated at Rs 400/bottle)

[86] Price to Andhra Pradesh Beverages Corporation Ltd (APBCL) is Basic Price + 20% margin (estimated at Rs 480/bottle)

[87] Basic Price is Landed Cost + cost of bottles, packaging, freight, insurance, handling charges, import and export fee (if applicable) & EAL (estimated at Rs 590/bottle)

[88] Price to APBCL is Basic Price + 20% margin (estimated at Rs 708/bottle)

State	Tax Burden Local Wines	Tax Burden BIO Wines
	(EDP = Rs 215/bottle)	CIF = Rs 107.50/bottle; CIF + BCD @ 100% = 215; AD @ 25% = 53.75; CIF + BCD + AD = 268.75; EAD @ 4% = 10.75. Landed Cost (inc AD & EAD) = Rs 279.50/bottle
Andhra Pradesh	<u>Relevant indirect taxes</u> *None* Total Tax Burden = **<u>Rs 0.00</u>** <u>Other indirect taxes</u> Import Fee (Rs 2/BL) = Rs 1.50 Excise Duty (Rs 80/PL) = Rs 13.66 EAL Fee (Rs 0.10/bottle) = Rs 0.10 Special Privilege Fee (10% of basic price, est Rs 230) = Rs 23.00 VAT (70% of cost to APBCL = basic price + 20% margin) = Rs 193.20 Total Tax Burden = <u>Rs 231.46</u>	<u>AD and relevant indirect taxes</u> Additional Duty (AD) = Rs 53.75 Total Tax Burden = **<u>Rs 53.75</u>** <u>EAD and other indirect taxes</u> EAD (268.75 x 4%) = Rs 10.75 Import Fee (Rs 2/BL) = Rs 1.50 Excise Duty (Rs 80/PL) = Rs 13.66 EAL Fee (Rs 0.10/bottle) = Rs 0.10 Special Privilege Fee (10% of basic price est. Rs 300) = Rs 30.00 VAT (70% of cost to APBCL = basic price + 20% margin) = Rs 252.00 Total Tax Burden = <u>Rs 351.76</u>

Legal basis for indirect taxes – Andhra Pradesh:

Excise Duty - Section 21 of the Andhra Pradesh Excise Act 1969 (Act 17 of 1968) and "Excise Policy" announced in Government of Andhra Pradesh Order, G.O.M.s No 184 of 7 February 2005, Andhra Pradesh Gazette of 7 February 2005.

Import fee - Section 28 of the Andhra Pradesh Excise Act 1969 (Act 17 of 1968) and Section 5(1)(a)(iii) of the Andhra Pradesh Excise (Import, Export and Transport of Indian Liquor and Foreign Liquor-permits) Rules 2005, as published in Andhra Pradesh Government, G.O.M.s No 996, Revenue (Ex.-II), of 24/5/2005, Andhra Pradesh Gazette, of 24/5/2005. (Confirmed by Andhra Pradesh Beverages Corporation Notification No APBCL/2005-2006/1,2,3, & 4 of 23 February 2005).

Excise Adhesive Label (EAL) Fee – Section 28 of the Andhra Pradesh Excise Act 1969 (Act 17 of 1968); Rule 46 of the Andhra Pradesh Indian Liquor and Foreign Liquor Rules, 1970 and Andhra Pradesh Government, G.O.M.s No 817, Revenue (Excise II) Department of 27/8/1987. (Confirmed by Andhra Pradesh Beverages Corporation Notification No APBCL/2005-2006/1,2,3, & 4 of 23 February 2005, page 9, points B i & B ii.)

Basic Price (definition of) – Andhra Pradesh Beverages Corporation Notification No APBCL/2005-2006/1,2,3, & 4 of 23 February 2005, page 17.

Special Privilege Fee – Section 28 Of the Andhra Pradesh Excise Act 1969 (Act 17 of 1968), Rule 25A of the Andhra Pradesh Indian Liquor and Foreign Liquor Rules, 1970 and Andhra Pradesh Government, G.O.M.s No 242 Revenue (Excise II) Department of 31/3/2001.

VAT – Section 4(5) and Schedule VI of the Andhra Pradesh Value Added Tax Act 2005, Andhra Pradesh Value Added Tax Rules 2005 and Andhra Pradesh Government, Revenue Department, Notification G.O.M.s No 1229, Revenue (CT. II), 20/6/2005.

State	Tax Burden IMFL	Tax Burden BIO Spirits
	(EDP = Rs 358.33/bottle)	CIF = Rs 143.33/bottle. CIF + BCD @ 150% = Rs 358.33; AD @ 53 USD/case = 190.63; CIF + BCD + AD = 548.96; EAD @ 4% = 21.96 Landed Cost (inc AD & EAD) = Rs 570.93/bottle
Assam	<u>Relevant indirect taxes</u> Transport Fee (Rs 30/case) [or Import Fee if from out of State (Rs 90)] = Rs 2.50 Excise Duty (Rs 1701/case) = Rs 141.75 Total Tax Burden = **<u>Rs 144.25</u>** <u>Other indirect taxes</u> Availability Fee (Rs 7/case) = Rs 0.58 Literage/Gallonage Fee (Rs 6.BL) = Rs 4.50 VAT[89] = Rs 126.14 Total Tax Burden = <u>Rs 275.47</u>	<u>AD and relevant indirect taxes</u> Additional Duty (AD) = Rs 190.63 Import Permit Fee (<u>whisky Rs 800/case</u>, vodka, gin, brandy, rum Rs 600, wine Rs 500) = Rs 66.67 Total Tax Burden = **<u>Rs 257.30</u>** <u>EAD and other indirect taxes</u> Extra Additional Duty (EAD) 4% x 548.97 = Rs 21.96 Availability Fee (Rs 7/case) = Rs 0.58 Literage/Gallonage Fee (Rs 6.BL) = Rs 4.50 VAT[90] = Rs 161.09 Total Tax Burden = <u>Rs 445.43</u>

[89] VAT: 24% x EDP + 5% margin = 376.25 + Transport Fee + Availability Fee + Excise Duty + Literage/Gallonage Fee = 24% x 525.58 = 126.14
[90] VAT: 24% x Landed Cost + 5% margin = 599.48 + Import Permit Fee + Availability Fee + Literage/Gallonage Fee = 24% x 671.23 = 161.09

State	Tax Burden Local Wines	Tax Burden BIO Wines
	(EDP = Rs 215/bottle)	CIF = Rs 107.50/bottle; CIF + BCD @ 100% = 215; AD @ 25% = 53.75; CIF + BCD + AD = 268.75; EAD @ 4% = 10.75. Landed Cost (inc AD & EAD) = Rs 279.50/bottle
Assam	<u>Relevant indirect taxes</u> Transport Fee (Rs 30/case) [or Import Fee if from out of State (Rs 90)] = Rs 7.50 Excise Duty (Rs 5/BL) = Rs 3.75 Total Tax Burden = **<u>Rs 11.25</u>** <u>Other indirect taxes</u> Availability Fee (Rs 7/case) = Rs 0.58 Literage/Gallonage Fee (Rs 6.BL) = Rs 4.50 VAT[91] = Rs 58.10 Total Tax Burden = <u>Rs 74.43</u>	<u>AD and relevant indirect taxes</u> Additional Duty (AD) = Rs 53.75 Import Permit Fee (whisky Rs 800/case, vodka, gin, brandy, rum Rs 600, <u>wine Rs 500</u>) = Rs 41.67 Total Tax Burden = **<u>Rs 95.42</u>** <u>EAD and other indirect taxes</u> Extra Additional Duty (EAD) 4% x 268.75 = Rs 10.75 Availability Fee (Rs 7/case) = Rs 0.58 Literage/Gallonage Fee (Rs 6.BL) = Rs 4.50 VAT[92] = Rs 78.88 Total Tax Burden = <u>Rs 190.13</u>

[91] VAT: 24% x EDP + 5% margin + Transport Fee + Availability Fee + Excise Duty + Literage/Gallonage Fee = 58.10
[92] VAT: 24% x Landed Cost + 5% margin + Import Permit Fee + Availability Fee + Literage/Gallonage Fee = 78.88

Legal basis for indirect taxes - Assam:

Transport Fee (IMFL) - Rule 30(2)(a) of the Assam Bonded Warehouse Rules 1965, as amended by the Assam Bonded Warehouse (Amendment) Rules 2003 (Notification No EX 153/98/214 of 23/10/2003).

