



Distilled Spirits
Industry Council
of Australia Inc.

Submission to Review of the Schedule to the Excise Tariff Act

August 2005

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Review of the Schedule to the Excise Tariff Act:

Submission by the Distilled Spirits Industry Council of Australia (DSICA)

August 2005

1. Executive Summary

- The Distilled Spirits Industry Council of Australia (DSICA) is the peak industry body representing the interests of distilled spirits manufacturers and importers in Australia.
- DSICA commends the Government on its initiative to undertake a review of the Schedule to the *Excise Tariff Act 1921* (the Act) (NB: in this submission, we will refer to this as simply “the Schedule”). In this context, DSICA also commends the Government for its focus on simplicity and minimising compliance costs on taxpayers as the focus for the review.
- DSICA estimates that the Government will collect \$1,715m in excise and customs duties on spirits in the 2005-06 financial year.
 - DSICA members act as the “collectors” and “remitters” of a significant portion of this revenue.
 - Any means by which the collection and remission of this revenue can be simplified and streamlined is of interest to DSICA and its members.
- DSICA has reviewed the Industry Discussion Paper (the Discussion Paper) released by the Assistant Treasurer which outlines the scope of the review.
 - This submission addresses both the technical issues DSICA has identified within the Discussion Paper, and the issues raised under the relevant “Stakeholder views sought” requests.
 - DSICA’s comments in relation to specific issues raised in the Discussion Paper are provided in the sections below and are cross referenced to where the issue appears in the Discussion Paper.
 - The comments within this response apply only to distilled spirituous beverages, unless otherwise stated.
- DSICA appreciates that this review is not a review of policy, and will confine its comments to administrative issues, and to policy-related issues of an administrative nature.

2. General Comments

- There are significant relationships between the Schedule, the *Spirits Act 1906* (the Spirits Act), the *Distillation Act 1901* (the Distillation Act), the *Excise Act 1901* (the Excise Act), and the *Excise Regulations 1925* (the Excise Regulations), as well as with the Food Standards Australia New Zealand (FSANZ) Food Standards Code (the Food Standards Code). These relationships are not addressed in the Discussion Paper.
 - As the review is focussing on simplicity, there will be a need to ensure that there is consistency in the inter-relationships between relevant legislation (in particular regarding definitions of products) when formulating recommendations in relation to the future content of the Schedule.

3. Specific Comments - Chapter 2: Relationship of the Customs Tariff to the Excise Tariff (EEGs)

Issue 1: Interaction between customs and excise tariffs (Section 2.3, page 3-4 of the Discussion Paper)

- DSICA commends the authors for the detailed explanation in the Discussion Paper on the interaction between the customs and excise tariffs and the harmonized classification system. This is a very clear and concise summary of a complex issue.
- Treasury has sought views on combining sub-items in the Schedule where duty rates are identical (eg various spirits other than brandy).
 - This, if implemented for beverages of an alcoholic strength greater than 10% alcohol by volume (abv), could result in say fruit brandy, whisky, rum, liqueurs and other excisable beverages greater than 10% abv becoming one sub-item under existing Item 2 of the Schedule.
- DSICA makes the following observations:
 - Brandy, rum and whisky are different spirituous products by virtue of the operation of the Spirits Act. Each is a separate product as legally defined by that Act, and has differing classification requirements to be met.
 - Similarly, liqueurs are a different product as defined, and must also meet certain (and different) definitional requirements of the Food Standards Code.
 - However, none of these definitional issues affect the application of excise duty, as all of these products are subject to excise duty at the same rate.
 - We note that Chapter 22, Schedule 3 to the *Customs Tariff Act 1995* (the Customs Tariff), actually has more sub-items than found in the Schedule, further separating out “gin” and “vodka” as spirituous beverages. DSICA accepts that the reasons for these separate sub-items in the Customs Tariff do not impact on the redrafting options for the Schedule.
 - The ability to acquire statistical data at a product level has in the past proved extremely useful in terms of research for tax policy development, and indeed in other areas of research and social policy development. Government and industry has therefore benefited from the ability to access data at a more detailed level of classification (ie whether by using statistical codes under the Customs Tariff, or by having separate sub-items in the Schedule).
 - DSICA supports the Treasury view that differentiation for purely statistical purposes should not be included in the primary legislation. However, would it be possible to develop a Statistical Code Matrix that was used for payment purposes to the Australian Taxation Office (ATO)? If so, this would completely remove the need for the separate sub-items.
 - The development of such a Matrix to cover both excise tariff sub-items AND customs tariff sub-items would be potentially a major simplification tool for industry, as the primary legislation could be drafted with greater clarity and simplicity, possibly in relation to both tariffs.
 - DSICA would be keen to explore a new approach to this issue, in consultation with Treasury (as appropriate), the ATO and the Australian Bureau of Statistics (ABS). For example, DSICA has recently worked closely with the ABS, which has recently revised significantly its report *Apparent Alcohol Consumption in Australia*. This report now identifies Ready to Drink beverages (RTDs) as a separate category.

