



16 August 2018

(18-5223)

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Original: English

CANADA - MEASURES GOVERNING THE SALE OF WINE

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY AUSTRALIA

The following communication, dated 13 August 2018, from the delegation of Australia to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 12 January 2018, the Government of Australia (Australia) requested consultations with the Government of Canada (Canada) pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), and Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), with regard to measures maintained by the Canadian Government and the Canadian provincial Governments of British Columbia ("BC"), Ontario, Quebec and Nova Scotia governing the sale of wine as it appeared that a range of distribution, licensing and sales measures such as product mark-ups, market access and listing policies, as well as duties and taxes on wine applied at the federal and provincial level discriminated, either directly or indirectly against imported wine. Australia and Canada held consultations on 1 March 2018, but unfortunately those consultations were unsuccessful in resolving this dispute.

As described in Parts I to V below Canada, at a federal level and at a provincial level in BC, Ontario, Quebec and Nova Scotia, applies a range of distribution, licensing and sales measures, product mark-ups as well as duties and taxes on wine that discriminate, either directly or indirectly against imported wine.

I. Federal – federal excise duty exemption for Canadian wine

Canada imposes a national excise duty on wine that is packaged in Canada, but the duty does not apply to wine that is produced in Canada and composed wholly of agricultural or plant product grown in Canada. Canada therefore exempts wine produced in Canada that is composed wholly of agricultural or plant products grown in Canada from the federal excise duty.

This measure is reflected in the federal Excise Act, 2001, as well as any amendments or successor, replacement or implementing measures.

Australia considers that this measure is inconsistent with Canada's obligations under Article III:1 and III:2 of the GATT 1994 because it is an internal tax or other internal charge of any kind applied to products imported into Canada in excess of those applied to products of domestic origin, so as to afford protection to products of domestic origin.

Australia also considers that this measure is inconsistent with Canada's obligations under Article III:4 of the GATT 1994 because it is a law, regulation or requirement affecting the internal sale, offering for sale, purchase or distribution of wine which fails to accord products imported into Canada treatment no less favourable than that accorded to like products of domestic origin.

II. British Columbia - Discriminatory measures governing sale of wine in grocery

BC wine measures provide advantages to BC wine through the granting of exclusive access to a retail channel of selling wine on grocery store shelves. The BC measures discriminate against

imported wine by allowing only BC wine to be sold on regular grocery store shelves while imported wine may be sold in grocery stores only through a so-called "store within a store."

These measures are reflected in legal and policy instruments and practices that include, but are not limited to, the following, operating separately or collectively:

- Policy Directive No. 15-01, issued by the BC Liquor Control and Licensing Branch, re: Liquor Policy Review Recommendations #19 and 20: Phased-in Implementation of Liquor in Grocery Stores, dated February 26, 2015;
- BC Liquor Control and Licensing Act ([SBC 2015] Chapter 19), succeeding the BC Liquor Control and Licensing Act ([RSBC 1996] Chapter 267);
- B.C. Reg. 42/2015, deposited March 17, 2015, amending BC Liquor Control and Licensing Regulation, B.C. Reg. 244/2002; Order in Council 121/2015, approved and ordered March 16, 2015; British Columbia Gazette, Part II, Volume 58, No. 6 (March 24, 2015);
- BC Liquor Control and Licensing Regulation, B.C. Reg. 241/2016, deposited October 20, 2016, effective January 23, 2017, succeeding BC Liquor Control and Licensing Regulation, B.C. Reg. 244/2002;
- "Wine Store Terms and Conditions," British Columbia Liquor and Cannabis Regulation Branch (formerly British Columbia Liquor Control and Licensing Branch), updated July 2018;
- Special Wine Store Licence Auction Act and regulations of 2015 [SBC 2015] Chapter 20 (British Columbia);
- "Manufacturer Terms and Conditions," British Columbia Liquor and Cannabis Regulation Branch (formerly British Columbia Liquor Control and Licensing Branch) publication, updated July 2018;
- British Columbia Vinters Quality Alliance system, including British Columbia Wines of Marked Quality Regulation and creating the "BC VQA" appellation of origin;
- British Columbia Liquor Distribution Act [RSBC 1996] Chapter 268,

as well as any amendments or successor, replacement or implementing measures.

