COMMISSION RECOMMENDATION

of 8 October 1987

to the Portuguese Republic concerning the adjustment of the State monopoly of a commercial character in alcohol *vis-à-vis* the other Member States

(Only the Portuguese text is authentic)

(87/525/EEC)

I

Article 208 of the Act of Accession states that, without prejudice to paragraph 2 of the same Article, Portugal shall, from 1 January 1986, progressively adjust State monopolies of a commercial character within the meaning of Article 37 (1) of the EEC Treaty so as to ensure that by 1 January 1993 no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States.

In addition to the products specified in Article 208 (2), in respect of which provision was made for specific adjustment measures, the following products are subject in Portugal to monopolies within the meaning of Article 37 of the EEC Treaty:

— ethyl alcohol of agricultural origin (agricultural product listed in Annex II to the EEC Treaty, as amended by Regulation No 7a adding certain products to the list in Annex II to the Treaty establishing the European Economic Community [1]),

— ethyl alcohol of non-agricultural origin falling within CCT heading Nos ex 22.08 A and B and ex 22.09 A (Nimexe code code 22.08-10 and 22.08-30),

— wine spirits for use in the making of port wine falling within CCT heading No 22.09 C V a) and b) (Nimexe code 22.09-81 and 22.09-91).

The Portuguese State conferred on itself the exclusive right to import and market the abovementioned products on its national territory. The monopoly in ethyl alcohol is administered by the Administração-geral do açúcar e do álcool (AGA), and that in spirits for use in the making of port wine by the Instituto do Vinho do Porto (IVP).

The second subparagraph of Article 208 (1) of the Act further stipulates that the present Member States shall have equivalent obligations in relation to Portugal. In the other Member States, however, none of the products is or is any longer subject to a monopoly within the meaning of Article 37 (1) of the EEC Treaty.

The third subparagraph of Article 208 (1) of the Act of Accession provides that the Commission shall make recommendations to Portugal as to the manner in which, and the timetable according to which, the adjustment provided for in the first paragraph must be carried out.

[1] OJ No 7, 30. 1. 1961, p. 71/61.

II

Since no specific mention is made of the Portuguese monopoly in alcohol — in contrast to the monopoly in petroleum products, in respect of which detailed rules are laid down in Article 208 (2) of the Act of Accession — the Commission believes that the timetable for the gradual removal of existing quantitative restrictions in this area should be based on the criteria provided for in Article 33 of the EEC Treaty. Article 33 stipulates for the original Member States a transitional period of 12 years and the setting of an initial quota amounting to not less than 3 % of national production on the understanding that the initial quota must not be lower than any bilateral quotas open to any other Member States on the entry into force of the Treaty. The quota was to be raised to 5 % at the end of the third year. Thereafter, it was to be increased by not less than 15 % annually. At the end of the tenth year, each quota was to be equal to not less than 20 % of national production.

III

The Commission considers that the provisions of Article 208 (1) of the Act of Accession need to be adapted in setting the volume of the initial quota and its annual rate of increase for Portugal.

The Commission considers that account must be taken of the length of the transitional period, expiring on 31 December 1992, set for Portugal in Article 208 (1), and of the time which has already elapsed.

As regard the initial quotas, account should be taken — by analogy with the provisions of Article 33 of the EEC Treaty — of any bilateral quotas open to any other Member States. In accordance with the objectives of the Act of Accession, the scope for trade existing before the entry into force of the Act must be at least maintained. The initial quota must therefore be equivalent to the amount of bilateral trade. If there are no bilateral quotas, the initial quota should be set at 3 % of national production, where national production is equal to or — in the event of exports — greater than domestic consumption.

In setting the initial quotas for the three products covered by this recommendation, it would therefore seem necessary to take account of production and imports. Since the situation is not the same for each of the three products, they must be treated separately.

IV

1. In the case of ethyl alcohol of agricultural origin, national production is roughly equivalent to national consumption ; it is for this reason that only small quantities have previously been imported. The setting of an initial quota by reference to national production therefore appears to meet the abovementioned objectives of the Act of Accession.

However, the Commission considers that account must also be taken of the provisions of Article 37 (4) of the EEC Treaty. Any existing rules designed to make it easier to dispose of agricultural products or obtain for them the best return should therefore not be called into question so as to ensure equivalent safeguards for the employment and standard of living of the producers concerned, account being taken of possible adjustments and necessary specialization. Nevertheless, any such rules must be brought fully into line with the requirements of Article 37 (1) before the end of the transitional period.