- DSICA flags the possibility of introducing further statistical keys in any such Statistical Code Matrix to enhance this research capability – particularly in the area of RTDs (see our submission below in relation to section 4.1.4 of the Discussion Paper).

Issue 2: Customs and excise licensing regime interaction (section 2.5, page 4 of the Discussion Paper)

- DSICA commends the authors on the explanation of the interaction between the customs and excise licensing regimes. However, DSICA wishes to provide the following observations:
 - Paras 3 – 8 actually deal with the same set of circumstances dealt with in section 2.6. That is, where imported goods are used in excise manufacture.
 - There is industry uncertainty as to whether the legislative rules set out in paras 3 – 8 derive from section 24 of the Act (as replicated in section 2.6) or whether these rules derive from other provisions of the Customs Act (CA) or the Excise Act (EA).
- DSICA wishes to identify two separate fact scenarios/examples to facilitate analysis of the issues involved in these complex transactions. This analysis relates primarily to the provisions of the Customs Act. However, we consider this relevant to both the potential compliance gap issue raised later in the submission, and also to the question of the correct interaction between Item 44 of Schedule 4 of the *Customs Tariff Act 1995* (item 44) and section 24 EA. It is possible that amendments to section 24 EA may need to take into account the intended operation of item 44.
- **EXAMPLE 1: SINGLE PREMISES:** In this example:
 - The importer of excise equivalent goods (EEGs) for use in excise manufacture (eg bulk spirit to be used in RTD manufacture) is also the RTD manufacturer.
 - This person holds a Customs licence and an ATO licence in relation to the premises at which the RTD manufacture is undertaken.
 - In these circumstances, the bulk spirit is entered for warehousing (with no duty payable)(Nature 20, section 71A CA), and then moved to the importer's licensed Customs premises. When required, the bulk spirit is moved within the premises into RTD production (say on a Wednesday) under the authority of a weekly settlement permission issued under section 69 CA.
 - These permissions allow the goods (ie bulk spirit) “ .. *to be delivered into home consumption without entering them for that purpose ..*” (paragraph 69 (3)(a) CA);
 - These permissions are subject to the condition that the goods must have been entered for warehousing (paragraph 69(4)(a) CA), which is the prescribed case for all imported bulk spirit (section 104 CA).
 - The holder of the permission must “ .. *give Customs [a] return [as specified in the permission] .. in relation to those goods ... that have, during the periods to which the returns relate, been delivered into home consumption.*” (paragraph 69(5)(c) CA) . Duty is payable at the time that the return is given to Customs (paragraph 69(5)(d) CA).

