EXCISE TARIFF AMENDMENT BILL (NO. 1) 1997

BACKGROUND TO THE INQUIRY

The Excise Tariff Amendment Bill (No. 1) 1997 contains amendments to the *Excise Tariff Act 1921* (The Tariff Act).

The Bill was introduced into the House of Representatives on 5 March 1997 and passed to the Senate on 20 March 1997. Subsequently, on 13 May 1997 the Senate referred provisions of the Bill to the Senate Economics Legislation Committee for inquiry and report by 16 June 1997. The Senate Selection of Bills Committee Report No. 7 of 1997 stated that the principle areas of the Bill for the Committee's consideration should be the:

> *Unintended consequences of the Bill.*

The Committee received 16 submissions to its inquiry (see Appendix 1) and conducted a public hearing on 30 May 1997 (see Appendix 2).

EFFECT OF THE BILL

The Excise Tariff Amendment Bill (No. 1) 1997 amends the *Excise Tariff Act 1921* (The Tariff Act) to ensure the continuing excisability of all beverages which contain distilled alcohol, including spirits, regardless of their alcohol content. The amendments apply retrospectively from 3 February 1996.

Government Response

The *Second Reading Speech* to the Bill explains the Government's rationale for the change:

> Under item 2 of the Schedule to the Tariff Act, spirituous beverages are subject to duties of excise, which are calculated at a dollar amount per litre of alcohol in each beverage. This definition was introduced into the Tariff Act in 1985 with the intention of making excisable any beverage that contained a spirit. Since that time, all such beverages have been treated as excisable regardless of their alcohol content, including beverages whose alcohol content ranges from 5% to 9% (for example the rum and cola mixer drinks).
>
> In November 1994, Carlton and United Breweries (CUB) commenced the manufacture of the product known as "Subzero Alcoholic Soda". At that time, the beverage was made from spirit obtained from the de-alcoholisation of beer and had approximately 5.5% alcohol content. The Australian Customs Service (the ACS) considered "Subzero" excisable under sub-item 2(H) of the Schedule to the Tariff Act as a spirituous beverage. CUB appealed the decision of the ACS to the Administrative Appeals Tribunal (AAT).

On 7 June 1996, the AAT determined that the production of "Subzero", with such a low alcohol content by volume, could not be described as spirituous and was therefore not excisable under sub-item 2(H). The decision was based on what the AAT considered is commonly regarded as the definition of "spirit" in the community, which is a strong alcoholic liquor usually containing not less than 37% alcohol by volume.

The ACS is also appealing this decision to the Federal Court and has continued to impose excise duty under sub-item 2(H) on all other similar low alcohol beverages.

In order to ensure the continuing excisability of all beverages containing distilled alcohol, it is proposed to amend the Tariff Act to:

(i) delete all references to "spirituous beverages" in the Schedule and item 2 (item 1 of Schedule 1 refers); and

(ii) clarify that excise liability is imposed upon all beverages which contain distilled alcohol (except fortified wine)(new sub-item 2(H), item 2 of Schedule 1 refers).

By removing the term "spirituous" from the present sub-item 2(H), this will remove any connotation as to the strength that an alcoholic beverage must be before it will be excisable. All such beverages will continue to be excisable regardless of their alcohol content and the excise duty will be calculated according to the alcohol content of the beverages.

The Retrospective Intention of the Bill

The amendments will take effect on and from 3 February 1996. The commencement of the amendments on this date is considered justifiable on the following grounds:

(a) As previously referred to, the intention of the term "spirituous beverages" was to make excisable any beverage that contained a spirit. There was no dispute with manufacturers of the low alcohol beverages using distilled alcohol as to their excisability nor to their proper classification to sub-item 2(H) of the Schedule to the Tariff Act. It is considered that the amendments are not altering the law with respect to alcoholic beverages as it stood at the time of the "Subzero" decision but are merely clarifying what was the status quo on that date. It is therefore considered appropriate that the amendments commence on 3 February 1996 to remove the technical loophole which was uncovered in the Tariff by that decision, which this amending legislation is now removing.

(b) The commencement of the amendments on 3 February 1996 would not require the retrospective recovery of any excise duty from the manufacturers of the alcoholic beverages. The excise duty has continued to be paid by the manufacturers, under deposit, and the 3 February 1996 commencement would protect the Government against all claims for recovery of this duty. If the amendments do not commence on 3 February 1996, however, the Government might be liable to pay $12.6 million in refunds of excise duty if the Federal Court confirms the AAT decision in favour of CUB. Given that the products manufactured by these companies have been sold duty paid, such a favourable decision to the companies would represent a windfall gain to them, with little chance that it would be returned to the consumers of the product.

