20 May 2009

Joanne Dow
Coordinator, India FTA Preparatory Process
Ministry of Foreign Affairs and Trade
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Wellington

By email: joanne.dow@mfat.govt.nz

Dear Joanne

New Zealand/India Free Trade Agreement
- Excessive Import Duty on HS 2208 Spirits, Liqueurs & Other Spirituous Beverages
- Geographical Indications associated with Distilled Spirits

I am writing on behalf of the Distilled Spirits Association Inc in response to the Ministry of Foreign Affairs and Trade invitation to make submissions on a Free Trade Agreement between New Zealand and India.

The Distilled Spirits Association is the national trade organisation representing New Zealand's leading producers and marketers of premium distilled spirits and liqueurs.

The Association's members include: Anchor Ethanol Limited, Bacardi Martini Asia Pacific Ltd, Beam Global (NZ) Ltd, Brown Forman Beverages Worldwide, Diageo (New Zealand) Ltd, Lion Nathan Wines and Spirits Ltd, Pernod Ricard New Zealand Limited, The Rum Company (New Zealand) Ltd, and Vintage Wines and Spirits Ltd.

The Association strongly supports a free trade agreement (FTA) between New Zealand and India.

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Current Market Situation
India is one of the world's largest markets for spirit drinks[1] and has the potential to be a significant export market for New Zealand produced distilled spirit brands however India's drinks market is currently supplied overwhelmingly by its large domestic industry with a fiscal regime which significantly advantages "Indian-made foreign liquor" (IMFL) over imported western-style spirits.

IMFL is produced almost entirely from molasses and is then 'flavoured' and sold described as 'whisky', 'brandy', 'gin', 'rum' 'vodka' etc. Internationally, spirits such as 'vodka' are largely produced from cereals, grains, grapes, fruit and other foods.

At present, New Zealand-origin spirits exported to India are largely comprised of **HS 2208.60** "Vodka".

For the year ended December 2008, New Zealand spirit exports to India amounted to a very modest 3,000 litres of alcohol, worth NZD $70,000 (FOB). Total New Zealand spirit export earnings in 2008 was $38 million of which India accounted for 0.2% market share by value.

Over the same 12 month period, New Zealand imported about NZD $24,000 worth of Indian made spirits, chiefly **HS 2208.30** "Whiskies" and **HS 2208.40** "Rum".

Duties and taxes
A key priority for the Association is the securing of fairer market access to the Indian market for New Zealand distilled spirits exports.

According to the World Trade Organisation's (WTO) Market Access Applied Tariffs Database[2], India's duties and taxes on imported spirits include:

- The "Landing Charge" which is assessed at 1% of CIF Value, before import duty and other charges
- The Basic Customs Duty (BCD), currently applied at the World Trade Organisation (WTO) bound rate of 150% ad-valorem (see **Annex A**) and
- The Extra Additional Duty (EAD) levied at 4%. The EAD was introduced in the 2006/7 budget. It is reclaimable by importers. Bulk imports pay only the BCD and not EAD.

The above does not include the Education Cess, federal excise and various State[3] excise taxes, fees and VAT (see **Annex B**).

[1] The industry estimates at least 120 million cases. In contrast, the NZ market is approximately 8 million cases. A case is the equivalent of 12 x 750ml bottles.
[2] http://www.wto.org/english/thewto_e/countries_e/india_e.htm
[3] 28 separate State authorities and 7 Union Territories, all of which formulate and have their own fiscal and regulatory policies

We note that some member states have in the past seen the need to lodge a complaint to a WTO disputes panel against the government of India for its imposition of excessive duty levels on distilled spirits.

Prior to July 2007 an Additional Duty (AD) of 150% was levied on spirits (and wines). The AD was settled prior to a WTO dispute settlement panel.

Seen from a commercial point of view, the various taxes, and in particular the BCD rate, are grossly excessive by international standards. Moreover, the combined duties and taxes exceed India's commitment to the WTO.

In contrast, India's access to the New Zealand market is tariff-free on current import lines of whiskies and rum.

It is plain that the Indian imposition of such high duties and taxes is designed to favour and protect their domestic producers against whom New Zealand producers and exporters compete.

Clearly, Association members are expecting India to offer significant cuts or the elimination of duty on New Zealand – origin HS 2208 Spirits, Liqueurs and Other Spirituous beverages. Parity with New Zealand duty levels would be ideal. Potentially, we would expect to export more volume and a wider type of alcohol beverage to India, which in turn could enhance earnings for New Zealand spirit producers/manufacturers.

At this time, we are unable to be specific on the quantum of additional volumes if the tariffs were significantly reduced or eliminated, however we remain optimistic for steady growth.

Intellectual Property Rights – Geographical Indications associated with distilled spirits

The protection of Intellectual Property Rights is another priority for the Association and is in line with the international practice in FTAs.

The Association does not seek new commitments, but it wants to see the adherence to Articles 22 and 23 of the Agreement on Trade Related aspects of Intellectual Property Rights (TRIPS).

Further, the Association does of course also want the New Zealand government to immediately activate the Geographical Indications (Wine and Spirits) Registration Act and its registration system. When the registration system is activated, the Act will clarify and give greater confidence and certainty of legal protection for quality spirits (and wines) with international or New Zealand geographical indications.

Conclusion and Requests

The Association welcomes and supports New Zealand Government moves to negotiate a FTA with India. Its aim should be for the highest possible degree of trade liberalisation.

A priority for the Association is to secure enhanced market access to the Indian market through the early elimination or reduction of the high federal duty burden.

Currently, New Zealand spirits market access to India faces customs duties and other charges commencing from 150% of the CIF value. This combination effectively keeps our exports out of the Indian market. In contrast, current Indian export lines to New Zealand enter duty free.

The Association requests that the FTA negotiations ensure HS 2208 Spirits, Liqueurs and Other Spirituous beverages tariff lines are included in discussions and the elimination or significant reduction of the BCD on imported spirit drinks by the Government of India is addressed.

The removal or reduction of India's high tariffs on spirit beverages would create important new market access opportunities for New Zealand spirit exporters.

Finally, the FTA negotiations should also address the protection of intellectual property for our respective and distinctive spirits with geographical indications.

Yours sincerely

Thomas Chin
Chief Executive

Annex A: Indian Basic Customs Duty on distilled spirit drinks

HS Heading 6 digit sub-heading	Description of Goods	BCD Rate
220820	Brandy	150%
220830	Whiskey	150%
220840	Rum	150%
220850	Gin	150%
220860	Vodka	150%
220870	Liqueurs	150%
220890	Others	150%

Annex B: Selected examples of various State duties, fees, charges, etc

Maharashtra	• "Special fee" on BIO – bottled in origin spirits RS 300 per bulk litre or a sliding ad valorem scale up to 200% • Maximum retail price declarations required on alcohol packaging
Goa	• Label registration fees • "Import fee"
Tamil Nadu	• State alcohol monopoly • Closed to BIO spirits
Karnataka	• "Special fee" on BIO spirits
Andra Pradesh	• Closed to BIO spirits
Uttar Pradesh	• Sales tax @ 20% • "Vend fee" RS 300 per 750ml bottle