- In this example, on the following Monday (ie the Monday following the week within which there has been the transfer of the bulk spirit to production), an *Ex-warehouse return for like customizable goods* (under section 69 CA) (Nature 30) for the bulk spirit is made. This return classifies the bulk spirit within the appropriate area of Schedule 3 of the Customs Tariff, and makes a further classification to Item 44 as like customizable goods for use in the manufacture of excisable goods. Item 44 then requires that the difference between the import duty and excise duty be the rate of import duty to apply on the return. In the case of imported bulk spirit, this is generally 5% of the customs value. However, it is increasingly becoming 3% (developing country rate) or 0% (Free Trade Agreement (FTA) rate).
 - Presumably ATO control commences at the point of RTD manufacture as the licensee has just manufactured an excisable product.
 - Customs control of the bulk spirit ceases at the time that when the goods are “*delivered into home consumption in accordance with ... [the] permission under section 69’ CA* (see sub-paragraph 30(1)(a)(ii) CA).
 - Presumably Customs control ceases either at the commencement of the RTD manufacture (Wednesday), or upon payment of the 5% ad valorem customs duty (on the following Monday), dependent upon the interpretation given to both “delivered into home consumption” and “in accordance with the permission” within sub-paragraph 30(1)(a)(ii) CA.
 - In these circumstances, there is no entry for home consumption, as there is permission to deliver the goods into home consumption **without entry** (paragraph 69(3)(a)). A number of factors which are relevant to the application of item 44 in these circumstances need to be considered. Firstly, there is an “end-use/further processing” component to the classification which must be fulfilled. Secondly, the goods are not leaving the licensed premises. Thirdly, section 105 CA prevents the delivery of bulk spirit to home consumption without permission and such permission is not to be given when the bulk spirit is to be repacked for retail sale.
 - Notwithstanding, excise duty on the RTDs is accountable from the time of production to the time they are released from ATO-licensed premises.
- **EXAMPLE 2: TWO PREMISES:** DSICA understands that there may be a number of RTD manufacturers who operate excise-licensed premises which are not Customs licensed premises. It appears that the importers of the bulk EEGs to be used as inputs in this RTD manufacture utilize the following procedures. (Note that DSICA cannot be completely certain of these facts, and it is unclear how the relevant legislation allows for this occurrence).
 - In this example:
 - The importer enters the bulk spirit for warehousing and moves the bulk spirit from the wharf into a customs licensed warehouse under an entry for warehousing under section 68 and 104 CA (Premises A, being a Customs licensed warehouse).
 - The importer enters the bulk spirit for home consumption (EHC) under item 44, and pays the 5% ad valorem customs duty.
 - The bulk spirit is moved to the excise-licensed premises (Premises B) under an ATO permission.

- DSICA again notes section 105 CA which requires a permission from the CEO of Customs to deliver bulk spirit into home consumption, and that such a permission can only be given if (a) the containers are not more than 20 litres (or such other volume as the CEO approves in writing; and (b) if the CEO is “satisfied that the customable beverage will not be repackaged in any other container for the purposes of retail sale.” (sub-section 105(2) CA). If the further manufacture of RTDs constitutes “repackaging in any other container for the purposes of retail sale”, then it would appear that the CEO should not be giving permission for these entries to take place.
 - If the bulk spirit is being transported from Premises A to Premises B under an ATO permission, then the bulk spirit is to be accounted for from the time of receipt at the ATO licensed premises, to the time the finished RTDs are released from the premises.
 - The holder of the permission to move the bulk spirit from the importer to the RTD manufacturer would be accountable for the excise duty on the bulk spirit.
- DSICA wishes to provide the following comments on the relevant rules from paras 3 – 8 of the Discussion Paper:

Rule 1: *Owners of imported goods who may wish to use them in excise manufacture must store their goods in a **Customs licensed warehouse upon importation** (Our emphasis)*

DSICA Comment: **Customs legislation:** Section 104 CA requires that all “customable beverage” imported into Australia in bulk containers must initially either be entered for warehousing (EW) (or for transshipment). Consequently, it is arguably NOT section 24 EA, but section 104 CA which requires bulk spirit to be entered for warehousing upon importation.

DSICA notes that the definition of “customable beverage” effectively covers all bulk spirits or bulk RTDs (ie in containers exceeding 2 litres). See section 103 CA and *Customs Regulation 95A*.

EXAMPLE 2: TWO PREMISES: In these circumstances, it would appear that the EHC under item 44 and then the movement of the bulk spirit under an ATO permission is a breach of section 24 EA, but may not be in breach of any particular section of the Customs Act (see further discussion below).