Import Fee (out of State IMFL) - Rule 30(2)(a) of the Assam Bonded Warehouse Rules 1965, as amended by the Assam Bonded Warehouse (Amendment) Rules 2005 (Notification No EX 203/04/27 of 7/9/2005).

Import Permit Fee (BIO) – Section 25(a)(i) of the Assam Excise Act 2000 (Assam Act XIV of 2000) and Rule 19 of the Assam Excise Rules 1945, as amended by the Assam Excise (Amendment) Rules 2005 (Notification No EX 51/2005/9 of 17/8/2005).

Import Permit Fee (IMFL) – Section 25(a)(i) of the Assam Excise Act 2000 (Assam Act XIV of 2000) and Rule 19 of the Assam Excise Rules 1945, as amended by the Assam Excise (Amendment) Rules 2005 (Notification EX 203/04/27 of 7/9/2005).

Transport Fee (IMFL) – Section 25(a)(i) of the Assam Excise Act 2000 (Assam Act XIV of 2000) and Rule 19 of the Assam Bonded Warehouse Rules 1965, as amended by the Assam Bonded Warehouse (Amendment) Rules 2003 (Notification EX 153/98/214 of 23/10/2003).

Availability Fee – Section 25(a)(i) of the Assam Excise Act 2000 (Assam Act XIV of 2000) and Rule 7(7) of the Assam Bonded Warehouse Rules 1965, as amended by the Assam Bonded Warehouse (Amendment) Rules 2005 (Notification No EX 340/2001/Pt III/105 of 18/3/2005).

Excise Duty - Section 21 of the Assam Excise Act 1910 (Assam Act I of 1910); items 10 and 11 of the Schedule of Order 29 of the Government of Assam Notification MEX 60/45/1, of 11/4/1945, as last amended by Government of Assam Order Notification No EX 16/97/214 of 3/5/2002.

Literage/Gallonage Fee – Section 25(a)(i) of the Assam Excise Act 2000 (Assam Act XIV of 2000) and Rule 245 of the Assam Bonded Warehouse Rules 1965, as amended by the Assam Bonded Warehouse (Amendment) Rules 2005 (Notification No EX 340/2001/Pt III/104 0f 18/3/2005).

VAT – Section 10 (1) (b) and Fourth Schedule of the Assam Value Added Tax Act 2003, as amended by the Assam Value Added Tax (Amendment) Act 2005.

State	Tax Burden IMFL[93]	Tax Burden BIO Spirits
	(EDP = Rs 358.33/bottle)	CIF = Rs 143.33/bottle. CIF + BCD @ 150% = Rs 358.33; AD @ 53 USD/case = 190.63; CIF + BCD + AD = 548.96; EAD @ 4% = 21.96 Landed Cost (inc AD & EAD) = Rs 570.93/bottle
Delhi	Relevant indirect taxes Import Fee (Rs 5/BL) = Rs 3.75 Special Duty (Rs 20/BL) = Rs 15.00 Assessment Fee[94] = Rs 220.00 Vend Fee[95] = Rs 145.79 Total Tax Burden = **Rs 384.54** Other indirect taxes Excise Duty NA VAT[96] = Rs 154.36 Total Tax Burden = Rs 538.90	AD and relevant indirect taxes Additional Duty (AD) = Rs 190.63 Vend Fee (BIO Rs 300/bottle) = Rs 300.00 Total Tax Burden = **Rs 490.63** EAD and other indirect taxes Extra Additional Duty (EAD) 548.97 x 4% = Rs 21.96 Import Fee (NA to BIO) NA Assessment Fee NA Special Duty (NA to BIO) NA VAT[97] = Rs 183.90 Total Tax Burden = Rs 696.49

[93] There is no production of spirits (IMFL) in Delhi. These calculations are for spirits (IMFL) imported from other States.

State	Tax Burden Local Wines	Tax Burden BIO Wines
	(EDP = Rs 215/bottle)	CIF = Rs 107.50/bottle; CIF + BCD @ 100% = Rs 215; AD @ 25% = 53.75; CIF + BCD + AD = 268.75; EAD @ 4% = 10.75 Landed Cost (inc AD & EAD) = Rs 279.50/bottle

[94] Assessment Fee: 50% x (wholesale price + Rs 20 per bottle) (Rs 220). Wholesale price = Landed Cost (i.e. EDP 358.33 + Import Fee 3.75 + Special Duty 15) 377.08 + 5% depot margin = 395.93 + Rs 2.50/case transport charge (estimated at Rs 400).

[95] Vend Fee on IMFL: (a) price up to Rs 200 = 30% x Wholesale Price + Special Duty + Assessment Fee; (b) Rs 200 – 400 = 20% of balance amount (of the Wholesale Price + Assessment Fee + Special Duty) above Rs 200 + Rs 60; (c) Rs 400 and above = 10% of balance amount (of the Wholesale Price + Assessment Fee + Special Duty) above Rs 400 + 100. Given that Wholesale Price is Rs 394, (b) applies as follows 20% x Wholesale Price (294) + Assessment Fee (220) + Special Duty (15) = 629 – 200 = 429 x 20% = Rs 85.79 + 60 = 145.79. (Wholesale price = Landed Price (375) + 5% depot margin (18.75) + Rs 2.50/case transport charge (0.21) (estimated at Rs 394). Landed price = EDP + export fee + import fee + Rs 2.50/case(freight) + 0.3% EDP (insurance) + Rs 1.00/case (handling charge) + Octroi (Rs 12/bottle) = estimated at 358.33 + 3.75 + 0.20 + 1.07 + 0.1 + 12 = 375.00.

[96] VAT on IMFL: 20% x wholesale price (394) + Assessment Fee (220) + Vend Fee (145.79) + retail profit margin Rs 12/bottle (12)) = 771.79 x 20% = 154.36

[97] VAT on BIO: 20% x (Landed Cost + 5% import margin = 599.48 + Vend Fee (300) + retail profit margin Rs20/bottle) = 919.48 x 20% = 183.90

Delhi	Relevant indirect taxes Import Fee (Rs 5/BL) = Rs 3.75 Special Duty (Rs 20/BL) = Rs 15.00 Assessment Fee[98] = Rs 61.00 Vend Fee[99] = Rs 37.60 Total Tax Burden = **Rs 117.35** Other indirect taxes Excise Duty NA VAT[100] = Rs 70.92 Total Tax Burden = Rs 188.27	AD and relevant indirect taxes Additional Duty (AD) = Rs 53.75 Vend Fee (BIO Rs 150/bottle) = Rs 150.00 Total Tax Burden = **Rs 203.75** EAD and other indirect taxes Extra Additional Duty (EAD) 268.75 x 4% = Rs 10.75 VAT[101] = Rs 89.90 Total Tax Burden = Rs 295.40

Legal basis for indirect taxes - Delhi:

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[98] Assessment Fee: 25% x wholesale price. Wholesale price = Landed Price (232) + 5% depot margin (11.60) + Rs 2.50/case transport charge (0.21) (estimated at Rs 244). Landed price = EDP + Import Fee + Rs 2.50/case (freight) +0.3% EDP (insurance) + Rs 1.00/case (handling charge) + Octroi (Rs 12/bottle) = 215 + 3.75 + 0.20 + 0.65 + 0.1 + 12 = 232

[99] Vend Fee on Indian wine: Half of rate applied to IMFL spirits, i.e. (a) price up to Rs 200 = 30% x Wholesale Price + Special Duty + Assessment Fee; (b) Rs 200 – 400 = 20% of balance amount (of the Wholesale Price + Assessment Fee + Special Duty) above Rs 200 + Rs 60; (c) Rs 400 and above = 10% of balance amount (of the Wholesale Price + Assessment Fee + Special Duty) above Rs 400 + 100. Given that Wholesale Price is Rs 244, (b) applies as follows 20% x Wholesale Price (244) + Assessment Fee (61) + Special Duty (15) = Rs 320 – 244 = Rs 76 x 20% + 60 = Rs 75.2 x 50% = 37.60.

