

Schleswig-Holsteinischer Landtag
Wirtschaftsausschuss
Att.: Thomas Wagner, Ausschussgeschäftsführer
By e-mail: Wirtschaftsausschuss@landtag.ltsh.de

29. May 2015

Dear Thomas Wagner,

RE: Bericht der Landesregierung zu den aktuellen Entwicklungen beim Dosenpfand unter besonderer Berücksichtigung der Aspekte des Grenzhandels.

Thank you for this opportunity to provide our assessment of the draft agreement concerning a deposit requirement in the cross border trade. Carlsberg Deutschland has forwarded the matter to Carlsberg Denmark, as the border trade in relation to Carlsberg products is exclusively operated by Carlsberg Denmark A/S. This hearing answer is therefore to be seen as a collectively feedback from Carlsberg and is aligned with Carlsberg Deutschland GmbH.

Having a deposit based collection system for certain drinks packaging in both Germany and Denmark it seems only natural to have also a deposit requirement on the same drinks packaging when sold to Scandinavian consumers in the German border trade.

Most of the consumers are Scandinavian and they transport the drinks packaging out of Germany and into the country of the consumer's residence, where the empty drinks packaging must be collected. That can only be done, if the packaging is covered by the country specific deposit system, in this case the Danish deposit system.

A deposit requirement for drinks packaging sold in the border trade must also be flexible for the consumers so they can easily get their deposit back. Furthermore, the deposit system must ensure equal treatment of the participating retailers so that border shops and Danish retailers have similar terms.

Our assessment of the draft agreement is that these basic conditions are not fulfilled, for which reason we cannot recommend that the present agreement is signed by Land Schleswig-Holstein respectively by the German government.

The draft agreement needs to be amended on at least the following points:

1. Border shops must charge Danish deposit when selling to Danish/Scandinavian consumers.
2. The deposit rate must be the Danish deposit without Danish VAT but with German VAT.
3. It must be flexible for the consumers to return the empty packaging and to get their deposit back in either Denmark or in the border shops.
4. Illegal trade must be combatted by a specific deposit mark.
5. The introduction of a deposit requirement in the border trade must not result in fee increases in the Danish deposit system for the collection of drinks packaging sold in Denmark.

Re.: 1. Danish deposit when selling to Danish / Scandinavian customers/consumers.

The German mandatory deposit system applies to the sale of beer and soft drinks etc. in non-ecological packaging to final consumers within the territorial scope of the Packaging Ordinance (ref. section 9), i.e. for sale to final consumers residing in Germany.

For sale to final consumers outside the territorial scope of the Packaging Ordinance there is at present no deposit requirement. However, if a deposit requirement is introduced by agreement between Germany and Denmark then it must be ensured that the border shops must charge the Danish deposit and not on a voluntary basis, otherwise distributors risk to have to manage two deposit schemes for the same products.

The draft agreement does not prescribe the inclusion of the border shops and their suppliers to the Danish deposit requirements. Instead the draft agreement will result in a separate deposit model with requirements that are not similar to the Danish deposit system. The result being that suppliers must adapt their packaging to three models: 1) packaging with a German Deposit, 2) packaging with the adapted "Danish deposit" and 3) packaging without a deposit for sale to other than Danish Citizens.

Our recommendation is that:

- The border shops and their suppliers must be entitled to participate in the Danish deposit system on similar and equal terms as shops and suppliers in Denmark.
- The border shops must charge the "Danish deposit" when selling to Danish or Scandinavian customers (i.e. having their permanent residences outside the territorial scope of the German Packaging Ordinance).

Re.: 2: The deposit rate must be the Danish deposit without Danish VAT but with German VAT

The Danish deposit rate is 0,8 DKK per packaging unit (10,74 eurocent). With 25% Danish VAT of 0,2 DKK (2,68 eurocent) the final deposit rate is 1,0 DKK (13,42 eurocent), incl. Danish VAT.

However, the draft agreement requires that suppliers and border shops must charge a "Danish" deposit of 1,19 DKK and not 1,00 DKK per packaging. The result is that the Danish deposit rate of 0,8 DKK is in reality added both Danish VAT (0,2 DKK) and German VAT (0,19 DKK).