As a result of the decision of the AAT in the "Subzero case", CUB was immediately given a refund of the excise duty that it paid under deposit in respect of "Subzero" (being $233,604). This amount will not be recovered from CUB as CUB has already received that money in pursuance of successful legal proceedings which are preserved by the Amendment Act (see sub-item 5(2) of Schedule 1).

Financial Impact Statement

The amendments will involve a minor change to the excise treatment of beverages containing brandy (see item 4 of Schedule 1) which is expected to result in reductions to the revenue of approximately $290,000 per annum. Otherwise, the amendments proposed in the Amendment Act are only clarifying the law as outlined above and involve no other change in the excise treatment of beverages containing distilled alcohol. These amendments have no financial impact. Without the retrospective commencement of 3 February 1996, however, the Government will have a contingent liability of approximately $12.6 million.

Summary of the Government Response at the Public Hearing

The government maintained that the Bill was designed to maintain the status quo which existed prior to the AAT decision on Subzero. They had considered the proposal for other alcoholic beverages to be brought within the present excise regime last year and rejected it on the basis that it was a new tax.

Senator Brownhill informed the Committee that:

> *"The government's policy that spirits and beverages containing spirits are subject to excise only on distilled alcohol content means that it has always been open to manufacturers to make alcohol obtained by fermentation".*[1]

On the question of retrospectivity Mr Corke, Principal Lawyer of litigation with ACS summed up the government position:

> *"The principle argument in relation to retrospectivity in this particular instance is simply the fact that it was apparently accepted by all facets of the industry that a product such as Subzero, which is derived by means of a distillation process, was always excisable. The Federal Court decided that was not so, but the decision was made to maintain that position. That is a value call that has to be made and that is the reason for it".*[2]

[1] Evidence p. E 81
[2] Evidence p. E 84

GENERAL ISSUES RAISED IN EVIDENCE

Equal Alcohol should equal Equal Tax

Mr Broderick, of Distilled Spirits Industry Council of Australia Inc. (DSICA) informed the Committee that the rates of federal taxation on alcoholic beverages are highly divergent and discriminatory.[3] He presented a slide which compared the wholesale sale tax equalivent for each category:

- wine, cider and designer alcoholic drinks 26%
- beer 70%
- pre-mixed spirits 90%
- spirits and liqueurs 215%

DSICA consider there is no economic or social justification to support the present taxation policy applying to spirits, wine and beer.[4] In the past taxation variances have been absorbed without a dramatic migration of consumers to lower taxed products. Recently, however, companies have been taking advantage of the current taxation arrangements and the rapid advances in technology, by producing a variety alcohol drinks from a range of low-tax or non-excisable alcohol bases.

Mr Broderick stated to the Committee that:

> *"The highly competitive nature of the alcohol industry is forcing rival firms to take advantage of low-tax alcohol bases and to adapt their product ranges accordingly. This is distorting the market, and the emergence of a non-excisable alcohol category is inevitably eroding revenue in such a declining market."*[5]

The alcoholic products affected by the Bill are a wide range of ready-to-drink (RTD) alcohol products. It includes canned and bottled beer, pre-mixed spirits, ciders, wine coolers and designer drinks in single-serve containers. Although alcoholic consumption in Australia has declined by 20% from 1981 to 1995 the RTD market has been a growth sector and it now comprises 45% of the total alcohol market.[6]

The Australian food standards code have established a section for alcoholic beverages, known as standard P. Standard P clearly defines each of the alcoholic beverages which comprises six groups. These are as follows:

P1	Beer
P2	Non grape fruit wines
P3	Spirits
P4	Wine
P5	**Designer drinks and pre-mixed spirits**
P6	Wine products that are over 70% wine

Within the RTD market innovative low-tax products or designer drinks have emerged most rapidly. From a very negligible base four years ago these products have gained a 15% share

[3] Evidence p. E 48
[4] Evidence p. E 48
[5] Evidence p. E 48
[6] Evidence p. E 48

of the RTD market. RTD products fall within three taxation regimes and these different regimes play a crucial role in consumer demand and unfairly impact on some products over others.[7]

Mr Broderick informed the Committee that government revenue of $70 million collected from spirit based, pre-mixed products in the RTD market was under threat from product substitution.[8] The recent Federal Court determination said 'The definition of spirituous beverage and spirit does not extend to a beverage containing 5.5 per cent by volume of alcohol.' This has caused unforeseen consequences of the Excise Tariff Amendment Bill (No. 1), which is to secure government revenue losses arising from the AAT decision.

