10 February 2012

Mr Rodger Evans
Clerk to the Health and Sport Committee
Scottish Parliament
Edinburgh
EH99 1SP

Dear Rodger

Alcohol (Minimum Pricing) (Scotland) Bill : Health and Sport Committee

At the evidence sessions on 31 January, members of the Committee raised issues relating to the need to notify the provisions of the Bill to the European Commission under the Technical Standards Directive 98/34/EC

We have noted the exchanges in the record of the Committee. Differing views were expressed.

In this context and in the light of the Committee’s deliberations on their Stage 1 report, I submit for the Committee’s attention copies of two letters from the European Commission indicating clearly in their view that both the Bill introduced in the last Parliament and the current Bill should be notified to Brussels. These letters reinforce the point that we made in our submission to the Committee that notification should be made.

I have written to Nicola Sturgeon, Deputy First Minister and Cabinet Secretary for Health and Wellbeing and Cities to raise the same point and to let her have copies of the Commission letters.

I hope the Committee will find this evidence useful as part of the Stage 1 proceedings.

Yours sincerely

Gavin Hewitt
Chief Executive
Brussels, 12 JAN, 2011

ENTR/C3/LP/cdw - (2012)27859

Mr Glen Barclay
Director of Legal Affairs
Scotch Whisky Association
20 Atholl Crescent,
Edinburgh, EH3 8HF,
United Kingdom
Email: gbarclay@swa.org.uk
cbonthron@swa.org.uk

Subject: The Scottish Government's proposal to introduce minimum pricing for alcohol

Dear Mr Barclay,

Thank you for your letter (ref IGB/CB/LC-785) of 8 December 2011 relating to the Scottish Government's proposal to introduce minimum pricing for alcohol.

As indicated on 18 January 2010 by my services, the afore-mentioned proposal seems, in principle, notifiable under Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations. The Commission always reminds Member States of their duty to notify. However, it falls under the Member States' competence to decide if and at what stage they will notify a draft national rule.

According to the Court of Justice case-law, the adoption of a technical regulation in breach of Directive 98/34/EC constitutes a procedural defect, which renders it inapplicable and unenforceable against individuals¹.

Furthermore, given that Articles 8 and 9 of the Directive are sufficiently precise and unconditional, they are to be interpreted as meaning that individuals may rely on them before the national court which must decline to apply a national technical regulation which has not been notified in accordance with Directive 98/34/EC².

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² Judgment of 30 April 1996 - "CIA Security International"
This means that if stakeholders consider that a technical regulation has been adopted without previous notification at draft stage, they may bring proceedings before a national court and invoke the inapplicability and unenforceability of that technical regulation.

Finally, once the proposal is adopted into national law, the Commission services will examine all complaints and consider all evidence that might be submitted regarding possible infringement of Union law and of the principle of free movement of goods.

I hope that this information is useful for you.

Yours sincerely,

[Signature]
Subject: The Scottish Government's proposal to introduce minimum pricing for alcohol.

Dear Sir,

Thank you for your letter dated 21 December 2009 and for the information concerning the Scottish Government's proposal to introduce minimum pricing for alcohol.

We take good note of your position regarding the contents in this proposal. I would like to inform you that the Commission, answering MEP questions E-2294/2009 and E-4880/2009, indicated that the Court of Justice of the European Communities\(^1\) considered that rules fixing retail prices for alcoholic beverages could constitute measures having an equivalent effect to quantitative restrictions on imports contrary to Article 28 EC (now Article 34 of the Treaty on the Functioning of the European Union). Nevertheless, this analysis has to be moderated by the examination of the health objectives of the national measures but in all cases, the proposed measures have to be proportionate and non-discriminatory.

As regard the Scottish Government's obligation to notify the proposed rules, I am pleased to inform you that following informal contacts with the Scottish authorities, they have been informed that their proposal should, in principle, be notified under Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations.

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\(^1\) See van Tiggele, Case 82/77; Collet, Case 231/83

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However, it falls under the Member State's competence to decide if and at what stage they will notify a draft national rule.

Yours faithfully,

[Signature]
Ghyslaine Guisolphe
Head of Unit