The consequence is that the border shops must charge the consumer a deposit of 1,19 DKK whereas Danish shops may charge only a deposit of 1,0 DKK for the same product/packaging. By doing so the consumer is paying both Danish VAT and German VAT on the deposit rate, but it may also be seen as a discrimination of the border shops because there is different deposit rates for the same product/packaging: a low deposit rate is charged for Danish domestic sale and a high deposit must be charged by the border shops selling to Danish consumers for private import into Denmark even though the German VAT (19%) is lower than the Danish VAT (25%) rate (i.e. protection of Danish domestic sales).

Our recommendation is that:

- VAT is only charged once and the border shops must charge the same deposit of the consumer as the deposit charged in Denmark, i.e. 1,00 DKK, including German VAT (0,84 + 16).

Re.: 3. It must be flexible for the consumers to return the empty packaging.

The draft agreement requires that the border shop charges a deposit of 1,19 DKK of the consumer, but the consumer is only refunded 1,00 DKK when the consumer returns the empty can. – Also, the consumer may only return the empty packaging in Denmark,

In contrast the consumer pays a deposit of 1,00 DKK when buying the same product in Denmark and is repaid the full deposit when returning the empty packaging in Denmark.

In other words the consumer will lose 0,19 DKK each time the consumer returns a packaging in Denmark that is originally bought in a German border shop. The effect is similar to introducing a special “tax” on private import that is not imposed on domestic sale. Furthermore, the border shops cannot offer the consumers to take back the empty packaging and to refund them the full deposit even in order to avoid this loss per packaging.

Our recommendation is that:

- The deposit system must be flexible for the consumers. The consumer must be able to return the empty packaging in both Denmark (although losing the German VAT per unit) and in the German border shop and get back the full deposit (i.e. including German VAT).

Re.: 4. Illegal trade must be combatted by a specific deposit mark

The setting up of a mandatory deposit system requires that all economic operators and consumers can recognise the deposit visually. With the inclusion of border shops into the Danish deposit system it is only natural that the existing Danish deposit mark is also used. There is however differences between excise duties and VAT rates and differences in whether the VAT is charged or not, that requires a visual distinction between deposited packaging sold in Denmark and the deposited packaging sold in Germany at the border shops although being collected for recycling within the same collection system.

The key word is that without a distinct deposit mark on drinks packaging sold in border shops it will virtually be impossible to see the difference and thereby impossible to combat illegal trade which is inherent when Denmark and Germany applies different excise duties and VAT rates on the same products/drinks.

Our recommendation is that:

- The existing Danish deposit mark or symbol must be used but with a small and visual distinction to allow for a manual and visual identification of packaging sold in Denmark and packaging sold in Germany by the border shop. The adaptation should be limited to what is technically possible.

Re.: 5. No fee increases

With the inclusion of the border trade into to the Danish deposit system it is expected that twice as much packaging must be collected. Such an increase obviously requires a huge investment in extending the collection system in order to meet the demands, but it also requires that the investment can actually be financed by packaging from the border trade. Without a firm guarantee that border shops will actually charge the “Danish” deposit such investments will not be made.

Our recommendation is that:

- Border shops must charge “Danish” deposit (1,00 DKK, German VAT included) and thereby ensure that the packaging must be collected by the existing Danish deposit system. Only by making this mandatory from day one the necessary extension of the Danish collection system can begin. The cost of collection must be financed by the scrap value of the packaging and the non-redeemed deposit, securing that no new fees are introduced.

In conclusion Carlsberg supports an agreement between Denmark and Germany regarding introduction of a deposit system ensuring the collection of the non-reusable packaging sold by border shops to consumers residing outside Germany. This is most effectively done by including the border shops into the Danish deposit system on equal terms as Danish retailers.

However, the present draft agreement needs to be improved on a number of issues before we can recommend a final agreement to be signed by the Land Schleswig-Holstein respectively the German government.

We are of course at your disposal for any questions that you may have; in the meantime, I remain,

Yours sincerely,

Carsten Hänel

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