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UNITED STATES - MEASURES AFFECTING ALCOHOLIC AND MALT BEVERAGES

Communication from Canada

The following communication, dated 4 June 1991, has been received from the Permanent Mission of Canada in Geneva, with the request that it be circulated to contracting parties.

Canada's Request under Article XXIII:2 for a Panel on U.S.A. Measures Affecting Alcoholic and Malt Beverages

At the federal level within the United States, Canada's concern derives from the provisions of Section 11201 of the Omnibus Budget Reconciliation Act of 1990, in which the excise tax on beer was increased to $18.00 a barrel. However, this legislation applies a tax of only $7.00 a barrel on the first 60,000 barrels produced by U.S. manufacturers of beer whose annual production does not exceed two million barrels. While there are approximately 250 brewers in the United States whose products may benefit from this reduced tax rate, foreign products are not eligible.

The same legislation also provides for an increase in the excise tax on wine and cider of $0.90 per wine gallon. This new tax increase does not apply to the first 100,000 wine gallons of wine or cider produced by those facilities whose total wine or cider production does not exceed 150,000 wine gallons per annum. This exemption is also available, at a progressively reduced rate, for wine or cider manufactured at facilities producing up to 250,000 wine gallons per annum. Over 1,500 wineries and cider producers in the United States potentially are eligible for this exemption. Products of foreign wineries and cider producers do not benefit from this credit.

Canada considers that these federal tax measures are in contravention of the General Agreement, in particular Article III. In addition, they have nullified or impaired benefits accruing to Canada under the General Agreement through the resulting loss of existing and future sales of Canadian exports to the United States.

At the U.S. state level, a number of state governments currently have in place a series of measures, the cumulative effect of which amounts to a significant barrier to Canadian exports of beer, wine and cider to the U.S. market. Our overall review of these state measures has revealed a number of measures which are maintained inconsistent with the General Agreement and which nullify or impair benefits accruing to Canada. With respect to the measures identified here, Canada reserves the right to raise additional examples which may come to our attention for inclusion in our first written submission to the GATT Panel. Canada also reserves the right to raise any new measure which may come into effect during the Panel's deliberations.

Tax Measures:

Various internal taxation measures discriminate against imports of beer, wine or cider within the state, and are therefore inconsistent with Article III. Examples include "import taxes" in Florida and Georgia, which are additional charges applied to products imported into the state; no corresponding charge is applied to like products produced in-state. As well, lower tax rates are applied on local products in Alabama, Idaho, Mississippi, New Jersey, New Mexico, South Carolina, Texas, Virginia and Puerto Rico than are applied on imported products. Tax credits, refunds or exemptions apply on the products of local or U.S. producers but do not apply to the products of out-of-state or foreign producers in Indiana, Kentucky, Michigan, Minnesota, New York, Ohio, Pennsylvania and Rhode Island. This leads to a lower effective tax rate on the products of in-state producers.

Market Access:

Most states in the United States, with the possible exception of Alaska, Arkansas, Nebraska, North Dakota, South Dakota, Georgia, Vermont and Wyoming, maintain some form of discriminatory measure with respect to market access and distribution for imported beer and/or wine as compared to in-state produced product. The most widespread practice is that of the three-tiered distribution system, in which states impose a requirement that foreign producers may only sell their products to in-state wholesalers (who then sell it to retailers), while in-state producers may sell directly to retailers themselves.

This requirement accords treatment, contrary to Article III, which is more favourable to in-state products, as in-state manufacturers are not required to incur the extra burden of an additional step in the distribution of their products which arise due to the use of wholesalers.

Licensing Fees:

Licensing fees for the sale of beer and/or wine in Alaska, Arizona, California, New Mexico, New York, Vermont, Washington and Wisconsin are higher for imported product and thereby affect the price of imported products in comparison to in-state products. As similar levels of fees are not charged to in-state producers, this practice is inconsistent with Article III.

Transportation:

In Arizona, California, Maine, South Carolina, South Dakota, Mississippi, Missouri, Montana, and Tennessee, common carriers must be used for the transportation of out-of-state beer and/or wine into the state whereas in-state products may be transported by vehicles operated by the in-state producer. In other states, imports must be consigned to the alcohol control board or licensees whereas in-state products may be distributed directly to retail outlets. These include, Alabama, Arizona, Arkansas, California, Delaware, Hawaii, Indiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, North Dakota, Oregon, South Dakota and Tennessee. These result in less favourable treatment for imported products inconsistent with Article III.

Alcohol Content:

Several states treat beer with 3.2% alcohol content or less, more favourably than beer with an alcohol content over 3.2% with respect to availability at points of sale. For example, 3.2% beer is permitted to be sold at a larger number of retail outlets than beer of higher alcoholic content in Alabama, Kansas, Minnesota, Missouri, Oklahoma and Utah. In Colorado, Florida, Illinois, Kentucky, Louisiana, Minnesota and Virginia, counties which are "dry", that is, which have elected to ban the sale of alcoholic beverages in their jurisdiction, still allow the sale of beer with 3.2% alcohol content or less, as these are considered to be "non-intoxicating".

Higher-alcohol beers are being accorded treatment less favourable than lower-alcohol (3.2%) beers with respect to where they are made available for sale. Beers of different alcohol content levels can be considered as "like products" in the context of Article III. Canada considers that these practices are contrary to Article III of the GATT.

Labelling:

Canada is examining the labelling practices of certain states to determine whether they afford protection to domestic products contrary to Article III.

Listing/delisting:

"Control" states require that suppliers obtain a listing for their products before they may be sold in the state. However, New Hampshire gives preference in its listing/delisting policies to in-state products. This is inconsistent with Article XI. We reserve the right to provide other examples where they may occur in the "control" states.

Pricing:

Connecticut, Kansas, Oklahoma, South Carolina and Vermont maintain provisions with respect to price affirmation, in which out-of-state alcoholic beverages would not be sold at a price above the lowest price elsewhere either in the United States or in adjoining states. As in-state producers were not restricted in their pricing decisions, this practice would be inconsistent with Article III. However, Canada understands that these measures have been found to be unconstitutional and therefore request confirmation that these practices are no longer being applied in these states.

In the course of the Article XXIII:1 consultations, Canada has provided particulars of the relevant state legislation on which these measures are based. Canada reserves the right to elaborate further on the legislative provisions pursuant to which these measures are made effective.