[100] VAT on Indian wine: 20% x (wholesale price (estimated at 244) + Assessment Fee (61) + Vend Fee (37.6) + retail profit margin Rs 12/bottle (12)) = 70.92

[101] VAT on BIO wine: 20% x (Landed Cost + 5% import margin = 279.50 + Vend Fee (150) + retail profit margin Rs20/bottle) = 89.90

Import Fee – Section 34 of the Punjab Excise Act 1914. (Rate confirmed by website of Import/Transport Permit Branch of Excise Department of Delhi).

Special Duty – Section 31 and Schedule IA of the Punjab Excise Act 1914, as amended by the Punjab Excise (Delhi Amendment) Act 1979; Delhi Fiscal Duty Order, 1979, Notification No F. 10/114/78-Fin (G) Delhi of 22/1/1979 as amended by Notification No. F.10(27)2001.Fin(E-1)/(iii)/242 Kha of 29/6/2001.

Assessment Fee - Section 34 of the Punjab Excise Act 1914 and Section 26(2) of the Delhi Liquor Licence Rules 1976 as amended by Notification No F.10(27)/2001.Fin.(E-1)/(i)/226 kha of 29/62001.

Vend Fee (BIO). Section 34 of the Punjab Excise Act 1914 and paragraph f of Notification No F 3/3/2004-GAD/CN/5424-25 of 4/11/2004, as set out in document entitled Cabinet Decision No 923 of 1/11/04.

Vend Fee (IMFL) Section 34 of the Punjab Excise Act 1914 and Section 26(2a) of the Delhi Liquor Licence Rules 1976 as amended by Notification No F.10(27)/2001.Fin.(E-1)/(i)/226 kha of 29/6/2001.

VAT **–** Sections 3 and 4, and the fourth schedule of, the Delhi Value Added Tax Act 2004.

State	Tax Burden IMFL	Tax Burden BIO Spirits
	(EDP = Rs 358.33/bottle)	CIF = Rs 143.33/bottle. CIF + BCD @ 150% = Rs 358.33; AD @ 53 USD/case = 190.63; CIF + BCD + AD = 548.96; EAD @ 4% = 21.96 Landed Cost (inc AD & EAD) = Rs 570.93/bottle
Goa	Relevant indirect taxes Excise Duty (Rs 40/PL) = Rs 22.50 Total Tax Burden = **Rs 22.50** Other indirect taxes Import Permit Fee (Rs 200/permit) NA (IMFL from out of State only) Special Duty (Health Charge)[102] = Rs 1.00 Library Cess[103] = Rs 0.38 VAT[104] = Rs 95.66 Total Tax Burden = Rs 119.54	AD and relevant indirect taxes Additional Duty (AD) = Rs 190.63 Import Permit Fee (Rs 100/BL) = Rs 75.00 Total Tax Burden = **Rs 265.63** EAD and other indirect taxes Extra Additional Duty (EAD) 548.97 x 4% = Rs 21.96 Special Duty (Health Charge)[105] = Rs 1.00 Library Cess[106] = Rs 0.38 VAT[107] = Rs 157.69 Total Tax Burden = Rs 446.66

[102] Health Charge of 2% x Excise Duty + licence fees (estimated at Rs 1.00 per bottle)

[103] Library Cess on IMFL Rs 0.5/BL = approx Rs 0.38 per 75 cl bottle

[104] VAT on IMFL: 20% x (EDP + 5% import margin + Excise Duty (22.50) + Health Surcharge (1) + Library Cess (0.38) + freight and insurance (Rs 30/case= 2.5/bottle) + distributor's margin (8%) + retail margin (10%)) = (358.33 x 1.05) = 376.25 +22.50 + 1.38 + 2.5 = 402.63 x 1.08 = 434.84 x 1.1 = 478.32 x 20% = 95.66.

[105] Health Charge of 2% x Excise Duty + licence fees (estimated at Rs 1.00 per bottle)

State	Tax Burden Local Wines	Tax Burden BIO Wines
	(EDP = Rs 215/bottle)	CIF = Rs 107.50/bottle; CIF + BCD @ 100% = Rs 215; AD @ 25% = 53.75; CIF + BCD + AD = 268.75; EAD @ 4% = 10.75 Landed Cost (inc AD & EAD) = Rs 279.50/bottle
Goa	Relevant indirect taxes Excise Duty (Rs 6/BL) = Rs 4.50 Total Tax Burden = **Rs 4.50** Other indirect taxes Import Permit Fee (Rs 200/permit) NA (IMFL from out of State only) Special Duty (Health Charge) (2% ED + Licence Fee, estimated at Rs 1) = Rs 1.00 Library Cess (Rs 0.5/BL) = Rs 0.38 VAT[108] = Rs 55.63 Total Tax Burden = Rs 61.51	AD and relevant indirect taxes Additional Duty (AD) = Rs 53.75 Import Permit Fee (Rs 20BL) = Rs 15.00 Total Tax Burden = **Rs 68.75** EAD and other indirect taxes Extra Additional Duty (EAD) 268.75 x 4% = Rs 10.75 Special Duty (Health Charge) (2% ED + Licence Fee, estimated at Rs 1) = Rs 1.00 Library Cess (Rs 0.5/BL) = Rs 0.38 VAT[109] = Rs 77.72 Total Tax Burden = Rs 158.60

[106] Library Cess on BIO assumed same as for IMFL (Rs 0.38 per bottle)

[107] VAT on BIO: 22% x (Landed Cost + 5% import margin (= 599.48) + Excise Duty (nil) + Health Surcharge (1) + Library Cess (0.38) + freight and insurance (Rs 30/case = 2.5/bottle) + distributor's margin (8%) + retail margin (10%)) = 22% x 716.79 = 157.69

[108] VAT on Indian wine: 20% x (EDP + 5% import margin) + Excise Duty (4.50) + Health Surcharge (1) + Library Cess (0.38) + freight and insurance (Rs 30/case= 2.5/bottle) + distributor's margin (8%) + retail margin (10%)) = 55.63

[109] VAT on BIO wine: 22% x (Landed Cost + 5% import margin + Health Surcharge (1) + Library Cess (0.38) + freight and insurance (Rs 30/case = 2.5/bottle) + distributor's margin (8%) + retail margin (10%)) = 77.72

Legal basis for indirect taxes - Goa:

Import Permit Fee - Sections 12 and 15 of the Goa Excise Duty Act 1964 (Act 5 of 1964), read with section 21 of the General Clauses Act 1897, and Part III Import and Export (2) of Notification No 1/1/2004-Fin (R&C) amending Notification No Fin(Rev)/2-35-1976.

Excise Duty - Sections 12 and 15 of the Goa Excise Duty Act 1964 (Act 5 of 1964), read with section 21 of the General Clauses Act 1897, and Parts A1(a)(iii) and A1(b)(ii) of Notification No 1/1/2004-Fin (R&C) amending Notification No Fin(Rev)/2-35-1976.

Special Duty (Health Charge) - Sections 12 and 15 of the Goa Excise Duty Act 1964 (Act 5 of 1964), read with section 21 of the General Clauses Act 1897; Part A(6) of Notification No 1/1/2004-Fin (R&C), amending Notification No Fin(Rev)/2-35-1976, read in conjunction with Notification No 1/4/2003-Fin (R&C) of 31/3/2003.

Library Cess - Sections 12 and 15 of the Goa Excise Duty Act 1964 (Act 5 of 1964), read with section 21 of the General Clauses Act 1897, and Part IV 5(a) of Notification No 1/1/2004-Fin (R&C) amending Notification No Fin(Rev)/2-35-1976.

VAT – Sections 3 and 4, and Schedule C, of the Goa Value Added Tax Act 2005 as amended by Notification No 4/5/2005-Fin(R&C)(23) of 24/8/2005; Goa Value Added Tax Rules 2005.