DSICA agrees with the Discussion Paper explanation that (in this case) “*If the goods are entered for home consumption, the [full] liability for [Customs] duty is acquitted and the goods cease to be under the control of Customs.*” (Our emphasis). DSICA considers that this statement also applies in situations where there is permission to deliver the goods into home consumption without making an entry (ie where complying with the conditions required to be met under a section 69 permission).

One additional (possibly academic) point here is whether, if there is an EHC under item 44, and the conditions set out in item 44 are not met (ie the bulk spirit is NOT subsequently used in excise manufacture), is there any possibility that the EHC is not valid, and the goods are still under the control of Customs? In these circumstances the full liability for Customs duty has not been acquitted because the excise equivalent duty component should have been paid, but wasn't. DSICA looks forward to discussing this point further with Treasury.

Section 24 of the Excise Act: DSICA agrees with the Discussion Paper (pg. 5) that section 24 EA requires that (in this example) the bulk spirit must continue to be under the control of Customs up to the moment in time immediately before (or at the point where) the RTD manufacturing process commences. The practical impact of the drafting of section 24 EA is that an EHC is not permitted until immediately before the manufacturing process commences. However, this requirement does not seem to be replicated in the Customs law. Clearly, one way to ensure this is to require Premises B to also be a Customs licensed premise, and to prevent the EHC being made under item 44 until immediately before manufacture commences (see further discussion below).

Rule 2: *If the duty payable on imported EEGs is **not** paid upon importation because the goods are destined for further excise manufacture, the customs and excise legislation interact in such a way that the goods become **subject to the excise licensing regime, and therefore, the control of the ATO.** (Our emphasis)*

DSICA Comment: **Excise legislation: Section 24 EA:** DSICA notes that the Discussion Paper example applies where customs duty is **not** paid upon importation.

EXAMPLE 1: SINGLE PREMISES: In these circumstances, it is likely that the return (Nature 30) applying eligibility under item 44 is not made until the Monday after the week in which the RTD manufacture commences. In which case, Customs control has continued to at least the time when manufacture commences and this is when ATO control commences. In this case, Rule 2 above applies effectively, and there is no ambiguity.

EXAMPLE 2: TWO PREMISES: However, in the cases which DSICA is aware of, that is, where customs duty is paid (ie the 5% ad valorem duty is paid, and this is the only customs duty payable) at Premises A, there does appear to be some ambiguity regarding the precise interaction between the customs and the excise legislation (see further discussion below).

Issue 3: The Compliance Gap – Where does Customs control finish and ATO control begin when manufacturing excisable RTDs with imported bulk spirit? (Section 2.6, page 5 of the Discussion Paper)

- *Issue:* DSICA believes that a potential “compliance gap” exists between Customs and ATO controls in the manufacture of RTDs with imported bulk spirits in some limited circumstances.
- *Background:* In order that the Government could fully deliver its ANTS policy to cut excise rates on excisable beverages of strengths less than 10% abv, administrative arrangements were established from 1 February 2002 which enabled those excise rate reductions to be available to those RTD manufacturers who used imported bulk spirit as their alcohol base (see ACN 2002/02, dated 1 December 2001: *Ready to Drink Beverages (RTDs) Manufactured from Imported Spirits*).
- These arrangements included ensuring that the excise equivalent duty was collected under the excise system, rather than having the ad valorem *and* the volumetric component of the duty collected by Customs. This is achieved by lodging an *Ex-warehouse Return for Like Customable Goods (Nature 30)* and applying eligibility under Item 44. Without these arrangements, RTDs manufactured with imported spirit would have been subject to the excise equivalent duties applying to full strength spirits.
- Administratively, it was further decided that Customs licensees manufacturing RTDs were not required to make an EHC using item 44 for each production run, but rather could add these bulk transfers to RTD production to their section 69 CA permissions, and report and pay the differential duty rate on the Monday following production.