Mr Broderick stated:

> *"The bill arbitrarily reimposes excise on one market competitor—that is, pre-mixed spirits—whilst direct competitors with different alcohol bases, designer drinks, and wine coolers remain non-excisable. Moreover, the bill establishes unequivocally for the first time that excise is only to be levied on the distilled spirit component of pre-mixed drinks. All manufacturers are now looking at ways of reformulating their products so that less spirit is incorporated".*[9]

Dr Muller of the Bundaberg District Tourism & Development Board, made the point that the intent of legislation was to close the loophole created by the AAT's decision and the Federal Court with the CUB's product "Subzero" because of the way it was manufactured. He added:

> *" In fact, CUB now makes Subzero by a different process and it will completely escape the impact of the legislation anyway. Subzero will continue to be non-excisable, even though the intent of this legislation was to close a loophole created by the Subzero case".*[10]

As at 1 February 1997 the taxation regime applying to P5 products had 6 different rates. The taxation of RTD products are set out in Table 1:

Table 1

RTD Category	Tax Rate
Packaged beer (Food Standard P1)	Beer Rate: excise duty of $15.89 per Litre of Alcohol above 1.15%, plus 22% Wholesale Sales Tax (WST)
100% fermented designer drinks (Food Standard P5) ie. excluding beer and pre-mixed spirits	0 to 1.15% - low alcohol wine rate: no excise duty, 12% WST Above 1.15% - wine rate: no excise duty, 26% WST
Pre-mixed Spirits (Food Standard P5)	Spirits Rate: excise duty of $36.99 per Litre of Alcohol, plus 22% WST

Source: UDA Submission No. 11, p.5

[7] Evidence p. E 48
[8] Evidence p. E 48
[9] Evidence p. E 49
[10] Evidence p. E 75

The Greens (WA) have proposed a three-tiered taxation regime for P5 products which is detailed in Table 2 below:

Table 2

RTD Category	% of Alcohol	New Tax Rate
Designer Drinks or Pre-mixed Spirits	Up to 5%	*Beer Rate*: excise duty of $15.89 per Litre of Alcohol above 1.15%, plus 22% Wholesale Sales Tax (WST)
Designer Drinks or Pre-mixed Spirits	over 5% to 8%	*Stepped rate*: excise duty of $28.00 per litre of alcohol, plus 22% WST
High strength Designer Drinks or Pre-mixed Spirits	over 8%	*Spirits Rate*: excise duty of $36.99 per Litre of Alcohol, plus 22% WST

Source: UDA Submission No. 11, pp. 9-12

DSICA members support this proposal subject to some minor changes. They saw the main benefits of taxing P5 products on their alcohol content and not how they are produced would be to:

- protect existing revenue;
- eliminate future revenue threats;
- introduce certainty to tax collection;
- prevent inefficient investment decisions and therefore economic waste;
- internationally compatible; and
- meets government commitment - no new taxes on wine, wine products and cider.[11]

The submission from United Distillers (Aust.) Limited (UDA) listed several unintended consequences of the Bill including:

- Continued tax loophole for 100% fermented P5 designer drinks which would not be subject to any excise tax, but would impose excise duty at the full spirit rate on a P5 product which has been produced by distillation;

- A significant tax incentive for spirits manufacturers to develop "hybrid" products to reduce excise payments. UDA estimated an additional cost to revenue of $36 million in a full year;

- It will encourage imports of hybrid alcohol products and this will impact adversely on Australian investments and Australian producers from pursuing export markets in Asia; and

- It will not encourage moderate consumption of RTD's and will discriminate against many lower alcohol products with a distilled alcohol base.[12]

Representatives from United Distillers in evidence to the Committee expressed concern that these unintended consequences will have an adverse affect on their business if the Bill

[11] Evidence p. E 49
[12] UDA submission No. 11, pp. 9-12

remained unchanged. Although it is not their preferred direction to convert their Huntingdale plant from distillation to fermentation, Mr Duthy, of UDA stated:

