Submission

9 September 2022

Australia India Comprehensive Economic Cooperation Agreement

Executive Summary

- While we congratulate both the outgoing and incoming Federal Government on reaching a landmark economic cooperation agreement with India, members of the two national distilled spirits trade associations – Spirits and Cocktails Australia and the Australian Distillers' Association – were disappointed that there was no movement by the Government of India to improve market access for imported distilled spirits, including on addressing the very high tariffs faced by imported spirits.
- Despite this, Australia gave in principle support for the importation of Indian-made distilled spirits, particularly Indian-styled "whisky", which fails to reach Australian or global technical standards to meet the definition of whisky. These imports risk undermining the investment made by Australian industry in laying down significant volumes of whisky for maturation.
- India's 150% *ad valorem* tariff on imported spirits severely restricts access to the Indian market for spirits exporters.
- In 2019, India ranked as the world's largest whisky market in terms of volume and second-largest in value. There is vast opportunity for Australian spirits importers in India if the *ad valorem* tariffs were to be liberalised, not only for bottled spirit but also ready to drink (RTD) beverages that have recently been introduced into the India market.
- Currently, total imports of bottled spirits represent only 1% of the market for spirits in India, predominantly scotch whisky, and modelling shows that a reduction in tariffs as proposed below would not adversely impact the sale of local Indian spirits, which compete at a different price point than potential Australian imports.
- The total Australian production of all distilled spirits would be less than 1% of the total spirits market in India, so Australian spirits exports would not impact domestic producers.
- Our members recommend Australia seek a reduction in Indian customs duty to 75% in year one, and to 30% in year three for imported spirits, aligned with the request of the UK Government.
- Australia should also seek a good faith commitment not to compensate for lost tariff revenue through the imposition or increase of other types of taxes or levies, including state excise.
- The Australian Government should ensure there is no devolution of current Australian standards for the definition of "whisky" around maturation and composition of inputs. Any

future importation of Indian-styled “whisky” must have a differentiated name, such as “spirit drink” or similar.

India Distilled Spirits Sector

In 2020, almost 277 million cases of 9 litre spirits were sold in India, making it the third largest spirits market in the world, and the largest whisky market by volume.

In India, there are three types of imported spirits segments:

1. Bottled in Origin (BIO) – imported premium spirits that are bottled in their country of origin, imported into India and fetch the highest price points in the market;
2. Bottled in India (BII) – imported bulk spirits (usually Scotch whisky) that is bottled in India.
3. Indian Made Foreign Liquor (IMFL) - imported bulk spirits (usually Scotch whisky) that are used as an ingredient and blended with locally produced spirits.

All imported spirits, whether bottled or bulk, currently face a customs duty of 150% (split as a 50% basic customs duty and a 100% AIDC – agriculture infrastructure and development cess).

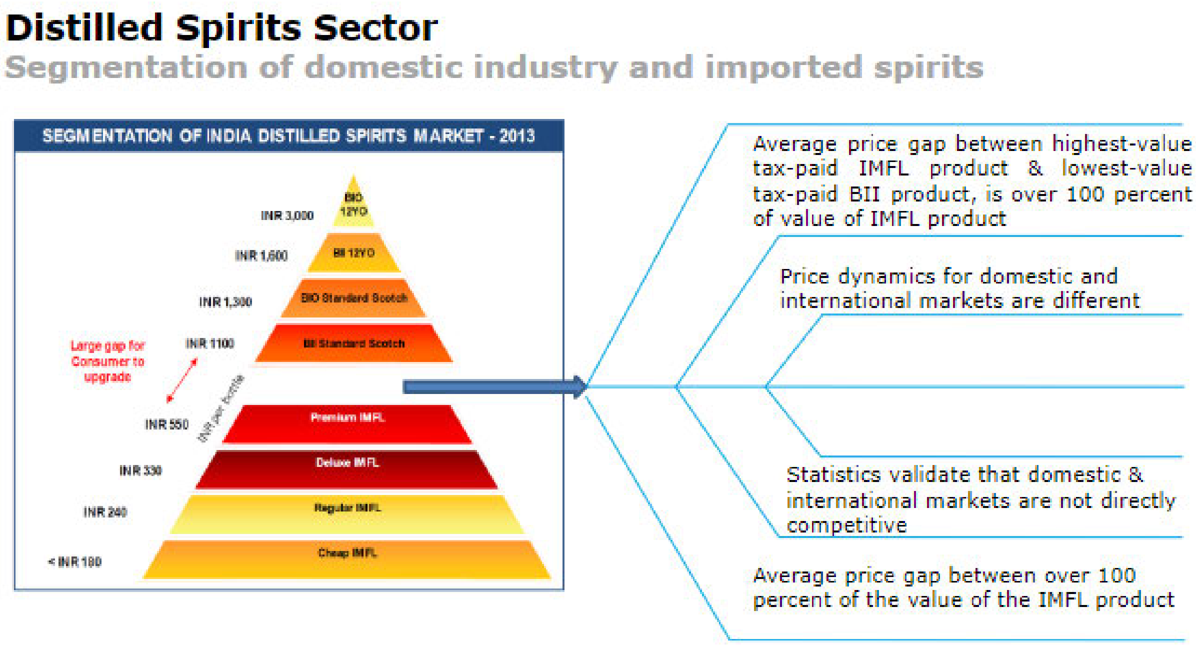
Current BIO brands include Chivas Regal, Johnnie Walker and Dewars.