State	Tax Burden IMFL	Tax Burden BIO Spirits
	(EDP = Rs 358.33/bottle)	CIF = Rs 143.33/bottle. CIF + BCD @ 150% = Rs 358.33; AD @ 53 USD/case = 190.63; CIF + BCD + AD = 548.96; EAD @ 4% = 21.96 Landed Cost (inc AD & EAD) = Rs 570.93/bottle
Karnataka	Relevant indirect taxes Excise Duty (Rs 73.33/PL) = Rs 41.25 Additional Duty (Rs 140/BL) = Rs 105.00 Total Tax Burden = **Rs 146.25** Other indirect taxes Import Fee (Rs 10/BL) NA (imports from out of State) Total Tax Burden = Rs 146.25	AD and relevant indirect taxes Additional Duty (AD) = Rs 190.63 Special Fee[110] = Rs 149.87 Literage Fee(Rs 5.85/BL) = Rs 4.39 Total Tax Burden = **Rs 344.89** EAD and other indirect taxes Extra Additional Duty (EAD) 548.97 x 4% = Rs 21.96 Import Fee NA Total Tax Burden = Rs 366.85

[110] Special Fee of 25% x (Landed Cost + 5% import margin) = 570.93 x 1.05 = 599.48 x 25% = 149.87

State	Tax Burden Local Wines		Tax Burden BIO Wines	
	(EDP = Rs 215/bottle)		CIF = Rs 107.50/bottle; CIF + BCD @ 100% = Rs 215; AD @ 25% = 53.75; CIF + BCD + AD = 268.75; EAD @ 4% = 10.75 Landed Cost (inc AD & EAD) = Rs 279.50/bottle	
Karnataka	<u>Relevant indirect taxes</u>		<u>AD and relevant indirect taxes</u>	
	Excise Duty (Rs 4/BL)	= Rs 3.00	Additional Duty (AD)	= Rs 53.75
	Additional Duty (Rs 48/BL)	= Rs 36.00	Special Fee (33% x (LC + 5% margin)	= Rs 96.85
			Literage Fee (Rs 1/BL)	= Rs 0.75
	Total Tax Burden	= **<u>Rs 39.00</u>**	Total Tax Burden	= **<u>Rs 151.35</u>**
	<u>Other indirect taxes</u>		<u>EAD and other indirect taxes</u>	
			Extra Additional Duty (EAD) 268.75 x 4%	= Rs 10.75
	Import Fee (Rs 2/BL) (imports from out of State)	NA	Import Fee	NA
	Total Tax Burden	= <u>Rs 39.00</u>	Total Tax Burden	= <u>Rs 162.10</u>

Legal basis for indirect taxes - Karnataka:

Import Fee – Sections 22 and 23(d) of the Karnataka Excise Act 1965; Section 2AA of the Karnataka Excise (Excise Duties and Fees) Rules 1968 as amended by the Karnataka Excise (Excise Duties and Fees) Rules 2000; Notification No FD 4 PES 2000, of 28/4/2000.

Excise Duty – Section 22 of the Karnataka Excise Act 1965; Section 2 and Schedule A, item 2, of the Karnataka Excise (Excise Duties and Fees) Rules 1968 as amended by the Karnataka Excise (Excise Duties and fees) Rules 2003.

Additional Duty – Sections 22 and 23(aaa) of the and Karnataka Excise Act 1965; Section 2AB of the Karnataka Excise (Excise Duties and fees) Rules 1968 as amended by the Karnataka Excise (Excise Duties and Fees) Rules 2003.

Literage Fee (BIO) – Sections 22 and 23(aaa) of the Karnataka Excise Act 1965; Section 2 and Schedule B, item 1, of the Karnataka Excise (Excise Duties and Fees) Rules 1968 as amended by the Karnataka Excise (Excise Duties and Fees) Rules 2003.

Special Fee (BIO spirits) – Section 23d and 26 of the Karnataka Excise Act 1965; Section 2AD of the Karnataka Excise (Excise Duties and Fees) Rules 1968 as amended by the Karnataka Excise (Excise Duties and fees) Rules 2002 (Notification No FD 9 PES 2002, of 12.6.2002).

State	Tax Burden IMFL	Tax Burden BIO Spirits
	(EDP = Rs 358.33/75cl bottle)	CIF = Rs 143.33/bottle. CIF + BCD @ 150% = Rs 358.33; AD @ 53 USD/case = 190.63; CIF + BCD + AD = 548.96; EAD @ 4% = 21.96 Landed Cost (inc AD & EAD) = Rs 570.93/bottle
Maharashtra	<u>Relevant indirect taxes</u> Import Fee (Rs 7/BL)[111] = NA Excise Duty[112] = Rs 332.00 Total Tax Burden = **<u>Rs 332.00</u>** <u>Other indirect taxes</u> Transport Fee (2/BL) = Rs 1.50 Special Fee NA Octroi[113] VAT[114] = Rs 167.30 Total Tax Burden = <u>Rs 500.80</u>	<u>AD and relevant indirect taxes</u> Additional Duty (AD) = Rs 190.63 Special Fee (Rs 200/BL) = Rs 150.00 Total Tax Burden = **<u>Rs 340.63</u>** <u>EAD and other indirect taxes</u> Extra Additional Duty (EAD) 548.97 x 4% = Rs 21.96 Transport Fee (Rs 2/BL) = Rs 1.50 Import Fee NA Octroi[115] VAT[116] = Rs 173.38 Total Tax Burden = <u>Rs 537.47</u>

[111] Import Fee applies to spirits (IMFL) imported from other States only.

[112] Excise duty of 200% of declared manufacturing cost (assuming a MRP of Rs 1112/bottle, the declared manufacturing cost is Rs 166 and Excise Duty Rs 332 in accordance with the "Ready Reckoner" issued by Maharashtra Excise).

[113] Octroi is levied at various rates in various places within the State and has therefore been omitted from calculation. (In Mumbai, octroi is levied at 7.1% x MRP).

State	Tax Burden Local Wines	Tax Burden BIO Wines
	(EDP = Rs 215 per 75cl bottle)	CIF = Rs 107.50/bottle; CIF + BCD @ 100% = Rs215; AD @ 25% = 53.75; CIF + BCD + AD = 268.75; EAD @ 4% = 10.75 Landed Cost (LC) (inc AD & EAD) = Rs 279.50/bottle
Maharashtra	<u>Relevant indirect taxes</u> Import Fee (Rs 7/BL)[117] = NA Excise Duty[118] = Nil Total Tax Burden = **<u>Rs 0.00</u>** <u>Other indirect taxes</u> Transport Fee (0.25/BL) = Rs 0.19 Special Fee NA Octroi[119] VAT[120] = Rs 51.64 Total Tax Burden = <u>Rs 51.83</u>	<u>AD and relevant indirect taxes</u> Additional Duty (AD) = Rs 53.75 Special Fee (Rs 200/BL) = Rs 150.00 Total Tax Burden = **<u>Rs 203.75</u>** <u>EAD and other indirect taxes</u> Extra Additional Duty (EAD) 268.75 x 4% = Rs 10.75 Transport Fee (Rs 0.25/BL) = Rs 0.19 Import Fee NA Octroi[121] VAT[122] = Rs 103.12 Total Tax Burden = <u>Rs 317.81</u>

[114] VAT of 20% (EDP + all levies/fees + 20% profit margin) i.e. 20% x (EDP 358.33 + Import Fee 5.25 + Excise Duty 332 + Transport Fee 1.50) = 20% x 836.496 = 167.30

[115] Octroi is levied at various rates in various places within the State and has therefore been omitted from calculation. (In Mumbai, octroi is levied at 7.1% x MRP).

[116] VAT 20% (Landed Cost + all levies/fees + 20% profit margin) i.e. 20% (Landed Cost 570.93 + Transport Fee 1.50 + Special Fee 150) = 20% x 866.92 = 173.38

[117] Import Fee applies to wines imported from other States only.

[118] The Government of Maharashtra has announced tax holiday for wines, therefore no excise duty is payable for wines produced and sold in the state.

[119] Octroi is levied at various rates in various places within the State and has therefore been omitted from calculation. (In Mumbai, octroi is levied at 7.1% x MRP).

[120] VAT of 20% (EDP + all levies/fees + 20% profit margin) i.e. 20% x (EDP 215 + Transport Fee 0.19) = 215.19 x 120% x 20% = 51.64

[121] Octroi is levied at various rates in various places within the State and has therefore been omitted from calculation. (In Mumbai, octroi is levied at 7.1% x MRP).

[122] VAT 20% (LC + all levies/fees + 20% profit margin) i.e. 20% (LC 279.50 + Transport Fee 0.19 + Special Fee 150) = 429.69 x 120% x 20% = 103.12

Legal basis for indirect taxes - Maharashtra:

Import Fee – Sections 53 and 143 of the Bombay Prohibition Act 1949; Rules 4 and 10 of Maharashtra Foreign Liquor (Import and Export) Rules 1963, Notification No BPA 1086/77(1)/PRO-2 of 14/1/1987.