> *"... I can assure you on the basis of $9 a case saving it does not take too long before you justify the capital investment to do that. That will enable us total flexibility for any range of spirit and fermented in any product".*

When asked by the Committee if they would support a two-tier tax structure, that would encourage manufacturers to produce lower alcohol products thereby removing the need for an intermediate rate Mr Ryan of UDA responded:

> *"That is precisely an option that we have been considering; and, in the DSICA and the UDA submissions, we have been saying that we support the Greens amendments, subject to adjustments. The adjustments we are talking about are in relation to the rates and where they might be struck."*

Mr Ryan of UDA also informed the Committee that one of the major problems with the Green's amendment is the high cost to revenue of somewhere between $12 million and $19 million a year, based on their knowledge of the market. However, this problem is balanced by the fact that if the Bill goes through in its current form the cost to revenue could be over $30 million a year as manufacturers move to produce hybrid products derived from 100% fermentation thus avoiding paying any excise duty at all.[13]

Mr Duthy of UDA stated:

> *"One of the most important points to come out of this morning is that there is a positive social trade-off to the short-term potential revenue slide."*[14]

Social Impact of Bill

A number of submissions were received from Health organisations concerned with the proposed amendments to the Excise Tariff Amendment Bill (No. 1) 1997 (the Bill) and the anomalies that exist in the current taxation regime on all forms of alcohol.

The submission from the University of NSW basically outlined those concerns as follows:

- Under the proposed *Excise Tariff Amendment Bill (No. 1) 1997*, high alcohol content ready-to-drink beverages (RTD's) produced with a non-excisable alcohol base will pay no excise duty. While low strength RTD's produced with a distilled alcohol base will subject to excise duty at the same rate that applies to full strength spirits.

- From a health perspective, all RTD's should be taxed in accordance with their alcohol content so as to encourage moderate and responsible alcohol consumption.

- The Bill does not establish a taxation system whereby a progressive excise is levied upon all P5 beverages in accordance with their increasing alcohol content.[15]

[13] Evidence p. E 52
[14] Evidence p. E 59
[15] The University of NSW submission No. 2, p. 3

The Alcohol and other Drugs Council of Australia (AODCA) were opposed to the current Bill as it represents an attempt to distinguish between alcohol products based upon their method of production rather than their alcohol content. The Bill also distorts the alcohol taxation regime and reinforces a form of industry protection that is unjustifiable from either a health or economic perspective.[16] Also the main tenet of the public health position in relation to alcohol consumption is that price is probably the principal determinant of consumption in a situation where the availability of alcohol is widespread.[17]

At the hearing, Mr Crosbie of AODCA stated that his organisation supported the introduction of a differential taxation system based on alcohol content. Any system that gave incentives to manufacturers to produce lower alcohol products had their blessing.[18] Mr Crosbie stated:

> *".... alcohol as alcohol and believe that from a health perspective it is alcohol and its misuse that cause the problems and therefore products should be taxed on the basis of alcohol content. We do not believe that whether something is made from sugar, potato or something else should be the basis for differentiating. Certainly, from a health perspective, it makes no difference where the alcohol comes from".*

When asked if he saw the need for a intermediate rate of tax for P5 product as proposed by the Green's (WA) or would a two-tier tax structure below 5% and above 5% be sufficient, Mr Crosbie said:

> *"It would certainly still achieve our goal of encouraging manufacturers to produce lower than five per cent standard doses of spirits. For us, that would be a positive outcome".*

Mr Duthy of UDA said they saw themselves as being responsible alcohol beverage marketeers[19] and they go to great lengths to promote moderate consumption of alcohol[20]. The alcohol content of RTD products are lower then their derivatives and there has been commercial value for UDA and other manufacturers to produce them that way. Also, these sorts of products do have a standard drink which regulates and moderates the consumption of alcohol. He stated:

> *"You know that you are drinking at five per cent alcohol whereas when you are mixing your own drinks they can be at any strength. So I think these are responsibly marketed products from the point of view of knowing your alcohol intake. I think that is one of the most important things in regulating alcohol in moderation and avoiding excess".*[21]

The AODCA supported the growth of the RTD market in preference to consumers mixing their own drinks and developing very unsafe serving practices.[22]