In view of the length of the transitional period and of the time which has already elapsed, and in view of the objectives referred to above, the Commission considers that a quota for 1987 amounting to 6 % of national production of ethyl alcohol of agricultural origin and an annual 20 % increase in the quota are fair and reasonable.

2. Ethyl alcohol of non-agricultural origin is not manufactured in Portugal. It is not used in certain sectors, such as the manufacture of beverages. Consequently, the AGA imports only small quantities. The initial quota volume can therefore be set only by reference to the imports actually made.

In view of the part of the transitional period which has already elapsed, the Commission considers that the initial quota for 1987 for ethyl alcohol of non-agricultural origin from the other Member States should amount to not less than 40 % of the highest annual level of imports recorded in the period from 1982 to 1986 inclusive.

3. In the case of wine spirits for use in the making of port wine, by contrast, imports account for a substantial proportion of national domestic consumption, and indeed tend to be well in excess of national production. The IVP is obliged to import wine spirits, being responsible for ensuring that the Portuguese market is properly supplied.

The situation differs fundamentally from the situation regarding ethyl alcohol of agricultural origin, where national production is sufficient to meet the requirements of the market. In the latter case, the opening of an import quota is likely to have an immediate effect on the disposal of national production.

By contrast, the only effect which an import quota would have, in the case of a monopoly which itself imports considerable quantities, would perhaps be to reduce the imports the monopoly was obliged to make, though the monopoly would remain free to import whatever quantities it wished to distribute on the national market. The monopoly would be in a favourable position where it wished to import large quantities, since its purchase tenders would be for amounts that would be attractive to the major producers.

The Commission accordingly considers that, in setting a quota for such products, reference must be made to the imports carried out by the Portuguese monopoly.

The Commission is nevertheless of the opinion that Portugal should not be required to set the initial quota volume at a level corresponding to the total amount of actual imports in previous years. This could reduce considerably the monopoly's room for manoeuvre and could jeopardize its task of ensuring the disposal of national production ; such a situation would not appear to be in line with the objective laid down in Article 208, which does not call for the abrupt dismantlement of the monopoly at the beginning of the transitional period, but merely for its gradual adjustment during the period.

It would seem to the Commission, however, in a situation where the monopoly's imports are well in excess of national production, as was the case in 1986, and in view of the length of the transitional period, that the setting of a quota for the second year amounting to 25 % of imports in 1985 is fair. Article 37 (4) cannot be invoked in this instance, since wine spirits are not agricultural products within the meaning ot the EEC Treaty.

However, account should be taken of the effect of all the provisions of the Accession Treaty and in particular those which set the transitional periods for the application of the common agricultural policy to Portugal.

V

For these reasons, and subjects to the position the Commission may subsequently adopt in the light of the results of applying the recommendation, the Commission hereby recommends, pursuant to the third subparagraph of Article 208 (1) of the Act of Accession, that the Portuguese Republic should :

1. — open, for ethyl alcohol of agricultural origin, subject in Portugal to a State monopoly of a commercial character, a quota for the remaining period of 1987 amounting to not less than 6 % of the relevant national production in 1986,

   — open, for ethyl alcohol of non-agricultural origin, subject in Portugal to a State monopoly of a commercial character, a quota for the remaining period 1987 amounting to not less than 40 % of the highest annual level of imports recorded in the period 1982 to 1986 inclusive,

— open, for wine spirits for use in making port wine, subject in Portugal to a State monopoly of a commercial character, a quota for the remaining period of 1987 amounting to not less than 25 % of imports made in 1985,

— increase the 1987 quotas by 20 % in 1988,

— increase the previous year's quotas by 20 % in the years thereafter.

It is understood that, by 31 December 1992, all quantitative restrictions will have been removed.

The quotas should be administered in a transparent, objective and non-discriminatory manner. They should be open to any importer other than the monopolies, and the products imported under them should not be made subject to any exclusive marketing rights in Portugal.

2. — inform all interested parties through the appropriate channels, and in particular by publishing a notice to importers in the Portuguese official journal *Diário da República,* of the possibilities available to them under the abovementioned quotas of obtaining supplies of the products referred to above from the other Member States.

Done at Brussels, 8 October 1987.

For the Commission

Peter SUTHERLAND

Member of the Commission