Current BII brands include 100 Pipers, Jim Beam and Grants.

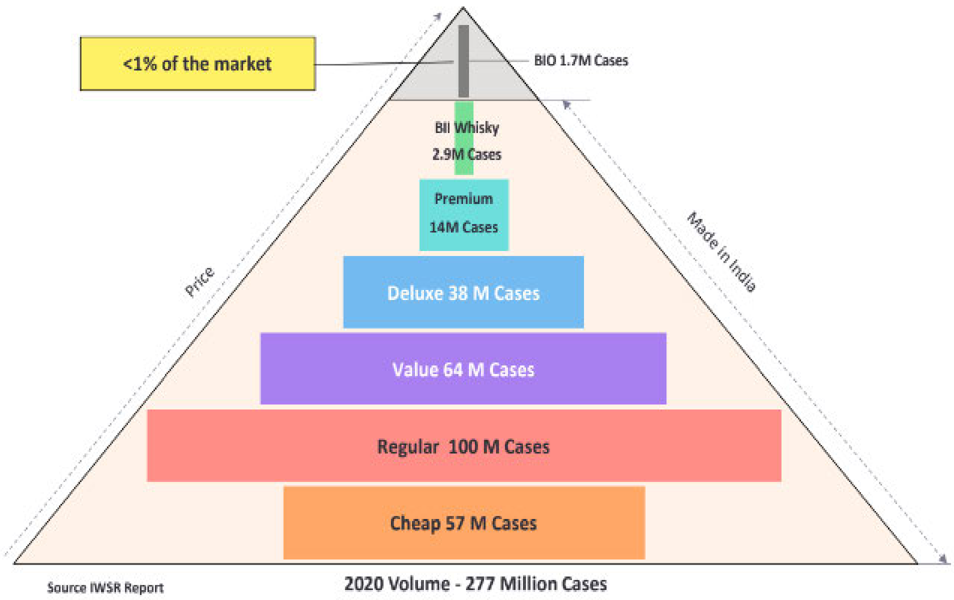
Current IMFL brands include Royal Stag, Imperial Blue and Blenders Pride.

The price difference between BIO and BII products on the one hand, and IMFL products on the other, is significant, and potential tariff reductions for imported spirits would not affect the domestic IMFL market at their price points.

Australian exports of whisky (and other spirit categories) would be targeting the BIO segment. They would be significantly more expensive than domestic products, even after a tariff reduction, and there would be no threat to the Indian domestic industry. The current BIO market for spirits would be significantly larger than the entire production of all Australian distilled spirits each year, and Australian exports to India would be a drop in the ocean for their entire consumption.



Total volume of spirits sold across different price segments of the Indian market



The Indian market for spirits is complex and difficult to access, particularly for niche brands, with different approaches to regulation applying in different States and Union Territories. That complexity means that consumers do not have access to the breadth of Indian and international spirits brands that they otherwise would. The States themselves have prioritised improving ease of doing business in the sector in recent years.

We note that the interim AI-CEC Agreement did not include Australian spirits in the scope of goods for tariff reductions; however, Indian spirits are included, with no tariff on imports and despite the Customs Act currently prohibiting the importation of whisky, rum and brandy that has not been aged in wood for 2 years. We are also concerned that given the Australian industry has made a substantial investment in laying down a significant volume of domestic whisky for maturation, allowing the importation of a substantial volume of Indian-style whisky would dilute that investment.