---

[16] The Alcohol and other Drugs Council of Australia submission No. 5, p. 7
[17] National Centre for Research into the Prevention of Drug Abuse submission No. 7, p. 1
[18] Evidence p. E 63
[19] Evidence p. E 54
[20] Evidence p. E 57
[21] Evidence p. E 54
[22] Evidence p. E 65

Retrospective effect of the Bill

The Institute of Chartered Accountants (ICA) and the Law Council of Australia (LCA) stated in their submissions that the retrospective aspects of the Bill should be withdrawn as the sole justification put forward by the Australian Customs Service (ACS) is revenue savings. The general arguments put forward by ICA against retrospective legislation are as follows:[23]

> Natural Justice
>
> Retrospective legislation offends against the principles of natural justice and trespasses on the basic tenet of our legal system that those subject to the law are entitled to be treated according to what the law says at the relevant time and according to what the law means at the time as declared by the courts.
>
> Uncertainty
>
> Retrospective legislation brings uncertainty to the environment in which business operates, particularly where the motive for that legislation is unambiguously revenue raising.
>
> Personal rights and liberties
>
> Retrospective legislation has the potential to trespass unduly on the personal rights and liberties of people, since it withdraws a section of the communities legal rights with retrospective effect.
>
> Circumvention of recovery proceedings
>
> Retrospective legislation defeats the judicial process by circumventing recovery proceedings, to the financial disadvantages of the claimants.
>
> Sovereign risk
>
> Retrospective legislation raises the perception internationally of *sovereign risk* in Australia. Sovereign risk is the principle that laws cannot bind the sovereign. The government, by taking a stand on sovereign risk, risks being seen as irresponsible and Australia runs the risk of being seen as an unsatisfactory place to do business.
>
> Transparency
>
> Retrospective legislation is not transparent since it is based on past liabilities. The government should ensure that tax mechanisms are transparent so taxpayers are able to determine how much tax they have to pay and how it should be paid.

Mr Feil of ICA argued to the Committee in evidence that Australia cannot create certainty in its legislation on a retrospective basis and continue to encourage multinational and national companies to invest in Australia.[24] He stated that the retrospectivity that is suggested in this Bill goes beyond retrospective measures that have been taken in the past. The principle of

[23] The Institute of Chartered Accountants in Australia submission No. 3, pp. 2-4
[24] Evidence p. E 67

retrospectivity is where there has been massive rorting, fraud or illegality then justification for such legislation may be warranted.[25]

In relation to revenue losses even in the cases of large losses the argument is less convincing although there maybe circumstances where it can be justified.[26] Mr Feil and the ICA believes:

> *"that the present case, if it is allowed to be retrospective, will create a very dangerous precedent for retrospectivity of other amounts of money."*

The LCA noted that opposition to the concept of retrospective legislation has been expressed by all the major political parties during the debate on the Diesel Fuel Legislation in 1995.[27]

Although there is an appeal pending against the Administrative Appeals Tribunal (AAT) by the ACS, the Bill proposes to retrospectively amend the law as a consequence of a decision by the AAT before the outcome the appeal was known and this was of a particular concern to the LCA.[28]

Mr Feil said if the retrospective aspect of the Bill was not passed by Parliament companies would be eligible to claim a refund for the excise duty they had paid under deposit but would be limited to a 12 month period.[29] It was estimated that the total refund would be around $12.6 million.

The government view about the retrospective aspect of the Bill are set out on page 2 of the report.

Other Issues

The Bundaberg District Tourism & Development Board were very concerned with the adverse impact the Bill, as its proposed, will have on the local Bundaberg economy and the regional tourism industry.[30]

In the submission from Bundaberg Distilling Company Pty Ltd it highlighted a number of issues including:[31]

> Tax anomaly
>
> Over recent years Bundaberg Distillers has had to compete with an increasing number of designer drinks which do not incur any excise duty. The proposed Bill will further entrench this tax anomaly and will compel the company to experiment with non-excisable alcohol sources instead of the rum spirit and produce "Hybrid" products.

[25] Evidence p. E 68
[26] Evidence p. E 68
[27] Law Council of Australia submission No. 16, p. 1
[28] Law Council of Australia submission No. 16, p. 1
[29] Evidence p. E 69
[30] Bundaberg District Tourism & Development Board submission No. 8, p. 1
[31] Bundaberg Distilling Company submission No. 10, p. 1

Diversion from export efforts

The effect of the Bill will inhibit Bundaberg Distillers to maintain a strong domestic market so it can fully develop its export potential. It will be forced to produce non-branded products that will have little export capabilities.