- The arrangements then allowed this bulk spirit transferred into RTD manufacture in premises licensed under the *Excise Act* for such purposes. This excise-licensed premise is generally the same licensed Customs warehouse into which the imported spirit was warehoused (ie in *Example 1*). RTD manufacturing operations then proceed under section 24 EA, and are subject to the prescribed conditions in Schedule 2 of the *Excise Regulations*, namely Item 10.
- However, as set out in *Example 2*, DSICA is now aware of some RTD manufacturing premises where imported spirits are used, and for which no appropriate *Customs Act* licensing exists. The imported spirit is sourced from importers who have entered the bulk spirit under Item 44 (ex-warehouse from Premises A), and subsequently moved this spirit to the RTD manufacturing premises (Premises B) under a permission possibly issued under section 61A of the Excise Act.
- This situation may be contrary to section 24 EA as there is a question as to whether the bulk spirit is still “liable to the duties of Customs” a requirement of section 24 EA, and as such the spirit may not be used in excise manufacture. Likewise, there is a question of the validity of any ATO permission issued for the movement of the spirit, as it is clear that these imported bulk spirits are NOT “excisable goods” under the meaning of excisable goods at section 4 EA.
- DSICA agrees with the Discussion Paper analysis, that the bulk spirit only becomes ‘excisable goods’ immediately upon commencement of the RTD manufacturing process (ie at ‘*the point of their incorporation in excise manufacture*’ pg 5). Consequently, ATO control can presumably only commence from the moment that the manufacturing process commences, even though the bulk spirit is stored on excise-licensed premises prior to the commencement of manufacturing.
- DSICA is concerned that “excise-free” bulk spirit may be moving around the country, or around certain premises, for which it is unclear which agency has jurisdiction over compliance. DSICA supports any action (as referred to in the Discussion Paper) that Customs and the ATO are taking to identify any manufacturing sites utilizing bulk spirit in this way which are not licensed as a Customs warehouse. DSICA will write separately to both the ATO and Customs regarding this compliance issue.
- *Legislative options:* DSICA believes there are at least 2 legislative options to explore in clarifying and addressing the possible short-comings in the control environment for using imported spirit to manufacture RTDs: *Option 1:* the *Customs Tariff Act* could be amended to require that an entry for home consumption under item 44 can only take place immediately before the manufacturing process commences. *Option 2:* Alternatively, ATO control over the goods could be extended back to the time of entry into home consumption at the point of departure from Premises A. *Other options:* There may be other legislative options to deal with this issue.
- These two options are discussed below:
 - **Option 1** – *Customs control until manufacturing occurs.* Under this approach, bulk spirit for RTD manufacture could only be entered for home consumption, or delivered under a section 69 permission, under item 44 immediately before manufacture commences. DSICA believes this is consistent with section 24 EA, and would provide accountability to Customs up until manufacturing occurs, at which point the bulk spirit can be entered, or delivered under section 69, applying eligibility Item 44. It will require all RTD manufacturers using imported spirit to hold a Customs warehouse licence for this purpose. Customs permission would be required to move the bulk spirits from Premises A to Premises B.

- *ATO Delegation:* In cases where RTD manufacturers hold a Customs warehouse licence for the act of importing or receiving underbond imported spirit for RTD manufacture, then the Customs warehouse licence could, for ease of administration, be issued by the ATO under a Delegation under the Customs Act. DSICA strongly supports such a delegation approach being implemented, as this would provide significant administrative savings for industry.
 - **Option 2** – *ATO control from point of entry for home consumption.* DSICA believes one alternative to Option 1 is to legislate so that the ATO controls the imported bulk spirit once entered under Item 44. Under this option, all bulk spirit entered for home consumption under Item 44 would become subject to ATO control immediately upon EHC or delivery under a section 69 permission. ATO approval would then be required to move spirit into production, particularly where that production is to occur at separate premises. Certainty in this regard would require changes to section 60 of the Excise Act to include a class of imported goods entered under Item 44, but which are yet to be used in excise manufacture. If the bulk spirit concerned were defined to be ‘excisable goods’, then there would be no need to amend Item 44, nor section 24 EA, as section 24 already permits excisable goods to be used in the manufacture of excisable goods.
- DSICA looks forward to exploring these options in further discussion with Treasury.