Much work was done by Indian and Australian businesses, together with both governments, to identify market access issues in the food and drink sector as part of the AI-CECA negotiations. We are pleased that the Joint Ministerial Committee and Working Committee dialogues are continuing as we await ratification of the AI-CECA, to ensure it delivers the increased bilateral trade and consumption it targeted. We believe the reduction of the customs duty will benefit all members of the industry, Australian and Indian, as it will improve product quality, best practice, enhance volumes and increase customs revenue. We note that the AI-CECA currently provides in the ECTA Side Letters - Whisky and Other Alcoholic Beverages - India to Australia that the Parties shall consider issues relating to market access, including maturation rules for whisky and other alcoholic beverages, in respect of spirits beverages imported from India to Australia. For this purpose, the respective parties are to establish a Working Group which will examine these issues, meeting within 6 months of the date of entry into force of the CECA. However, no such arrangement has been agreed with respect to spirit beverages imported from Australia to India.

Tariffs and Basic Customs Duty (BDC)

In February 2021, India introduced an *Agriculture Infrastructure and Development Cess* (AIDC),[1] the equivalent of a 100% ad valorem tariff. Indian authorities announced at the same time that the BCD had been simultaneously lowered to 50% on items on which the AICD was imposed, the result being that imported spirits producers still pay 150% ad valorem duty when clearing goods at customs.

In their FTA negotiations, the UK and the EU are treating the reduced BCD together with the AICD as an entire basic customs duty of ad valorem 150% in their trade agreement negotiations, and we suggest Australia do the same. In the UK/India ETP negotiations the spirits industry is seeking alignment on both sides to a reduction of the BCD for 150% to the following:

Products with an import value equal to or above $US24 per 9L case[2]	Reduced to 75% in Year 1 and 30% in Year 3
Bulk spirit imports equal or above USD 2.2 per litre of pure alcohol	Reduced to 75% in Year 1 and 30% in Year 3

We understand the UK/India negotiations are focusing on the 6 digit 2208 tariff codes regarding vodka, whisky and gin to enable reduction of the tariff for those spirits categories from the UK.

The local spirits producers' association in India, CIABC (Confederation of Indian Alcoholic Beverage Companies), is also supportive of a reduction in the tariff rate, but not to the extent that international and Australian producers wish to see. We note that many of the local producers in India wish to maintain their high margins as they peg their retail prices to compete with imported spirits (which are priced after application of the 150% BCD). We submit that the Australian government should consider widening the scope of the AI-CEC Agreement to provide for the importation of spirit beverages from Australia to India with a reduced BCD rate as per the amounts set out in this submission.

We understand the Ministry of Commerce in India has also flagged the application of a BCD reduction for imports within a set quota. We would advocate against any such quantitative

[1] Clause 115 of the Finance Bill 2021, which describes the Cess as "duty of customs", adding that enabling provisions have been made for levy of this cess on all imported goods at the rate not exceeding the rate specified in the First Schedule to the Customs Tariff Act, 1975 (that is, 100%).

[2] The $US24 threshold amount relates to a 9 litre case (which is a standard measure of spirits sales). By way of context, this equates to a value threshold of USD6.66 per litre of pure alcohol (LPA). A 9L case of scotch whisky bottled at 40% alcohol by volume (abv) contains 3.6 LPA. A CIF value of USD24 per case therefore equates to USD6.66. If the calculation is based on an assumed abv of 42.8% (the standard strength in India) a 9L case would contain 3.85LPA and a value threshold per LPA would be US$6.23 CIF.

restrictions as they usually have trade distorting effects, their allocation is problematic and their administration burdensome and not transparent (consistent with WTO principles).

Tariff reduction and compensatory tax increases

Despite a growing demand for imported wine and spirits, India is the most complex market in the world to sell alcoholic beverages. The central government regulates the import and export of alcoholic beverages, customs and central duties and excises, as well as marketing and advertising, product standards and labelling.

However, the regulation of alcohol generally is a matter for individual state and union territory jurisdictions, and each state enforces its own taxation, pricing mechanisms, licensing and distribution conditions and regulations along the supply chain. States may also impose additional labelling requirements. As alcohol tax is a key share of state revenue collection (and outside the central government's GST system), taxation rates can rise steeply and at short notice. There is sometimes a lack of regulatory transparency around state-level taxes, and often discriminatory tax application between local and out-of-state (including international) products. The states, through their excise policy, control the supply chain of spirits, including distribution, licensing, labelling, packaging and retail requirements. Moreover, obtaining the correct procedures and processes in each state is often difficult, and where online information is not always available. Changes can occur without notice. This undermines the concept of a "single country single market" and adds to the cost and complexity of exporting to India.

It is important to ensure that any tariff reductions granted by Indian authorities are not compensated by an increase of taxes and other levies on imported products.

