

SIMULATION EXERCISE: A SONG OF BEER AND WINE

*(adapted from Peter van den Bossche's **The Law and Policy of the World Trade Organization: Text, Cases and Materials**)*

1. Case outline

Traditionally, **Newland** is a wine-drinking country. However, recent market research has shown that demand for beer in Newland is steadily growing. **RichBrew Inc.** of **Richland**, one of the world's largest beer producers, therefore wants to increase its exports of specialty beers, ordinary beer and non-alcoholic beer to Newland.

Before its accession to the WTO, Newland limited the importation of beer of any kind to a meagre 50,000 hectolitres per year. This quantitative restriction was put into place in the late 1950s to protect the many winegrowers in Newland from competition from imported beer. The National Association of Wineries (NAW) was, and still is, a powerful lobby in Newland politics. Beer production in Newland has always been and remains small.

On accession to the WTO, Newland abolished the quantitative restriction on the importation of beer. However, around the same time, it revised its tax regime for alcoholic and non-alcoholic beverages. In addition to a value added tax (VAT) of 21 per cent ad valorem applied to all alcoholic beverages, the following excise tax rates currently apply: N\$5 ppl on wine; N\$6 ppl on ordinary beer; and N\$15 ppl on specialty beers.

Non-alcoholic beer is not subject to excise tax. However, non-alcoholic beer is subject to a VAT of 21 per cent ad valorem whereas soft drinks are subject to a VAT of 15 per cent ad valorem. As stated above, all alcoholic beverages are subject to a 21 per cent VAT but resellers of imported alcoholic beverages are subject to more onerous VAT-related administrative requirements.

At the time of importation, the Newland Customs Service imposes a charge of N\$0.5 per litre on alcoholic beverages that are, after importation, bottled in aluminium cans rather than glass bottles, for environmental reasons.

Pursuant to the **Fair Competition Act** of 1991, imported as well as domestic beer and wine are subject to a minimum price requirement, annually set by the Ministry of Commerce of Newland. Furthermore, Newland prohibits the use of additives in lager while leaving the use of additives in specialty beers and wine unregulated.

One of the reasons for special treatment given to wine (including its lower taxes) is the health benefits derived from its moderate consumption. Substances such as the *resveratrol*, which studies affirm that has promising antiviral, anti-inflammatory, and anticancer effects.

In support of the national wine industry, Newland's **National Federation of Restaurateurs**, a government-sponsored organisation, has instructed its 10,000 members not to serve beer with traditional Newland dishes. Municipal authorities in Newland's main wine-producing region prohibit serving beer on weekends. Note also that, since the **Armed Forces Reform Act** of 1996, the armed forces of Newland are required by law to buy domestic alcoholic beverages to serve in army mess halls.

As stated above, beer production in Newland has always been and remains small. The Newland beer industry consists primarily of microbreweries, which produce beer in a more environment-friendly manner than RichBrew Inc. As part of its environmental policy, the Government of Newland intends to lower the excise tax on beer produced by microbreweries to N\$5 ppl (instead of the N\$6 ppl (for ordinary beer) and N\$15 ppl (for specialty beer) currently applied).

2. Choose one of the following roles:

- 1) You are an associate with the Brazilian law firm **Cartaxo Queiroga Lopes Filho Advogados**. Your firm has been hired by **RichBrew Inc.** to give legal advice on all the issues raised above.
- 2) You are a legal advisor at the **Ministry of Commerce of Newland**. You have been tasked to present the grounds of your country position in this matter.

3. Assignment:

Draft a memorandum (10p.) outlining the arguments supporting your case, given your selected role. This paper should reference the relevant treaties and Dispute Settlement Body cases. Questions regarding the Technical Barriers to Trade (TBT) and the Sanitary and Phytosanitary Measures (SPS) agreements may be ignored for the purpose of this activity. Each team will have 15 minutes to present their case and will be questioned accordingly.

4. Evaluation

This activity will be considered voluntary, and the participation will be awarded an extra point. The grade will be based not only the written assignment, but also participation on the debate itself. The questions may be posed to the group, or to specific individuals, as the evaluation body see fit.