Excise Duty – Sections 105 and 106 of the Bombay Prohibition Act 1949; Maharashtra Foreign Liquor (Import and Export) Rules 1963; Ready Reckoner on Ad Valorem Duty, Commissioner of State Excise Maharashtra, of 19.10.1997.

Transport Fee - Sections 53 and 143 of the Bombay Prohibition Act 1949; Rule 4 (1) (a)(i) [spirits] and Rule 4 (1)(a)(iii) [wines] of the Bombay Foreign Liquor and Rectified Spirits (Transport Fees) Rules 1954 as amended by Notification No BPA 2082/(111)/PRO-2 of 13/3/1982 and Notification no BPA 1086/77(iv)/PRO-2 of 14/1/1987 [wines] and by Notification No BPA 1090/(ii)/PRO-3 of 1/12/1990 [spirits].

Special Duty (Fee) - Sections 53 and 143 of the Bombay Prohibition Act 1949; Rule 4(2)(i) of the Bombay Foreign Liquor and Rectified Spirit (Transport) Fees Rules 1954 as amended by the Bombay Foreign Liquor and rectified Spirit (Transport) Fees (Amendment) Rules 2001.

VAT - Section 6 and Schedule D of the Maharashtra Value Added Tax (Levy and Amendment) Act 2005; Maharashtra Value Added Tax Rules 2005; Notification No VAT. 11.05/CR-72/Taxation-1, of 1/4/2005.

State	Tax Burden IMFL	Tax Burden BIO Spirits
	(EDP = Rs 358.33/bottle)	CIF = Rs 143.33/bottle. CIF + BCD @ 150% = Rs 358.33; AD @ 53 USD/case = 190.63; CIF + BCD + AD = 548.96; EAD @ 4% = 21.96 Landed Cost (inc AD & EAD) = Rs 570.93/bottle
Punjab	Relevant indirect taxes Excise Duty (Rs 25/PL) = Rs 14.06 Total Tax Burden = **Rs 14.06** Other indirect taxes Import Fee (Rs 7/PL) = NA (only spirits from out of State) Additional/Special Duty (Rs 4/PL) = Rs 2.25 Tax Dept Dev Fee (Rs 1/PL) = Rs 0.56 Sales Tax (VAT)[123] = Rs 15.80 Total Tax Burden = Rs 32.67	AD and relevant indirect taxes Additional Duty (AD) = Rs 190.63 Import Fee (Rs 7/PL) = Rs 3.94 Total Tax Burden = **Rs 194.57** EAD and other indirect taxes Extra Additional Duty (EAD) 548.97 x 4% = Rs 21.96 Additional/Special Duty (Rs 4/PL) = Rs 2.25 Tax Dept Dev Fee (Rs 1/PL) = Rs 0.56 Sales Tax (VAT)[124] = Rs 24.16 Total Tax Burden = Rs 243.50

[123] Sales Tax of 4% x (EDP (358.33) + 5% import margin = 376.2465 + Import Fee (zero) + Tax Dept Dev Fee (0.56)) = 395.06 x 4% = 15.80

[124] Sales Tax of 4% x (Landed Cost (570.93) + 5% import margin = 599.48 + Import Fee (3.94) + Tax Dept Dev Fee (0.56)) = 603.98 x 4% = 24.16

State	Tax Burden Local Wines	Tax Burden BIO Wines
	(EDP = Rs 215 per 75cl bottle)	CIF = Rs 107.50/bottle; CIF + BCD @ 100% = Rs215; AD @ 25% = 53.75; CIF + BCD + AD = 268.75; EAD @ 4% = 10.75 Landed Cost (LC) (inc AD & EAD) = Rs 279.50/bottle
Punjab	Relevant indirect taxes Excise Duty (Rs 4PL) = Rs 3.00 Total Tax Burden = **Rs 3.00** Other indirect taxes Import Fee (Rs 1/BL) = Rs 0.75 Additional/Special Duty (Rs 4/PL) = NA Tax Dept Dev Fee (Rs 1/PL) = Rs 0.17 Sales Tax (VAT) [125] = Rs 9.07 Total Tax Burden = Rs 12.99	AD and relevant indirect taxes Additional Duty (AD) = Rs 53.75 Total Tax Burden = **Rs 53.75** EAD and other indirect taxes Extra Additional Duty (EAD) 268.75 x 4% = Rs 10.75 Import Fee (Rs 1/BL) = Rs 0.75 Additional/Special Duty (Rs 4/PL) = NA Tax Dept Dev Fee (Rs 1/PL) = Rs 0.17 Sales Tax (VAT) [126] = Rs 11.78 Total Tax Burden = Rs 77.20

[125] Sales Tax of 4% x (EDP (215.00) + 5% import margin = 225.75 + Import Fee (0.75) + Tax Dept Dev Fee (0.17)) = 226.67 x 4% = 9.07

[126] Sales Tax of 4% x (Landed Cost (279.50) + 5% import margin = 293.46 + Import Fee (0.75) + Tax Dept Dev Fee (0.17)) = 294.40 x 4% = 11.78

Legal basis for indirect taxes - Punjab:

Import Fee **–** Section 31 of the Punjab Excise Act 1914; Section 1-D of Punjab Fiscal Orders 1932 as amended; Serial Nos. 84, 85 and 90 of annexure to Punjab Excise Policy 2006–2007, available at the website of the Government of Punjab.

Excise Duty & Additional/Special Duty - Sections 16 and 31 of the Punjab Excise Act 1914; Sections 1 and 1-A of Punjab Fiscal Orders 1932 as amended; Serial Nos. 56, 61 and 66 of annexure to Punjab Excise Policy 2006–2007, available at the website of the Government of Punjab.

Tax Department Development Fee - Sections 34 (1)(a) and 59(d) of the Punjab Excise Act 1914; Section 1-AA of Punjab Fiscal Orders 1932 as amended; Serial No 95 of annexure to Punjab Excise Policy 2006–2007, available at the website of the Government of Punjab.

Sales Tax (VAT) – Sections 6(1) and 8(1) ,and Schedule E, of the Punjab Value Added Tax Act 2005; Punjab Value Added Tax Rules 2005; Serial No 47 of annexure to Punjab Excise Policy 2006–2007, available at the website of the Government of Punjab.

State	Tax Burden IMFL	Tax Burden BIO Spirits
	(EDP = Rs 358.33 /bottle)	CIF = Rs 143.33/bottle. CIF + BCD @ 150% = Rs 358.33; AD @ 53 USD/case = 190.63; CIF + BCD + AD = 548.96; EAD @ 4% = 21.96 Landed Cost (inc AD & EAD) = Rs 570.93/bottle
Rajasthan	<u>Relevant indirect taxes</u> Excise Duty[127] (Rs 500/PL) = Rs 281.25 Total Tax Burden = **<u>Rs 281.25</u>** <u>Other indirect taxes</u> Sales Tax[128] = NA Import Fee (Rs 5/PL) NA (spirits from out of State only) Total Tax Burden = <u>Rs 281.25</u>	<u>AD and relevant indirect taxes</u> Additional Duty (AD) = Rs 190.63 Sales Tax[129] = Rs 125.89 Total Tax Burden = **<u>Rs 316.52</u>** <u>EAD and other indirect taxes</u> Extra Additional Duty (EAD) 548.97 x 4% = Rs 21.96 Import Fee (NA to BIO) NA Total Tax Burden = <u>Rs 338.48</u>

[127] Excise Duty @ Rs 350/PL for premium whisky with EDP of Rs 2250 per case. For EDP 358.33 x 12 = 4299.96, Excise Duty rises to Rs 500/PL as for BII.