Issue 4: Schedule 2 of the Excise Regulations 1925 (section 2.6, page 5-7 of the Discussion Paper)

- DSICA believes that the alcohol related items in Schedule 2 of the Excise Regulations should be repealed, as these are redundant. DSICA expresses this view based on the following observations:
 - Several items appear to be potentially in conflict with World Trade Organisation (WTO) protocols in relation to non-tariff trade barriers. For example, Items 6 and 9 of Schedule 2 require a greater component of local content in blends of excisable and imported EEGs, whilst Item 7 also has some end-use limitations placed upon the importation of industrial grade spirit.
 - Several items appear to be inconsistent with modern business practices. For example, Item 1 and the denaturing of spirit used to flavour tobacco, and Item 9 dictating blending proportions based on origin, and not taste, and cost of business inputs.
 - Some items appear outdated. For example, Items 2 and 3 relate to beer of strength of 3.8% alcohol by volume (abv) – an alcohol strength which has not been relevant to beer since 1988.
- Accordingly, DSICA believes that Schedule 2 could be replaced with amendments to section 24 of the Act or to Excise Regulation 2A. These amendments could create a simple and generic set of rules for manufacturing of excisable goods with imported EEGs.
 - These rules should be based entirely on revenue protection. For example, clearly specifying the nature of licensing involved for the type of manufacture to occur.

Issue 5: Imported Goods used in the manufacture of spirits (Section 2.7.2, page 8 of the Discussion Paper)

- Treasury has specifically sought stakeholder views regarding Items 7 and 9 of Schedule 2 to the Excise Regulations. In particular, Treasury is interested in whether current industry policy and current business practices are reflected in these Items.
- **Item 7:** DSICA confirms that it does not support the requirement set out in Condition 2 that the spirits liable to customs duty be required to be blended with spirits distilled in Australia with an alcohol content of 84 per cent or more. This is an antiquated condition, and DSICA does not support limitations of this kind.
- **Item 9:** DSICA confirms that it does not support the protective policy approach of Item 9 which requires that there must be at least 50.1% of Australian spirit in the blend (note DSICA's comments above which suggest that this may be a "non-tariff" trade barrier under WTO protocols). Item 9 is unnecessarily restrictive in that a manufacturer could blend a preferred flavour, but could face increased business input costs if cheaper spirits can be acquired off-shore.
- **Item 10:** DSICA confirms that it does not support prescription of a minimum local content for the manufacture of RTDs under Item 10, on the same basis as its comments above in relation to Item 9.
- As stated above, DSICA's preference is to repeal Schedule 2 to the Excise Regulations, and replace the current conditions with directions on the correct forms of customs and excise licensing (and licensing conditions where appropriate), and other revenue protection directions with regard to the "compliance gap discussed above, for the following circumstances:
 - Use of customable goods to manufacture excisable goods;
 - Use of customable and excisable goods to manufacture excisable goods; and
 - Use of excisable goods of different kinds to manufacture excisable goods.

4 Specific Comments - Chapter 3: Product definitions in the Excise Tariff Act 1921

Issue 6: Imitations

- The Discussion Paper contains no discussion or analysis regarding the first paragraph of the Schedule, which is transcribed below:
 - *"All imitations to be dutiable at the rate chargeable on the goods they imitate, unless such rate is less than the rate which would otherwise be chargeable on the imitations."*
- DSICA believes that this is a significant part of the Schedule because of the policy intention it expresses and its location in the Schedule. Accordingly, DSICA believes this issue must be addressed in the review.
 - This is an issue of particular concern to DSICA given that a number of wine-based products have been imitating excisable spirits and liqueurs for many years.
- DSICA believes that this is a provision of the Act that has been consistently overlooked and not always enforced. DSICA considers that this review presents an ideal opportunity to clarify the intention and operation of this provision.
- DSICA's view is that the provision be maintained in its current form, or strengthened in a manner that implements the policy objective of the provision, ie. that imitation products be subject to duty at the same rate levied on goods that they are seeking to imitate.

