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**CANADA – MEASURES GOVERNING THE SALE OF WINE**

REPORT OF THE PANEL

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## 1 COMPLAINT BY AUSTRALIA

1.1. On 12 January 2018, Australia requested consultations with 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 respect to "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."<sup>1</sup>

1.2. According to Australia, these measures appeared to be inconsistent with Canada's obligations pursuant to Articles III, XVII and XXIV:12 of the GATT 1994.<sup>2</sup>

1.3. Consultations were held on 1 March 2018.<sup>3</sup>

## 2 PANEL ESTABLISHMENT AND COMPOSITION

2.1. On 13 August 2018, Australia requested the establishment of a panel pursuant to Article 6 of the DSU with standard terms of reference.<sup>4</sup>

2.2. In its panel request, Australia alleged that "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."<sup>5</sup>

2.3. Australia challenged the following measures:

- a. "Federal – federal excise duty exemption for Canadian wine";
- b. "British Columbia – Discriminatory measures governing sale of wine in grocery";
- c. Ontario – "Measures governing sale of wine in grocery that favour domestic wine" and "Reduced wine basic tax rate for Ontario wines sold through winery retail store system and wine boutiques";
- d. "Quebec – Discriminatory measures governing the sale of wine in grocery that provide domestic wine access to grocery and convenience stores"; and
- e. "Nova Scotia – reduced product mark-ups for local wine producers".<sup>6</sup>

2.4. Australia claimed *inter alia* that these measures were inconsistent with Articles III:1, III:2 and/or III:4 of the GATT 1994.<sup>7</sup>

2.5. At its meeting on 26 September 2018, the Dispute Settlement Body (DSB) established a panel pursuant to Australia's request in document WT/DS537/8, in accordance with Article 6 of the DSU.<sup>8</sup>

2.6. The Panel's terms of reference are the following:

To examine, in the light of the relevant provisions of the covered agreements cited by the parties to the dispute, the matter referred to the DSB by Australia in document

<sup>1</sup> Request for consultations by Australia, WT/DS537/1 (Australia's consultations request), p. 1.

<sup>2</sup> Australia's consultations request, WT/DS537/1, p. 3.

<sup>3</sup> Request for the establishment of a panel by Australia, WT/DS537/8 (Australia's panel request), p. 1.

<sup>4</sup> Australia's panel request, p. 5.

<sup>5</sup> Australia's panel request, p. 1.

<sup>6</sup> Australia's panel request, pp. 1-4.

<sup>7</sup> Australia's panel request, pp. 1-4.

<sup>8</sup> DSB, Minutes of the meeting held on 26 September 2018, WT/DSB/M/419, para. 5.6.

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WT/DS537/8 and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.<sup>9</sup>

2.7. On 25 February 2019, Australia requested the Director-General to determine the composition of the panel, pursuant to Article 8.7 of the DSU. On 7 March 2019, the Director-General accordingly composed the Panel as follows:

Chairperson: Mr Stuart Harbinson

Members: Ms Gisela Bolívar-Villagómez  
Mr Gabriel Duque

2.8. Argentina, Chile, China, the European Union, India, Israel, the Republic of Korea, Mexico, New Zealand, the Russian Federation, South Africa, Chinese Taipei, Ukraine, the United States, and Uruguay reserved their rights to participate in the Panel proceedings as third parties.<sup>10</sup>

### **3 NOTIFICATION OF A MUTUALLY AGREED SOLUTION**

3.1. On 12 April 2019, Australia informed the Panel that Australia and Canada had reached an agreement on measures governing the sale of wine in grocery stores in the province of British Columbia.<sup>11</sup> Canada confirmed that an understanding on the "measures governing the sale of wine in grocery stores in the province of British Columbia" had been reached with Australia, as outlined in Australia's letter of 12 April 2019.<sup>12</sup>

3.2. On 3 July 2020, Australia and Canada informed the Panel that they had reached "a mutually agreed solution regarding Australia's claims with respect to the federal excise duty exemption and the Nova Scotia Emerging Wine Regions Policy".<sup>13</sup>

3.3. On 22 July 2020, Australia and Canada informed the Panel that they had reached "a mutually agreed solution regarding Australia's claims with respect to the disputed Ontario measures on the sale of wine."<sup>14</sup>

3.4. On 8 February 2021 and on 8 April 2021, the Panel informed the DSB that it had accepted several requests by the parties to delay the issuance of its interim report in order to allow the parties to find a mutually agreed solution.<sup>15</sup>

3.5. On 22 April 2021, Australia and Canada informed the Panel that they had reached "a mutually agreed solution regarding Australia's claims with respect to the disputed Quebec measures on the sale of wine." The parties considered that, as a result of that agreement, the matters raised in this dispute had been resolved.<sup>16</sup>

3.6. By a letter dated 12 May 2021, the parties notified the DSB that they had reached a mutually agreed solution pursuant to Article 3.6 of the DSU. The mutually agreed solution reached by the parties, was circulated as document WT/DS537/18 on 18 May 2021.

3.7. The Panel welcomes the fact that the parties have reached a mutually agreed solution and recalls that, pursuant to Article 3.7 of the DSU, "[t]he aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred."

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<sup>9</sup> Constitution note of the Panel, WT/DS537/9 and WT/DS537/9/Corr.1, para. 2.

<sup>10</sup> Constitution note of the Panel, WT/DS537/9 and WT/DS537/9/Corr.1, para. 5.

<sup>11</sup> Australia's communication, 12 April 2019, p. 1.

<sup>12</sup> Canada's communication, 12 April 2019.

<sup>13</sup> Joint communication, 3 July 2020.

<sup>14</sup> Joint communication, 22 July 2020.

<sup>15</sup> Communications from the Panel, WT/DS537/16, 11 February 2021, and WT/DS537/17, 9 April 2021.

<sup>16</sup> Joint communication, 22 April 2021.

3.8. The Panel also takes note of Article 12.7 of the DSU, which provides that "[w]here a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached."

3.9. Accordingly, the Panel concludes its work by reporting that a mutually agreed solution to this dispute has been reached between the parties.

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