[128] Sales Tax for IMFL has been incorporated into Excise Duty

[129] Sales Tax of 20% x (Landed Cost 570.93+ import margin (5%) = 599.48 + RBBCL margin (5%) = 629.45) = 125.89

State	Tax Burden Local Wines	Tax Burden BIO Wines
	(EDP = Rs 215 per 75cl bottle)	CIF = Rs 107.50/bottle; CIF + BCD @ 100% = Rs215; AD @ 25% = 53.75; CIF + BCD + AD = 268.75; EAD @ 4% = 10.75 Landed Cost (LC) (inc AD & EAD) = Rs 279.50/bottle
Rajasthan	Relevant indirect taxes Import Fee (Rs 5/PL) (products from out of State only) = Rs 0.85 Excise Duty (Rs 350/PL) = Rs 59.78 Total Tax Burden = **Rs 60.63** Other indirect taxes Sales Tax[130] = NA Total Tax Burden = Rs 60.63	AD and relevant indirect taxes Additional Duty (AD) = Rs 53.75 Sales Tax[131] = Rs 61.63 Total Tax Burden = **Rs 115.38** EAD and other indirect taxes Extra Additional Duty (EAD) 268.75 x 4% = Rs 10.75 Import Fee (NA to BIO) NA Total Tax Burden = Rs 126.13

130 Sales Tax for IMFL has been incorporated into Excise Duty

131 Sales Tax of 20% x (Landed Cost 279.50 + import margin (5%) = 293.48 + RBBCL margin (5%) = 308.15) = 61.63

Legal basis for indirect taxes - Rajasthan:

Import Fee – Section 31(b) of the Rajasthan Excise Act 1950; Rule 69B of the Rajasthan Excise Rules 1956 as amended by S.O.-3 Rajasthan Excise Amendment Rules 2005 of 1/4/2005.

Excise Duty – Sections 11(c) and 28 of the Rajasthan Excise Act 1950; Rajasthan Excise Rules 1956; Government of Rajasthan Finance Department Excise Division Notification No F.4(62)FD/Ex/96, Serial No (i) under heading “1. Excise Duty”, of 31/3/1997, as amended by Notification No.F4(17)FD/Excise/2004, of 1/4/2005 (S.O.-4).

Sales Tax - . Section 4 of the Rajasthan Sales Tax Act 1994 (Act No 22 of 1995); Rajasthan Sales Tax Rules 1995; Government of Rajasthan Finance Department (Tax Division) Notification No F4(75)FD/Tax/2004-7 of 1/10/2005 [20% rate]; paragraph 3.7 of RSBC Circular No 1, of 13/3/2005, available at the web site of the Excise Department of the Government of Rajasthan [margins].

State	Tax Burden IMFL	Tax Burden BIO Spirits
	(EDP = Rs 358.33/bottle)	CIF = Rs 143.33/bottle. CIF + BCD @ 150% = Rs 358.33; AD @ 53 USD/case = 190.63; CIF + BCD + AD = 548.96; EAD @ 4% = 21.96 Landed Cost (inc AD & EAD) = Rs 570.93/bottle
Uttar Pradesh	<u>Relevant indirect taxes</u> Excise Duty (EDP exceeding Rs 254, Rs 496/BL) = Rs 372.00 Total Tax Burden = **<u>Rs 372.00</u>** <u>Other indirect taxes</u> Import Fee Rs 4/BL (spirits from out of State only) = NA Sales Tax[132] = Rs 243.18 Total Tax Burden = <u>Rs 615.18</u>	<u>AD and relevant indirect taxes</u> Additional Duty (AD) = Rs 190.63 Import Permit Fee (foreign spirits Rs 300) = Rs 300.00 Total Tax Burden = **<u>Rs 490.63</u>** <u>EAD and other indirect taxes</u> Extra Additional Duty (EAD) 548.97 x 4% = Rs 21.96 Sales Tax[133] = Rs 292.33 Total Tax Burden = <u>Rs 804.92</u>

[132] Sales Tax on IMFL: 32.5% x EDP + 5% margin = 376.25 + ED (372) = 32.5% x 748.25 = 243.18
[133] Sales Tax on BIO: 32.5% x Landed Cost + 5% margin = 599.48 + IPF (300) = 32.5% x 899.48 = 292.33

State	Tax Burden Local Wines	Tax Burden BIO Wines
Uttar Pradesh	(EDP = Rs 215 per 75cl bottle)	CIF = Rs 107.50/bottle; CIF + BCD @ 100% = Rs215; AD @ 25% = 53.75; CIF + BCD + AD = 268.75; EAD @ 4% = 10.75 Landed Cost (LC) (inc AD & EAD) = Rs 279.50/bottle
	<u>Relevant indirect taxes</u> Import Fee Rs 4/BL (wine from out of State only Rs2/75 cl) = Rs 2.00 Excise Duty (Rs 50/bottle or 25% MRP, whichever higher) *minimum* = Rs 50.00 Total Tax Burden **=** **<u>Rs 52.00</u>**	<u>AD and relevant indirect taxes</u> Additional Duty (AD) = Rs 53.75 Import Permit Fee (foreign wines Rs 100/bottle) = Rs 100.00 Total Tax Burden = **<u>Rs 153.75</u>**
	<u>Other indirect taxes</u> Sales Tax[134] = Rs 90.27 Total Tax Burden = <u>Rs 142.27</u>	<u>EAD and other indirect taxes</u> Extra Additional Duty (EAD) 268.75 x 4% = Rs 10.75 Sales Tax[135] = Rs 127.88 Total Tax Burden = <u>Rs 292.38</u>

[134] Sales tax Indian wine: 32.5% x EDP + 5% margin = 225.75 + Import Fee (2) + ED (50) = 32.5% x 277.75 = Rs 90.27

[135] Sales tax on BIO wine: 32.5% x LC + 5% margin = 293.48 + Import Permit Fee (100) = 32.5% x 393.48 = 127.88

Legal basis for indirect taxes – Uttar Pradesh:

Import Fee (IMFL) – Sections 15 and 31 of the United Provinces Excise Act 1910; Excise Commissioner's Notification No 1991-E/XIII-337(1)-74, of 26/3/1974 as amended, in particular, by Notification No 15518/Sansadhan-92-93, of 25/3/1992. (Confirmed by document Rates and Duty Structure for Category: Import Fees Liquor, available at the website of the Excise Department of the Government of Uttar Pradesh).

Import Permit Fee (BIO) – Sections 15 and 31 of the United Provinces Excise Act 1910; Government Uttar Pradesh Notice No-2918 E-2/XIII-2002-91/2002, of 15/10/2003.

Excise Duty – Sections 12 and 28 of the United Provinces Excise Act 1910; Government Order No 726 E-2/XIII-2005-85/2004,of 9/3/2005, as amended. (Amended rates available in document entitled Rates and Duty Structure for Category: IMFL, available at the website of the Excise Department of the Government of Uttar Pradesh).

Sales Tax – Section 3 of the United Provinces Trade Tax Act 1948; United Provinces Trade Tax Rules 1948; Notification KA.NI.-2-1160 of 10/4/2000.

State	Tax Burden IMFL	Tax Burden BIO Spirits
	(EDP = Rs 358.33/bottle)	CIF = Rs 143.33/bottle. CIF + BCD @ 150% = Rs 358.33; AD @ 53 USD/case = 190.63; CIF + BCD + AD = 548.96; EAD @ 4% = 21.96 Landed Cost (inc AD & EAD) = Rs 570.93/bottle
West Bengal	Relevant indirect taxes Excise Duty (Rs 405 PL) = Rs 227.81 Total Tax Burden = **Rs 227.81** Other indirect taxes Import Pass Fee (Rs 12/BL if from out of state) NA Sales Tax[136] = Rs 175.84 Total Tax Burden = Rs 403.65	AD and relevant indirect taxes Additional Duty (AD) = Rs 190.63 Import Pass Fee (Rs 332/BL) = Rs 249.00 Total Tax Burden = **Rs 439.63** EAD and other indirect taxes Extra Additional Duty (EAD) 548.97 x 4% = Rs 21.96 Sales Tax[137] = Rs 245.99 Total Tax Burden = Rs 707.58

[136] Sales Tax on IMFL (17.5% MRP) calculated as 30% wholesale price i.e. EDP (358.33) + Excise Duty (227.81) = 586.14 x 30% = 175.84

[137] Sales Tax on BIO (17.5% MRP) calculated as 30% wholesale price. i.e Landed Cost (570.93) + Import Pass Fee (249) = 819.93 x 30% = 245.99

