

Original: English

**CANADA – TAX EXEMPTIONS AND REDUCTIONS  
FOR WINE AND BEER**

Request for Consultations by the European Communities

The following communication, dated 29 November 2006, from the delegation of the European Communities to the delegation of Canada and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

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The European Communities hereby requests consultations with Canada pursuant to Articles 4 and 30 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"), Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Article XXIII:1 of the *General Agreement on Tariffs and Trade 1994* (GATT 1994) regarding Canada's tax exemptions and reductions for wine and beer.

The issues which the European Communities would like to raise in the course of the consultations include, but are not limited to, the following:

- Canada's exemption from federal excise duties of wine produced in Canada and composed wholly of agricultural or plant products grown in Canada, in accordance with Canada Revenue Agency Notice EDN 15 of June 2006
- Canada's reduction of excise duty rates on the first 75,000 hl of beer and malt liquor produced and packaged in Canada per year by a licensed brewer, in accordance with Canada Revenue Agency Notice EDBN 9 of July 2006.

The European Communities understands that the above exemptions and reductions are provisionally applied since 1 July 2006 based on a "*Notice of ways and means motion*".<sup>1</sup> At the present time, proposed amendments to the *Excise Act 2001* and the *Excise Act* as laid down in Bill C-28 "*A second act to implement certain provisions of the budget tabled in Parliament on May 2, 2006*" of 18 October 2006, preceded by a "*Notice of ways and means motion to implement certain provisions of the Budget tabled in Parliament on May 2, 2006*" are being discussed in the Canadian

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<sup>1</sup> Notice of Ways and Means Motion to amend the *Excise Tax Act*, the *Excise Act, 2001*, the *Excise Act* and the *Air Travellers Security Charge Act* relating to other sales tax measures/That it is expedient to amend the *Excise Tax Act*, the *Excise Act, 2001*, the *Excise Act* and the *Air Travellers Security Charge Act* to provide among other things: that the provisions of the *Excise Act, 2001* and the *Excise Act* relating to excise duties on wine and beer be modified for vintners and small brewers in accordance with the proposals described in the budget documents tabled by the Minister of Finance in the House of Commons on May 2, 2006 <http://www.fin.gc.ca/budget06/bp/bpa3be.htm#Notice>.

Parliament. The adoption of Bill C-28 would make these exemptions and reductions applicable definitively.

For each of the measures referred to above, this request also covers any amendments, replacements, extensions, implementing measures or other related measures, *inter alia* any act of the Canadian Parliament or the executive that would confirm, extend, amend or otherwise affect the tax measures in question.

The European Communities considers that these measures are inconsistent with Canada's obligations under the SCM Agreement and GATT 1994. In particular, as far as wine is concerned:

- Canada is acting inconsistently with Article III:2 of the GATT 1994, by subjecting the products of the territory of other Members imported into the territory of Canada, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Canada is also acting inconsistently with Article III:2 of the GATT 1994 by applying internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1 of Article III.

As far as agricultural and plant products are concerned, from which wine is made:

- Canada is acting inconsistently with Articles 3.1(b) and 3.2 of the SCM Agreement by granting and maintaining a subsidy that is contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods;
- Canada is acting inconsistently with Article III:2 of the GATT 1994, by subjecting the products of the territory of other Members imported into the territory of Canada indirectly to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Canada is also acting inconsistently with Article III:2 of the GATT 1994 by applying internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1 of Article III;
- Canada is acting inconsistently with Article III:4 of the GATT 1994, by failing to accord, to products of the territory of the European Communities imported into the territory of Canada, treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.

As far as beer and malt liquor are concerned:

- Canada is acting inconsistently with Article III:2 of the GATT 1994, by subjecting the products of the territory of other Members imported into the territory of Canada indirectly to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Canada is also acting inconsistently with Article III:2 of the GATT 1994 by applying internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1 of Article III.

The European Communities considers that exemptions and reductions from excise duties applied by Canada to wine and to beer and malt liquor, respectively, also nullify or impair the benefits accruing to the European Communities under the GATT 1994.

Article 4.2 of the SCM Agreement requires that a request for consultations under Article 4.1 of the SCM Agreement include a statement of available evidence with regard to the existence and nature of the subsidy in question. This request identifies the existence and nature of the subsidies, and further available evidence is listed in the Annex to this request.

The European Communities reserves the right to address additional measures and claims under other provisions of the WTO Agreements regarding the above matters during the course of the consultations.

The European Communities looks forward to receiving in due course a reply from Canada to this request. The European Communities is ready to consider with Canada mutually acceptable dates to hold consultations in Geneva.

## ANNEX

### STATEMENT OF AVAILABLE EVIDENCE

The evidence set out below is evidence available to the EC at this time regarding the existence and nature of the subsidies set out in the request for consultations. It reflects the presently available evidence regarding the claims reflected in the EC's request for consultations and is supported by documents that are listed below. The EC reserves the right to supplement or alter this list in the future, as required. The European communities' request for consultations describes in more detail the nature of these subsidies.

- Bill C-28 "A second act to implement certain provisions of the budget tables in Parliament on May 2, 2006", Part 3, available at <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2410854&language=e&mode=1>;
  - Canada Revenue Agency, Excise duty notice EDN n° 15 under the Excise Act, 2001, June 2006, available at <http://www.cra-arc.gc.ca/E/pub/em/edn15/edn15-e.html>;
  - Canada Revenue Agency, Excise duty notice EDBN n° 9 under the Excise Act, July 2006, available at <http://www.cra-arc.gc.ca/E/pub/em/edbn9/README.html>;
  - Canada Revenue Agency, Excise duty notice EDN n°9 under the excise Act and the Excise Act, 2001, May 2006, at <http://www.cra-arc.gc.ca/E/pub/em/edn9/edn9-e.pdf>
  - Canada Revenue Agency, Excise duty notice EDN n°11 under the Excise Act at <http://www.cra-arc.gc.ca/E/pub/em/edn11/edn11-e.pdf>
  - Canada Revenue Agency, Excise duty notice EDBN n° 6 under the Excise Act 2001, at <http://www.cra-arc.gc.ca/E/pub/em/edbn6/edbn6-e.html>
  - Canada Revenue Agency, Excise duty notice EDBN n° 8 under the Excise Act at <http://www.cra-arc.gc.ca/E/pub/em/edbn8/edbn8-e.pdf>
  - "Canada's government is further reducing the tax burden for Canadian wineries and Breweries", available at <http://www.fin.gc.ca/news06/06-027e.html>;
  - "Notice of ways and means Motion to implement certain provisions of the budget tabled in Parliament on May 2, 2006", The Minister of finance, ref. 90386-2006-10-13,, available at <http://www.fin.gc.ca/drleg/wmbud06l.pdf> and <http://www.fin.gc.ca/news06/06-057e.html>;
  - Canada Budget Plan 2006 at Department of Finance Canada at <http://www.fin.gc.ca/budget06/bp/bptoce.htm> and Tax Measures: Supplementary Information-Annex 3 - Tax Measures: Supplementary Information and Notices of Ways and Means Motions at <http://www.fin.gc.ca/budget06/bp/bpa3ae.htm>
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