Increased imports and offshore investments

As Bundaberg Distillers do not have its own brewing facilities at its plant it would have to arrange and import the production of substitute fermented hybrid products from overseas. In time this will result in reduction in investment in its Australian plant and technology and shift some of its investment offshore.

Adverse regional effects

Bundaberg Distillers supports many regional suppliers in the production of its RTD products, including the suppliers of molasses, yeast, ginger beer, label producers, etc. If Bundaberg Distillers were to start producing hybrid beverages the result would lead to a reduction in the use of their suppliers products and impact on the suppliers profits. This will lead to direct and indirect job losses in a city that already has a major unemployment problem. The current figure (Feb 1997) for Bundaberg and surrounds is 17.2%, compared with a national figure of 9.8%.

Representatives from the Bundaberg District Tourism & Development Board, Bundaberg Distilling Company Pty Ltd and Bundaberg Sugar presented to the Committee a detailed case on the adverse impact of the Bill and what could be done to avoid the situations detailed above. In summing up their case Mr Woodward of Bundaberg Distilling stated their message is pretty clear:

> *"fix up the tax anomaly and don't put into law an incentive for the production of low tax hybrid products. We just think that is absolutely ridiculous. We are not asking for a special break. What we are asking for is a fair go. We think we have been up against it for years. Bundaberg Distilling has no advantages under the current system. We are looking for a fair go in this pretty competitive sector of the market."*[32]

They all supported the Green's (WA) amendments to the Bill, with some minor adjustments as this will create a level playing field for all alcoholic beverages in the P5 category of the Australian Food Standards. Mr Woodward of Bundaberg Distilling said they were prepared to examine alternative tax structures but were concerned that by pushing the thresholds lower it may not achieve revenue neutrality as was suggested by DSICA and UDA.[33]

He went on to inform the Committee:

> *"There will inevitably be a push to the lower end as an incentive, but I would also point out that that does not necessarily mean that people will drink in greater moderation, which we would support. What it does mean is that if they want a bigger kick they will go and use something else, whether it is wine or straight spirits or cider. The fact is that you can get alcohol from many other sources and although this fixes the P5 and*

[32] Evidence p. E 78
[33] Evidence p. E 78

makes that a much more level playing field, people can get a kick somewhere else. It will not fix all of the problems but it is a hell of a good start."[34]

CONCLUSIONS & RECOMMENDATION

1)	**THE COMMITTEE RECOMMENDS** that the bill be passed.
2)	In making the recommendation that the Bill proceed the Committee agrees that any loophole in the principal legislation that allowed a class of alcoholic beverage to escape the revenue net should be closed.

However the Committee noted a number of serious concerns raised by the industry about differing tax treatments of alcohol according to the production method used. This tax treatment also has social consequences as set out earlier in the report. The committee recommends that these matters should be the subject of an immediate review by government and that a review should look at the equity of tax treatment between RTD products and designer drinks in the P5 category particular reference to:

a) the social effect on consumption patterns caused by the differential taxation treatment according to the production method of the alcohol;

b) Potential loss of government revenue with a change to the use of different forms of alcohol (other than distilled spirits) in RTD products; and

c) The possibility of introducing common taxation treatment for RTD products with an alcohol content of 5% or less and those above 5%.

Senator Alan Ferguson
Chairman

[34] Evidence p. E 78

MINORITY REPORT

Senator Jacinta Collins
Australian Labor Party

The inquiry into the *Excise Tariff Amendment Bill (No. 1) 1997* received a number of submissions which were critical of the Bill in its current form and in particular the consequences of the Bill being enacted.

These consequences include

- the failure to remove a tax anomaly for some fermented beverages;
- an incentive for beverage manufacturers to develop hybrid drinks which substitute fermented alcohol for distilled alcohol;
- disincentives to local production of some beverages (and incentives to import substitute beverages) which could impact on future trade, investment, employment and export opportunities for Australia;
- failure to encourage moderate consumption of lower alcohol beverages;
- failure to encourage production of lower alcohol beverages; and
- retrospective application of the legislation.

Whilst not opposing the specific measures within the Bill, the Opposition shares many of the concerns that were raised in evidence before the Committee.

The taxation of beverages falling within the P5 food standard are clearly anomalous. The Opposition considers that the Government should have used the opportunity afforded by the Bill to address these anomalies.