We would suggest the inclusion of a clause with the following effect:

Parties[3] commit to grant tariff liberalization in good faith and to ensure that reduction will not be compensated by the increase of taxes and other levies on imported products in a different form, including at state level. If this is the case, the other party reserves the right to revisit its schedule of commitments and to reduce benefits granted proportionally.

Indian exports of "whisky" to Australia

CIABC has made public its position on trade liberalisation in the Australian negotiations which is consistent with India's ask for access for Indian whisky to the UK market in the Australian negotiations. The Indian food standards authority use of the term "blended whisky" for an alcohol beverage which can use grain spirit, including from molasses, aged for one year (including the use of wood chips rather than barrels) and allows the addition of sugar. This definition would not meet the standards of whisky in Australia or other major whisky producing nations (UK, EU, US or Japan).

We note that currently s105 of the Customs Act in Australia prevents importation of unmatured whisky. The Australian Border Force is in the process of considering whether to grant exceptions to this maturation requirement for certain products such as "Brazilian cachaca". We note that in the UK there is a whisky standard applicable which places conditions on what can be called "whisky",

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[3] 1 « Parties » should be understood as both the Federal Government and individual states.

and the nomenclature for products made other than from grain and cereals is "spirit drink". In Australia, we would advocate for the same principles to apply (maturation in wood barrels for no less than 2 years, product of grain or cereal mash) to ensure the high quality and standards of our whiskies expected by Australian consumers is maintained. Calling the Indian-styled spirits drink "whisky" would devalue the category for all producers, including Australian producers.

We would also not support any qualifier (e.g. "Indian-style whisky") that would mislead Australian consumers. Australian Distillers have committed to a process to develop comprehensive technical standards for the major styles of distilled spirits, and to establish a process around label integrity to address consumer expectations.

Non-tariff barriers

Canteen Store Department - ban on imported spirits

Following Prime Minister Modi's May 2020 address to the Nation, for a 'Self-Reliant India', the Indian Ministry of Defence issued an order that procurement of directly imported items (alcoholic beverages) shall not be undertaken by the Military Channel (Canteen Store Department, or CSD). This issue is not limited to alcoholic beverages, but spans across a total of 422 different items for a range of products. Sales of imported alcoholic beverages in this channel accounted for 1.1 million 9 litre cases.

The Indian government continues to maintain that allowing the sale of local and locally bottled, but not imported bottled spirits, in these outlets is not discriminatory or contrary to WTO rules as personnel who want a spirit brand only available as BIO (Bottled in Origin) are free to go elsewhere. However, given that the ban treats imported spirits less favourably than domestic spirits in relation to the conditions of sale within the CSD channel, it is inconsistent with India's obligations under Article III:4 of the GATT 1994.

Protection of future Australian geographic indicators

We expect that following completion of the Australia-European Union FTA, a domestic administrative and regulatory system designed to recognise and protect European geographic indicators, including for distilled spirits, will be developed. Our members have said that as a matter of reciprocity, the EU should protect future geographic indicators as they are developed for the Australian distilled spirits industry. There is strong interest among local distillers to develop and protect Australian geographic indicators, both for domestic and export use, and we ask that the future use of Australian GIs for distilled spirits be recognised in a final trade agreement with India, and that the administration of any GI scheme be of minimal burden to exporters.

Cooperation on rules related to food registration & inspection

FSSAI Draft Food Safety and Standards (Import) Amendment Regulation (2020) related to inclusion of registration & inspection of Foreign Food manufacturing facilities, which was notified to the TBT committee on 25 November (G/TBT/N/IND/180) provides for the registration and inspection of Foreign Food manufacturing facilities. The requirements are not proportionate to the level of risk inherent to spirit beverages and would constitute an important barrier to trade if applied. India has indicated that some products such as spirits would fall into a "low-risk products" category - cooperation on defining what constitutes low-risk products and on exempting them from these requirements would be a priority.

Cooperation on alcoholic beverages standards

The revised alcoholic beverages standard (notified as G/TBT/N/IND/104 & published in the Indian Gazette on 18 December 2020) presents a number of significant issues for spirits producers, the primary one relating to the limitation of % ABV across the categories to a maximum 50% ABV which could prevent certain matured products from being exported to India. For example, the US has established a minimum of 40% ABV for all spirits (excluding flavoured spirits, liqueurs, cordials, and specialties), with no upper limit and Australia has a 37% ABV lower threshold but no maximum. There are also unjustified labelling requirements and restrictive requirements with regard to the length of the maturation process. Regulatory cooperation on these standards would ensure that all spirits could continue to be imported into India in the future.

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