COMMISSION RECOMMENDATION

of 3 July 1987

to the French Republic concerning the adjustment of the State monopoly of a commercial character in manufactured tobacco *vis-à-vis* the new Member States

(Only the French text is authentic)

(87/390/EEC)

1. By letter dated 1 April 1986, the French Government informed the Commission that, in the case of manufactured tobacco falling within CCT heading No 24.02 A, B, C and D, it was still applying its import monopoly within the meaning of Article 37 (1) of the EEC Treaty *vis-à-vis* the new Member States.

   Under Law No 80/495 of 2 July 1980, the 'Société nationale d'exploitation industrielle des tabacs et des allumettes' (SEITA) was required to carry out the tasks previously performed by the 'Service d'exploitation industrielle des tabacs et des allumettes' pursuant to Law No 76/448 of 24 May 1976 with regard to the manufacture and retailing of manufactured tobacco and the importation and wholesale distribution of manufactured tobacco originating in or coming from third countries.

   Though Article 2 of the Law of 24 May 1976 gives the French State the exclusive right to import and distribute to wholesalers manufactured tobacco originating in or coming from third countries, it is no longer applicable where such products come from the other Member States of the Community.

2. The first subparagraph of Articles 48 (1) and 208 (1) of the Act of Accession provides that Spain and Portugal shall, form 1 January 1986, progressively adjust their State monopolies of a commercial character within the meaning of Article 37 (1) of the EEC Treaty so as to ensure that, by 31 December 1991 in the case of Spain and 31 December 1992 in the case of Portugal, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States.

   The second subparagraph of Articles 48 (1) and 208 (1) stipulates that the other Member States shall have obligations in relation to Spain and Portugal equivalent to those laid down in the first subparagraph for the two new Member States.

   The third subparagraph of Articles 48 (1) and 208 (1) provides that the Commission shall make recommendations to the relevant Member States of the Community of Ten as to the manner in which and the timetable according to which the adjustment provided for in those Articles must be carried out.

3. Of the new Member States, only Spain applies a monopoly of a commercial character in manufactured tobacco. Article 48 (3) of the Act of Accession lays down detailed rules for the adjustment of the monopoly, through the gradual opening of import quotas as from 1 January 1986. The quota volumes for 1986 and the increases to be made in them in subsequent years were set out in the list appearing in Annex V.

   The French Government has not yet taken any measures to liberalize imports of manufactured tobacco from the new Member States.

   There was virtually no trade in manufactured tobacco products between France and the new Member States during the five years prior to accession, as the statistics provided by the French Government on 18 July 1986 show.

4. The Commission considers that, in carrying out the adjustment provided for in Articles 48 and 208 of the Act of Accession, the restrictions on imports of manufactured tobacco from Spain and Portugal must be gradually removed by immediately opening quotas and increasing them annually so as to ensure that the French monopoly is completely dismantled by 31 December 1991 in the case of Spain and 31 December 1992 in the case of Portugal.

   In view of the very low level of trade in manufactured tobacco between France and Spain, the Commission believes that the initial level of the quota to be opened by France for such products can be set at a percentage of the national production of manufactured tobacco in the country holding the monopoly.

   Since, as stipulated in Articles 48 (1) and 208 (1) of the Act of Accession, the Member States of the Community of Ten must have equivalent obligations to those laid down for Spain and Portugal, the Commission considers it reasonable to base the adjustment of the French monopoly on the criteria applied to Spain, pursuant to Article 48 (3) of the Act of Accession and Annex V thereto, as regards the gradual adjustment of its monopoly in manufactured tobacco.

It was decided in this respect that Spain's basic quota volumes must be at least equivalent to certain percentages (5 % or 6 % depending on the product) of Spain's total average production during the last three years prior to accession for which statistics were available.

In addition, there was to be a gradual annual increase of at least 20 % in the quotas at the beginning of each year, with the previous years quota being automatically increased by 20 %.

5. Since the production of manufactured tobacco in France is roughly the same as the combined production of the two new Member States, and since the same applies to the populations of the three countries, the Commission considers that the initial quota which France has been required to open as from 1 January 1986 *vis-à-vis* the new Member States should be set at 5,5 % of its production.

The Commission also considers that the quota to be opened by France should be allocated between Spain and Portugal on the basis of their respective levels of production. According to the Commission's information, average production over the last three years (1983 to 1985) was 58 000 million cigarettes in Spain and 14 000 million in Portugal.

The Commission is therefore of the opinion that France should allocate 80 % of the quota to Spain and 20 % to Portugal.

So as to facilitate administration of the quota, the Commission considers that, even though the transitional period for Portugal is one year longer than that for Spain, it is reasonable not to treat the two new Member States differently at least until 1991.

6. For these reasons, and subject to the position the Commission my subsequently adopt in the light of the results of applying this Recommendation, the Commission hereby recommends to the French Republic, pursuant to the third subparagraph of Articles 48 (1) and 208 (1) of the Act of Accession :

(a) that it should open, for imports of manufactured tobacco falling within CCT heading No 24.02 A, B, C and D from Spain and Portugal :

— in respect of each product and for the remaining period of 1987, a quota equal to not less than 6,6 % of national production in 1985, 80 % of the quota being allocated to Spain and 20 % to Portugal,

— the 1987 quotas should be increased by at least 20 % in 1988,

— the previous year's quotas should be increased by at least 20 % in the years thereafter.

It is understood that, by 31 December 1991 in the case of Spain and 31 December 1992 in the case of Portugal, all quantitative restrictions will have been removed.

The quotas should be administered in a transparent, objective and non-discriminatory manner. They should be opened for all operators without restriction. The products imported under them should not be made subject to any exclusive wholesale distribution rights in France.

It is understood that retail distribution will be regulated in an objective and non-discriminatory manner ;

(b) that it should inform all interested parties, in particular By publishing a notice to importers in the *Journal Officiel de la République française,* of the possibilities available to them under the abovementioned quotas of obtaining supplies of manufactured tobacco falling within CCT heading No 24.02 A, B, C and D from Spain and Portugal.

Done at Brussels, 3 July 1987.

For the Commission

Peter SUTHERLAND

Member of the Commission