Instead, the bill simply proposes to ensure that the proportion of a beverage which constitutes *distilled* alcohol will be subjected to excise.

Witnesses before the Committee have pointed out that this will now provide a powerful incentive for firms to adjust their production processes to enable substitution of *fermented* alcohol for distilled alcohol.

If this substitution eventuates, it will erode the revenue collections of the Commonwealth by an estimated $30 million over the next three years.

In addition, in the immediate term passage of the Bill will provide a competitive advantage for those "ready to drink" products already containing fermented alcohol. Evidence showed that many of the 100% fermented P5 products taking advantage of the tax loophole are fully imported from New Zealand.
Addressing these issues is clearly not an issue of imposing a new tax, but rather a matter of correcting an existing taxation anomaly.

Failure to act will introduce competitive distortions into the beverage market and may also influence investment decisions. This will probably benefit offshore producers to the detriment of local producers.

Failure to act will also result in a lack of incentive to produce lower alcohol beverages, which is not a desirable outcome from a public health perspective.

The provisions of the bill are not opposed by the Opposition. However, in isolation they simply compound the anomalies in the excise regime applying to beverages.

Recommendation

The Opposition recommends that the Government use the opportunity of this legislation to address the anomalies contained in the current excise regime.

Senator Jacinta Collins
Australian Labor Party

MINORITY REPORT

Senator Andrew Murray
Australian Democrats

1. Review

The submissions to the Committee, both those written and those made at the Public Hearing on 30 May 1997, identify a number of problems. It appears evident to me that many of these problems could have been fixed prior to tabling of the Bill in the Senate, if the Minister and his Department had consulted more, and reacted appropriately to the obvious shortcomings in this Bill, as identified early on by experienced observers.

I have not prioritised these problems, but the main ones are :

Retrospectivity

The Bill will be retrospective to 3 February 1996. As early as November 1994, Carlton United Breweries had made it clear that it did not consider or accept from the outset that excise was payable. The AAT and Court decisions which validated their stance may have consequences for other producers and distributors. The retrospectivity issue therefore has two components - that pertaining to excise contested prior to 3 February 1996, and that relative to the period from then to date.

Revenue Neutrality

The Bill does not result in a revenue neutral, nor a revenue gaining position. From the evidence advanced, the unintended consequence of this Bill appears undoubtedly to result in very significant revenue losses, as a result of substitutability - both from foreign sources and alternative processes.

Substitutability

Evidence was led that to avoid the cost consequences of the Bill, alternative technical production processes could readily be adopted by producers, so negating the intention of the Bill.

The evidence led also clearly threatened that the effect of the Bill would be to result in tax minimisation through very considerable import substitution for Australian raw material. The ease with which Australian made product can be substituted by foreign made product at a price beneficial rate for the affected companies, has unpalatable and unnecessary

consequences. Those are in terms of lost jobs, growth, investment, and exports for Australia, and increased imports and foreign liabilities.

Pricing

All things being equal, it is the role of excise duty on alcohol to contribute towards more socially productive styles of consumption. This Bill does not contribute at all to that goal.

Taxation Equity, Fairness, and Consistency

In its failure to resolve the inconsistencies and inequalities of some excise taxation on alcohol drinks categories, this Bill ignores the opportunity to rationalise and simplify the RTD category's taxation.

2. The Majority Committee Report

The Australian Democrats concur with the Majority Committee Report in concluding that industry and community organisations have revealed a number of adverse social and economic consequences due to the application of different tax treatment according to the method of production.

The Australian Democrats see no reason why the Majority of the Committee (the Government Senators) should not avail themselves of the opportunity provided by this Inquiry to resolve any adverse consequences by appropriately amending the Bill. To assist it, the Committee already has before it numerous submissions highlighting concerns and proposing solutions.

We see no reason for these matters to be the subject of an identical repeat inquiry. This is simply a waste of time and resources. Moreover, it is unfair to witnesses and those who made submissions, and it is also unfair to subject industry to unnecessary delays and uncertainties in resolving acknowledged concerns. This is not a difficult matter, with complex policy and revenue consequences. A Minister, Department, and Committee with an open, willing and objective approach can readily address these problems.

We would urge the Government to save time and effort by itself amending its Bill appropriately.

Recommendation

The Australian Democrats will seek to amend the Bill, or support amendments to the Bill, which meet the most significant of the problems identified above.

Senator Andrew Murray
Australian Democrats