State	Tax Burden Local Wines	Tax Burden BIO Wines
West Bengal	(EDP = Rs 215 per 75cl bottle)	CIF = Rs 107.50/bottle; CIF + BCD @ 100% = Rs215; AD @ 25% = 53.75; CIF + BCD + AD = 268.75; EAD @ 4% = 10.75 Landed Cost (LC) (inc AD & EAD) = Rs 279.50/bottle
	<u>Relevant indirect taxes</u> Excise Duty (Rs 150 PL) = Rs 25.62 Import Pass Fee (Rs 7/BL wines from out of state) 5.25 Total Tax Burden = **<u>Rs 30.78</u>** <u>Other indirect taxes</u> Sales Tax[138] = Rs 73.73 Total Tax Burden = <u>Rs 104.51</u>	<u>AD and relevant indirect taxes</u> Additional Duty (AD) = Rs 53.75 Import Pass Fee (Rs 332/BL) = Rs 249.00 Total Tax Burden = **<u>Rs 302.75</u>** <u>EAD and other indirect taxes</u> Extra Additional Duty (EAD) 268.75 x 4% = Rs 10.75 Sales Tax[139] = Rs 158.55 Total Tax Burden = <u>Rs 472.05</u>

[138] Sales Tax on Indian wine: (17.5% of MRP) calculated as 30% wholesale price i.e. EDP (215.00) + Excise Duty (25.62) + Import Pass Fee (5.25) = 245.87 x 30% = 73.73

[139] Sales Tax on BIO wine: (17.5% of MRP) calculated as 30% wholesale price i.e. EDP (279.50) + Import Permit Fee (249.00) = 528.50 x 30% = 158.55

Legal basis for internal taxes – West Bengal:

Import Pass Fee - Section 38 of the Bengal Excise Act 1909; Rule 149 and Appendix F, serials 1 and 3, of the West Bengal Excise (Foreign Liquor) Rules 1998 as amended by Government of West Bengal Excise Department Notification No 720-EX no. WB (Part-I)/2005/SAR-117.

Excise Duty - Section 27 of the Bengal Excise Act 1909; Rule 149 and Appendix K, serials 1 and 3, of the West Bengal Excise (Foreign Liquor) Rules 1998 as amended by Government of West Bengal Excise Department Notification No 720-EX no. WB (Part-I)/2005/SAR-117.

Sales Tax - Sections 17(1)(g) and 22D, and Schedule VIII, of the West Bengal Sales Tax 1994 as amended by the West Bengal Taxation law (Amendment) Act 2004; the West Bengal Sales Tax Rules 1995; Government of West Bengal Notification No 2984-F.T., of 1/9/2004 as amended by Government of West Bengal Notification No 3275-F.T. of 8/10/2004; Government of West Bengal, Directorate of Commercial Taxes, Trade Circular No 3/2004 of 19/10/2004.

ANNEX 2

COMPARISON OF TAXATION RESULTING FROM THE APPLICATION OF EXTRA ADDITIONAL DUTY AND INTERNAL TAXES TO IMPORTED BIO WINES AND SPIRITS AND TO LIKE INDIAN WINES AND SPIRITS IN THE STATES OF ANDHRA PRADESH, ASSAM, DELHI, GOA, KARNATAKA, MAHARASHTRA, PUNJAB, RAJASTHAN, UTTAR PRADESH, AND WEST BENGAL.

This Annex calculates the level of taxation resulting from, on the one hand, the application of Extra Additional Duty by the Central Government of India and the application by Indian States of indirect taxes *exclusively* to imported spirits (or at rates which exceed the rates applied in respect of like domestic spirits) and, on the other hand, the application of indirect taxes by Indian States *exclusively* to domestic spirits (or at rates which exceed the rates applied in respect of like imported spirits).

This annex is based on the same methodology as Annex 1, to which reference is made.

State	Tax Burden IMFL	Tax Burden BIO Spirits[140]
	(EDP = Rs 358.33/bottle)	CIF = Rs 143.33/bottle. CIF + BCD @ 150% = Rs 358.33; EAD @ 4% = 14.33. Landed Cost (inc EAD) = 372.66/bottle
Andhra Pradesh	Relevant indirect taxes *None* Total Tax Burden = **Rs 0.00** Other indirect taxes Import Fee (only out-of-State IMFL) = NA Excise Duty (Rs 80/PL) = Rs 45.00 EAL Fee (Rs 0.10/bottle) = Rs 0.10 Special Privilege Fee (10% of basic price[141]) = VAT (70% of cost to APBCL[142]) = Total Tax Burden =	EAD and relevant indirect taxes EAD (358.33 x 4%) = Rs 14.33 Import Fee (Rs 2/BL) = Rs 1.50 Total Tax Burden = **Rs 15.83** Other indirect taxes Excise Duty (Rs 80/PL) = Rs 45.00 EAL Fee (Rs 0.10/bottle) = Rs 0.10 Special Privilege Fee (10% of basic price[143]) = Rs 39.00 VAT (70% of cost to APBCL[144]) = Rs 327.60 Total Tax Burden = Rs 427.53

[140] The Government has announced its intention to develop a separate policy for BIO products, but the applicable taxes have not yet been notified. In the interim, the retail sale of BIO products is permitted subject to payment of all internal taxes applicable to domestic products.

[141] Basic Price is EDP + cost of bottles, packaging, freight, insurance, handling charges, import and export fee (if applicable) & EAL (estimated at Rs 400/bottle)

[142] Price to Andhra Pradesh Beverages Corporation Ltd (APBCL) is Basic Price + 20% margin (estimated at Rs 480/bottle)

[143] Basic Price is Landed Cost + cost of bottles, packaging, freight, insurance, handling charges, import and export fee (if applicable) & EAL (estimated at Rs 390/bottle)

[144] Price to APBCL is Basic Price + 20% margin (estimated at Rs 468/bottle)

Legal basis for indirect taxes – Andhra Pradesh:

Excise Duty - Section 21 of the Andhra Pradesh Excise Act 1969 (Act 17 of 1968) and "Excise Policy" announced in Government of Andhra Pradesh Order, G.O.M.s No 184 of 7 February 2005, Andhra Pradesh Gazette of 7 February 2005.

Import fee - Section 28 of the Andhra Pradesh Excise Act 1969 (Act 17 of 1968) and Section 5(1)(a)(iii) of the Andhra Pradesh Excise (Import, Export and Transport of Indian Liquor and Foreign Liquor-permits) Rules 2005, as published in Andhra Pradesh Government, G.O.M.s No 996, Revenue (Ex.-II), of 24/5/2005, Andhra Pradesh Gazette, of 24/5/2005. (Confirmed by Andhra Pradesh Beverages Corporation Notification No APBCL/2005-2006/1,2,3, & 4 of 23 February 2005).

Excise Adhesive Label (EAL) Fee – Section 28 of the Andhra Pradesh Excise Act 1969 (Act 17 of 1968); Rule 46 of the Andhra Pradesh Indian Liquor and Foreign Liquor Rules, 1970 and Andhra Pradesh Government, G.O.M.s No 817, Revenue (Excise II) Department of 27/8/1987. (Confirmed by Andhra Pradesh Beverages Corporation Notification No APBCL/2005-2006/1,2,3, & 4 of 23 February 2005, page 9, points B i & B ii.)

Basic Price (definition of) – Andhra Pradesh Beverages Corporation Notification No APBCL/2005-2006/1,2,3, & 4 of 23 February 2005, page 17.

Special Privilege Fee – Section 28 Of the Andhra Pradesh Excise Act 1969 (Act 17 of 1968), Rule 25A of the Andhra Pradesh Indian Liquor and Foreign Liquor Rules, 1970 and Andhra Pradesh Government, G.O.M.s No 242 Revenue (Excise II) Department of 31/3/2001.

VAT – Section 4(5) and Schedule VI of the Andhra Pradesh Value Added Tax Act 2005, Andhra Pradesh Value Added Tax Rules 2005 and Andhra Pradesh Government, Revenue Department, Notification G.O.M.s No 1229, Revenue (CT. II), 20/6/2005.