Australia considers that these measures are inconsistent with Canada's obligations under Article III:4 of the GATT 1994 because they are laws, regulations or requirements affecting the internal sale, offering for sale, purchase or distribution of wine which fail to accord products imported into Canada treatment no less favourable than that accorded to like products of domestic origin.

III. Ontario

a) Measures governing sale of wine in grocery that favour domestic wine

Ontario wine measures place conditions¹ on the sale of wine in grocery stores that govern the type of wine that can be sold in grocery stores and the display of wine in grocery stores under restricted and unrestricted beer and wine authorizations. These conditions operate so as to favour domestic Ontario wines in grocery stores and exclude or limit imported wine from being displayed and sold in grocery stores.

Ontario wine measures with respect to "wine boutiques" in grocery stores favour domestic wine and exclude or limit the sale of imported wine in grocery stores through the winery retail store system and "wine boutiques". Wine sold in grocery stores through wine boutiques must include local content and certain winemaking steps must be performed in Ontario, which favours domestic

¹ These conditions are set out in Ontario Regulation 232/16: Sale of Liquor in Government Stores.

wine and excludes imported wine from these sales outlets. These measures also mandate shelf display requirements and sales targets for wine sold in wine boutiques that favour domestic wines.

These measures are reflected in legal and policy instruments and practices that include, but are not limited to, the following, operating separately or collectively:

- Ontario Regulation 232/16: Sale of Liquor in Government Stores under the Liquor Control Act;
- Ontario Liquor Licence Act [R.S.O. 1990, Chapter L.19] and Regulations;
- Ontario Liquor Control Act [R.S.O. 1990, Chapter L.18] and Regulations,

as well as any amendments or successor, replacement or implementing measures.

Australia considers that these measures are inconsistent with Canada's obligations under Article III:4 of the GATT 1994 because they are laws, regulations or requirements affecting the internal sale, offering for sale, purchase or distribution of wine which fail to accord products imported into Canada treatment no less favourable than that accorded to like products of domestic origin.

b) Reduced wine basic tax rate for Ontario wines sold through winery retail store system and wine boutiques

Ontario imposes a differential wine basic tax rate for wines sold through winery retail stores and wine boutiques that discriminates against imported wine. The wine basic tax rate is reduced for Ontario wine (for tax purposes, Ontario generally means that the wine is produced from 100 per cent Ontario- grown produce), while non-Ontario wine is taxed at a higher rate.

This measure is reflected in legal and policy instruments and practices that include, but are not limited to, the following, operating separately or collectively:

- Ontario Alcohol and Gaming Regulation and Public Protection Act, 1996, S.O. 1996, Chapter 26. Part II;
- Increases in the wine basic tax announced in the 2016 Ontario Budget,

as well as any amendments or successor, replacement or implementing measures.

Australia considers that this measure is inconsistent with Canada's obligations under Article III:1 and III:2 of the GATT 1994 because it is an internal tax or other internal charge of any kind applied to products imported into Canada in excess of those applied to products of domestic origin, so as to afford protection to products of domestic origin.

IV. Quebec- Discriminatory measures governing the sale of wine in grocery that provide domestic wine access to grocery and convenience stores

Quebec measures governing the sale of wine in grocery and convenience stores mandate access which favours domestic Quebec wine, while maintaining barriers to access grocery and convenience stores for imported wine. These measures provide Quebec small-scale wine producers with direct access to be sold in grocery and convenience stores, without going through the Société des alcools du Québec (SAQ) distribution system. Imported wines are not afforded this same access and must go through the SAQ distribution system where they are subject to mark-ups and other fees in this system. Quebec also imposes a requirement that wine must be bottled in Quebec to be sold in grocery and convenience stores. These measures exclude imported wines that are not bottled in Quebec from sale in grocery and convenience stores.