Issue 7: Definition of “beer” (Section 3.2.1, page 11 of the Discussion Paper)

- In recent times, some flavoured beer products have appeared in the Australian market. For example chilli beer, chocolate beer and some ginger beers brewed on a malt base.
- DSICA believes that there is a question over the classification of a number of beer products to which certain flavours have been added:
 - As there is an excise differential between beer and other excisable beverages less than 10% abv, we suggest that further clarity regarding application of the definition of beer to instances like that outlined above is required.
 - DSICA suggests either an exclusion of certain ingredients from the current definition (if the Government is seeking to have only “normal” beer production taxed as beer), or alternatively, if the intention is to let flavoured beers receive the beer excise concessions, then a definition similar to the operation of Food Standard Code 2.7.2 may be required to allow for these additional flavours.

Issue 8: Definition of “brandy” (section 3.2.2, page 11 of the Discussion Paper)

- The current definition of “brandy” in the Act is identical to that in the Spirits Act.
 - Therefore, any change to this definition would require identical amendment to section 3 of the Spirits Act to maintain consistency.
- The link to the Spirits Act is also important in that the Spirits Act further defines requirements for maturation in wood (section 12), and for the alcohol base to be wholly derived from grapes (section 10). DSICA is preparing a further and separate submission on the issue of maturation requirements in the Spirits Act.

Issue 9: Definition of “liqueur” (section 3.2.4, page 11 of the Discussion Paper)

- Presumably, if the sub-items dealing with specific types of spirits are removed, then there will not be a need for definitions of the various spirits products in the preamble to the Schedule. This will be a valuable simplification measure.
- However, the following comments (Issues 9 to 11) are provided for completeness.
- The definition of “liqueur” in the Act is quite different from the definition of “Liqueur” in Clause 1 of Food Standard Code 2.7.5.
 - The definition in the Schedule requires minimum sugar content (25 gm sugar per litre) and minimum alcohol strength (17% abv).
- Whilst DSICA would prefer the Food Standard Codes to require a minimum alcoholic strength, this inconsistency should be addressed.

Issue 10: Definition of “rum” (section 3.2.6, page 12 of the Discussion Paper)

- The definition of “rum” in the Act is identical to that in the Spirits Act.
 - Therefore any change to this definition would require identical amendment to section 3 of the Spirits Act to maintain consistency.
- The link to the Spirits Act is also important in that the Spirits Act further defines the requirements for maturation in wood (section 12 of the Spirits Act).

Issue 11: Definition of “whisky” (section 3.2.8, page 12 of the Discussion Paper)

- The definition of “whisky” in the Act is identical to that found in the Spirits Act.
 - Therefore any change to this definition would require identical amendment to section 3 of the Spirits Act to maintain consistency.
- The link to the Spirits Act is also important in that the Spirits Act further defines the requirements for maturation in wood (section 12 of the Spirits Act).

5. Specific comments - Chapter 4: Alcohol-related items in the Schedule to the Excise Tariff Act 1921

Issue 12: Item 1, Beer (section 4.1, page 13 of the Discussion Paper)

- The Heading for Item 1 of the Schedule is “Beer, other excisable beverages of an alcoholic strength by volume not exceeding 10%”.
- The construction of the heading makes it possibly unclear regarding the classification of beer which exceeds 10% abv.
 - Does there need to be a full stop after “Beer” rather than a comma?

Issue 13: Item 1(D), Other excisable beverages of an alcoholic strength not exceeding 10% (section 4.1.4, page 18 of the Discussion Paper)

- As mentioned earlier in this submission, DSICA recommends the creation of a statistical matrix with 3 separate statistical keys for sub-item 1D for the purpose of accessing better quality statistical data. DSICA will pursue this issue with the ATO and ABS.
- DSICA recommends the following beverages be allocated to the 3 separate statistical keys:
 - Manufactured on a fermented alcohol base;
 - Manufactured with a dark spirit (ie brandy, whisky or rum) base; and
 - Manufactured with a white spirit (ie vodka, gin) base.