State	**Tax Burden IMFL**	**Tax Burden BIO Spirits**
	(EDP = Rs 358.33/bottle)	CIF = Rs 143.33/bottle. CIF + BCD @ 150% = Rs 358.33; EAD @ 4% = 14.33. Landed Cost (inc EAD) = 372.66/bottle
Goa	Relevant indirect taxes Excise Duty (Rs 40/PL) = Rs 22.50 Total Tax Burden = **Rs 22.50** Other indirect taxes Import Permit Fee (Rs 200/permit) NA (IMFL from out of State only) Special Duty (Health Charge)[145]	EAD and relevant indirect taxes EAD (358.33 x 4%) = Import Permit Fee (Rs 100/BL) = Rs 75.00 Total Tax Burden = Other indirect taxes Special Duty (Health Charge)[148] = Rs 1.00

[145] Health Charge of 2% x Excise Duty + licence fees (estimated at Rs 1.00 per bottle)

	Library Cess[146] VAT[147] = Rs 95.66 Total Tax Burden	Library Cess[149] = Rs 0.38 VAT[150] = Rs 103.28 Total Tax Burden = Rs 193.99

[146] Library Cess on IMFL Rs 0.5/BL = approx Rs 0.38 per 75 cl bottle

[147] VAT on IMFL: 20% x (EDP + 5% import margin + Excise Duty (22.50) + Health Surcharge (1) + Library Cess (0.38) + freight and insurance (Rs 30/case= 2.5/bottle) + distributor's margin (8%) + retail margin (10%)) = (358.33 x 1.05) = 376.25 +22.50 + 1.38 + 2.5 = 402.63 x 1.08 = 434.84 x 1.1 = 478.32 x 20% = 95.66.

[148] Health Charge of 2% x Excise Duty + licence fees (estimated at Rs 1.00 per bottle)

[149] Library Cess on BIO assumed same as for IMFL (Rs 0.38 per bottle)

[150] VAT on BIO: 22% x (Landed Cost + 5% import margin (= 391.30 + Excise Duty (nil) + Health Surcharge (1) + Library Cess (0.38) + freight and insurance (Rs 30/case = 2.5/bottle) = 395.18 + distributor's margin (8%) + retail margin (10%)) = 22% x 469.47 = 103.28

Legal basis for indirect taxes - Goa:

Import Permit Fee - Sections 12 and 15 of the Goa Excise Duty Act 1964 (Act 5 of 1964), read with section 21 of the General Clauses Act 1897, and Part III Import and Export (2) of Notification No 1/1/2004-Fin (R&C) amending Notification No Fin(Rev)/2-35-1976.

Excise Duty - Sections 12 and 15 of the Goa Excise Duty Act 1964 (Act 5 of 1964), read with section 21 of the General Clauses Act 1897, and Parts A1(a)(iii) and A1(b)(ii) of Notification No 1/1/2004-Fin (R&C) amending Notification No Fin(Rev)/2-35-1976.

Special Duty (Health Charge) - Sections 12 and 15 of the Goa Excise Duty Act 1964 (Act 5 of 1964), read with section 21 of the General Clauses Act 1897; Part A(6) of Notification No 1/1/2004-Fin (R&C), amending Notification No Fin(Rev)/2-35-1976, read in conjunction with Notification No 1/4/2003-Fin (R&C) of 31/3/2003.

Library Cess - Sections 12 and 15 of the Goa Excise Duty Act 1964 (Act 5 of 1964), read with section 21 of the General Clauses Act 1897, and Part IV 5(a) of Notification No 1/1/2004-Fin (R&C) amending Notification No Fin(Rev)/2-35-1976.

VAT – Sections 3 and 4, and Schedule C, of the Goa Value Added Tax Act 2005 as amended by Notification No 4/5/2005-Fin(R&C)(23) of 24/8/2005; Goa Value Added Tax Rules 2005.

State	Tax Burden IMFL	Tax Burden BIO Spirits
	(EDP = Rs 358.33/bottle)	CIF = Rs 143.33/bottle. CIF + BCD @ 150% = Rs 358.33; EAD @ 4% = 14.33. Landed Cost (inc EAD) = 372.66/bottle
Punjab	<u>Relevant indirect taxes</u> Excise Duty (Rs 25/PL) Total Tax Burden <u>Other indirect taxes</u> Import Fee (Rs 7/PL) (only spirits from out of State) Additional/Special Duty (Rs 4/PL) Tax Dept Dev Fee (Rs 1/PL) Sales Tax (VAT)[151] Total Tax Burden	<u>EAD and relevant indirect taxes</u> EAD (358.33 x 4%) = Import Fee (Rs 7/PL) = Rs 3.94 Total Tax Burden = <u>Other indirect taxes</u> Additional/Special Duty (Rs 4/PL) = Rs 2.25 Tax Dept Dev Fee (Rs 1/PL) = Rs 0.56 Sales Tax (VAT)[152] = Rs 15.83 Total Tax Burden = <u>Rs 36.79</u>

[151] Sales Tax of 4% x (EDP (358.33) + 5% import margin = 376.2465 + Import Fee (zero) + Tax Dept Dev Fee (0.56)) = 395.06 x 4% = 15.80

[152] Sales Tax of 4% x (Landed Cost (372.66) + 5% import margin = 391.29 + Import Fee (3.94) + Tax Dept Dev Fee (0.56)) = 395.79 x 4% = 15.83

Legal basis for indirect taxes - Punjab:

Import Fee **–** Section 31 of the Punjab Excise Act 1914; Section 1-D of Punjab Fiscal Orders 1932 as amended; Serial Nos. 84, 85 and 90 of annexure to Punjab Excise Policy 2006–2007, available at the website of the Government of Punjab.

Excise Duty & Additional/Special Duty - Sections 16 and 31 of the Punjab Excise Act 1914; Sections 1 and 1-A of Punjab Fiscal Orders 1932 as amended; Serial Nos. 56, 61 and 66 of annexure to Punjab Excise Policy 2006–2007, available at the website of the Government of Punjab.

Tax Department Development Fee - Sections 34 (1)(a) and 59(d) of the Punjab Excise Act 1914; Section 1-AA of Punjab Fiscal Orders 1932 as amended; Serial No 95 of annexure to Punjab Excise Policy 2006–2007, available at the website of the Government of Punjab.

Sales Tax (VAT) – Sections 6(1) and 8(1) ,and Schedule E, of the Punjab Value Added Tax Act 2005; Punjab Value Added Tax Rules 2005; Serial No 47 of annexure to Punjab Excise Policy 2006–2007, available at the website of the Government of Punjab.

State	Tax Burden IMFL	Tax Burden BIO Spirits
	(EDP = Rs 358.33/bottle)	CIF = Rs 143.33/bottle. CIF + BCD @ 150% = Rs 358.33; EAD @ 4% = 14.33. Landed Cost (inc EAD) = 372.66/bottle
West Bengal	<u>Relevant indirect taxes</u> Excise Duty (Rs 405 PL) Total Tax Burden = **<u>Rs 227.81</u>** <u>Other indirect taxes</u> Import Pass Fee (Rs 12/BL for IMFL from out of state only) NA Sales Tax[153] Total Tax Burden	<u>EAD and relevant indirect taxes</u> EAD (358.33 x 4%) = Import Pass Fee (Rs 332/BL) = Rs 249.00 Total Tax Burden = **<u>Rs 263.33</u>** <u>Other indirect taxes</u> Sales Tax[154] Total Tax Burden = <u>Rs 449.83</u>

[153] Sales Tax on IMFL (17.5% MRP) calculated as 30% wholesale price i.e. EDP (358.33) + Excise Duty (227.81) = 586.14 x 30% = 175.84

[154] Sales Tax on BIO (17.5% MRP) calculated as 30% wholesale price. i.e Landed Cost (372.66) + Import Pass Fee (249) = 621.66 x 30% = 186.50

Legal basis for internal taxes – West Bengal:

Import Pass Fee - Section 38 of the Bengal Excise Act 1909; Rule 149 and Appendix F, serials 1 and 3, of the West Bengal Excise (Foreign Liquor) Rules 1998 as amended by Government of West Bengal Excise Department Notification No 720-EX no. WB (Part-I)/2005/SAR-117.

Excise Duty - Section 27 of the Bengal Excise Act 1909; Rule 149 and Appendix K, serials 1 and 3, of the West Bengal Excise (Foreign Liquor) Rules 1998 as amended by Government of West Bengal Excise Department Notification No 720-EX no. WB (Part-I)/2005/SAR-117.

Sales Tax - Sections 17(1)(g) and 22D, and Schedule VIII, of the West Bengal Sales Tax 1994 as amended by the West Bengal Taxation law (Amendment) Act 2004; the West Bengal Sales Tax Rules 1995; Government of West Bengal Notification No 2984-F.T., of 1/9/2004 as amended by Government of West Bengal Notification No 3275-F.T. of 8/10/2004; Government of West Bengal, Directorate of Commercial Taxes, Trade Circular No 3/2004 of 19/10/2004