These measures are reflected in legal and policy instruments and practices that include, but are not limited to, the following, operating separately or collectively:

- Chapter P-9.1 An Act respecting liquor permits (Quebec) and Regulations, including:

- chapter P-9.1, r. 6 Regulation respecting promotion, advertising and educational programs relating to alcoholic beverages;
- Act respecting the Société des alcools du Québec and Regulations, including
 - chapter S-13, r. 5 Regulation respecting the duties and costs payable under the Act respecting the Société des alcools du Québec;
 - chapter S-13, r. 7 Regulation respecting wine and other alcoholic beverages made or bottled by holders of a wine maker's permit; Act respecting the Société des alcools du Québec (chapter S-13, ss. 30 and 37);
 - chapter S-13, r.6 Regulation respecting the terms of sale of alcoholic beverages by holders of a grocery permit in the Act respecting the Société des alcools du Québec;
- Legislation and regulations enacted as a result of Bill 88: An Act respecting development of the small-scale alcoholic beverage industry (Quebec), including Regulation respecting use of raw materials by holders of a small-scale wine producer's permit (chapter S-13, r 6.2);
- Mark ups and other fees through the Société des alcools du Québec,

as well as any amendments or successor, replacement or implementing measures.

Australia considers that these measures are inconsistent with Canada's obligations under Article III:4 of the GATT 1994 because they are laws, regulations or requirements affecting the internal sale, offering for sale, purchase or distribution of wine and fail to accord products imported into Canada treatment no less favourable than that accorded to like products of domestic origin.

V. Nova Scotia – reduced product mark-ups for local wine producers

Nova Scotia measures provide a reduced product mark-up on wine, through the Nova Scotia Liquor Corporation, for local wine producers.

These measures are reflected in legal and policy instruments and practices that include, but are not limited to, the following, operating separately or collectively:

- Liquor Control Act of Nova Scotia and Regulations;
- Nova Scotia Liquor Corporation's "Emerging Wine Region Policy";
- Mark-ups on wine through the Nova Scotia Liquor Corporation,

as well as any amendments or successor, replacement or implementing measures.

Australia considers that these measures are inconsistent with Canada's obligations under Article III:1 and III:2 of the GATT 1994 because they are internal taxes or other internal charges of any kind applied to products imported into Canada in excess of those applied to products of domestic origin, so as to afford protection to products of domestic origin.

Australia also considers that these measures are inconsistent with Canada's obligations under Article III:4 of the GATT 1994 because they are laws, regulations or requirements affecting the internal sale, offering for sale, purchase or distribution of wine which fail to accord products imported into Canada treatment no less favourable than that accorded to like products of domestic origin.

Australia also considers that with respect to the measures described in Parts II to V of this request, Canada has not complied with its obligations under Article XXIV:12 of the GATT 1994 because Canada² has not taken reasonable measures as may be available to it to ensure observance of the provisions of the GATT 1994 by the Governments and authorities of British Columbia, Ontario,

² Australia notes that s3(1) of the federal Importation of Intoxicating Liquors Act bans importation or inter-provincial shipment of liquor except if the liquor has been purchased by the government of the province to which it is being transported or imported.

Quebec and Nova Scotia which are regional or local governments and authorities within its territories.

In addition, Canada's measures appear to nullify or impair the benefits accruing to Australia directly or indirectly under the cited agreement.

As a result, Australia respectfully requests pursuant to Article 6 of the DSU that the Dispute Settlement Body establish a panel to examine this matter, with standard terms of reference as set out in Article 7.1 of the DSU. Australia notes that the United States requested a panel related to the same matter on 25 May 2018 (WT/DS531/7), which was established on 20 July 2018.