Issue 14: Items 2(C), 2(D), 2(F), 2(G) and 2(H) (section 4.2.2, page 19 of the Discussion Paper)

- Treasury has sought the views of stakeholders on the possibility of moving Fruit Brandy, Whisky, Rum, Liqueurs and other excisable beverages greater than 10% abv into one sub-item.
- Whilst there is no obvious policy reason for separating these beverages into separate sub-items, DSICA raises the following issues for consideration:
 - Legally, whisky and rum are different goods to brandy, fruit brandy, liqueurs and others – see section 3 of the Spirits Act. However, this does not of itself prevent removal of the sub-items.
 - For the research purposes outlined above, DSICA is keen to retain the ability to acquire statistical data in relation to the quantities delivered of each product.
 - We do note however that accurate reporting at a statistical key level is often questionable. Accordingly, the ATO would need to support a compliance effort in this area to ensure such data is reliable.

Issue 15: Item 2(M) (section 4.2.4, page 21 of the Discussion Paper)

- Whilst no DSICA members are involved in the production or distribution of industrial grade spirit, DSICA supports industrial use spirits remaining in the excise regime for overall compliance management purposes.
 - A sound and robust compliance management system in this area is important to DSICA and its members as advantages gained by any manufacturers from illicitly acquiring duty free spirit would impact industry equity.
- Further, DSICA supports the split between denatured and undenatured spirits.
 - Again, on compliance grounds, DSICA believes it would be worthwhile to track undenatured product as this is where there is a greater risk of diversion to beverages.

Issue 16: Item 2(O) (section 4.2.6, page 22 of the Discussion Paper)

- There is no mention in the Discussion Paper regarding the history of this sub-item and no indication of Treasury's view as to whether it should remain in the Schedule. Presumably it will disappear in the re-write.
 - We understand that Item 2(O) was once a "penalty" rate item, with the penalty aspect having been removed along with similar penalty rates for liqueurs (formerly 2G2) and other spirituous beverages (formerly 2H2), these latter two referring to penalties that applied when the manufacturer was not manufacturing to formulae approved by a Collector of Customs.
- Whilst DSICA is not necessarily advocating a return to penalty excise rates for spirits nei, it does seek confirmation that current policy is for spirits nei to be classified to Item 2H (other excisable beverages greater than 10% abv).
 - If this is the case, then we believe that the situation of **spirits which are not beverages** needs to be considered. For example, undenatured spirit held underbond for methylation for which the methylator cannot account during ATO compliance activity. A further example could be where undenatured spirit is held for repackaging/resale by a reseller and the spirit cannot be accounted for during ATO compliance activity. If the item applicable in this case is not item 2O, then would the loss be duty free?
 - DSICA would support any legislative action to ensure that spirit-based non-beverages (eg alcoholic jellies or icy-poles) would be subject to the same rates of duty as beverages of similar alcohol content.

6. Specific comments - Chapter 9: Miscellaneous duty-free Items in the Excise Tariff Act 1921

Issue 17: Item 10

- Sub-item 10A of the Schedule allows for duty free delivery to Government agencies.
- In line with National Competition Policy (which has most government agencies paying "tax equivalents" under a tax equivalence regime) we suggest it is appropriate that these agencies should be paying excise inclusive prices the same as the private sector, and seeking an adjustment to agency running costs as appropriate.
- Accordingly, this sub-item could be repealed.

Further consultations

There are many extremely complex issues involved in the review, and DSICA would strongly recommend that, if at all possible, the industry should be given an opportunity to provide comments on a confidential draft of the revised Schedule, before it is introduced into the Parliament.

DSICA would welcome the opportunity to meet with Treasury representatives to further discuss and address the matters raised in this submission. In this regard, please refer to the contact details below should you have any questions in relation to the contents of this submission or to arrange a time for a meeting.

19 August 2005

Contact:

For further information, contact Gordon Broderick, Executive Director, DSICA, 03 9696 4466 or Warwick Ryan, KPMG, 02 6248 1124