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CANADA - MEASURES GOVERNING THE SALE OF WINE

REQUEST FOR CONSULTATIONS BY AUSTRALIA

The following communication, dated 12 January 2018, from the delegation of Australia to the delegation of Canada and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of 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 provinces of British Columbia ("BC"), Ontario, Quebec and Nova Scotia governing the sale of wine.

It appears 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 may discriminate, either directly or indirectly, against imported wine. In particular:

- The 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 appear to discriminate on their face 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." The BC wine measures also provide advantages to BC wine through a separate distribution system for imported wine and another system that applies to BC wine. Imported wine is subject to a wide range of mark-ups, fees and taxes, while BC wineries are permitted to "direct deliver" wine to consumers. This system provides a substantial benefit to BC wines.
- The Ontario wine measures place conditions on both the sale of wine in grocery stores and its supply through the Liquor Control Board of Ontario (LCBO), a State Trading Enterprise. The Ontario measures appear to operate so as to favour products of Canadian origin and potentially exclude or limit imported products from being displayed and sold. It appears that the Ontario wine measures advantage Ontario wine by allowing Ontario wineries to directly deliver wines to licensed establishments in Ontario, on behalf of the LCBO.
- The Quebec wine measures provide Quebec small-scale wine producers with direct access to grocery and convenience stores. The Quebec measures appear to streamline access in favour of Canadian wine, while maintaining barriers to access for imported wines.
- The Nova Scotia wine measures provide reduced product mark-up for local producers and preferences through supplier competitions and price bands.

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

1. Federal Importation of Intoxicating Liquors Act 1985;

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2. Federal Excise Act 2001;
 3. 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;
 4. BC Liquor Control and Licensing Act ([SBC 2015] Chapter 19), succeeding the BC Liquor Control and Licensing Act ([RSBC 1996] Chapter 267);
 5. 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);
 6. 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;
 7. "Wine Store Terms and Conditions," BC Liquor Control and Licensing Branch publication, updated August 2017;
 8. Special Wine Store Licence Auction Act and regulations of 2015 [SBC 2015] Chapter 20 (British Columbia);
 9. British Columbia Wine Store Handbook, January 2017;
 10. "Manufacturer Terms and Conditions," BC Liquor Control and Licensing Branch publication, December 2017;
 11. British Columbia Vinters Quality Alliance system, including British Columbia Wines of Marked Quality Regulation and creating the "BC VQA" appellation of origin;
 12. British Columbia Liquor Distribution Act [RSBC 1996] Chapter 268;
 13. Mark ups, fees and taxes through the British Columbia Liquor Distribution Branch;
 14. Ontario Liquor Licence Act [R.S.O. 1990, Chapter L.19] and Regulations;
 15. Ontario Liquor Control Act [R.S.O. 1990, Chapter L.18] and Regulations;
 16. Ontario Regulation 232/16 regarding the sale of liquor in government stores under the Liquor Control Act;
 17. Ontario Alcohol and Gaming Regulation and Public Protection Act, 1996, S.O. 1996, Chapter 26;
 18. Mark ups, fees and taxes through the Liquor Control Board of Ontario and the Alcohol and Gaming Commission of Ontario, including those listed in the 2016 Ontario Budget;
 19. 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;
 20. 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); and
 - 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;

21. Legislation and regulations enacted as a result of Bill 88: An Act respecting development of the small-scale alcoholic beverage industry (Quebec);
22. Act respecting the Quebec sales tax and Regulation respecting the Quebec sales tax;
23. Mark ups, fees and taxes through the Société des alcools du Québec;
24. Liquor Control Act of Nova Scotia and Regulations; and
25. Mark ups, fees and taxes through the Nova Scotia Liquor Corporation

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

These measures appear to be inconsistent with Canada's obligations pursuant to Articles III, XVII and XXIV:12 of the GATT 1994.

- 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 Canadian origin, so as to afford protection to products of Canadian origin.
- 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 favorable than that accorded to like products of Canadian origin.
- Article XVII:1 of the GATT 1994 because the provincial liquor control boards/commissions of British Columbia, Ontario, Nova Scotia and Quebec, as State Trading Enterprises, are not acting in a manner consistent with the general principles of non-discriminatory treatment prescribed in the GATT 1994 for governmental measures affecting imports by private traders.
- Article XXIV:12 of the GATT 1994 because Canada has not taken reasonable measures as may be available to it to ensure observance of the provisions of the GATT 1994 by the regional and local governments and authorities within its territories.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.
