

Chapter Eight

Wine and Distilled Spirits

Article 801: Coverage

1. This Chapter applies to any measure related to the internal sale and distribution of wine and distilled spirits.
2. Except as otherwise provided in this Chapter, Chapter Five (National Treatment) shall not apply to:
 - a) a non-conforming provision of any existing measure;
 - b) the continuation or prompt renewal of a non-conforming provision of any existing measure; or
 - c) an amendment to a non-conforming provision of any existing measure to the extent that the amendment does not decrease its conformity with any of the provisions of Chapter Five.
3. The Party asserting that paragraph 2 applies to one of its measures shall have the burden of establishing the validity of such assertion.

Article 802: Listing

1. Any measure related to listing of wine and distilled spirits of the other Party shall:
 - a) conform with Chapter Five;
 - b) be transparent, non-discriminatory and provide for prompt decision on any listing application, prompt written notification of such decision to the applicant and, in the case of a negative decision, provide for a statement of the reason for refusal;

- c) establish administrative appeal procedures for listing decisions that provide for prompt, fair and objective rulings;
- d) be based on normal commercial considerations;
- e) not create disguised barriers to trade; and
- f) be published and made generally available to persons of the other Party.

2. Notwithstanding paragraph 1 and Chapter Five, and provided that listing measures of British Columbia otherwise conform with the provisions of paragraph 1 and Chapter Five, automatic listing measures in the province of British Columbia may be maintained provided they apply only to estate wineries existing on October 4, 1987, producing less than 30,000 gallons of wine annually and meeting the then-existing content rule.

Article 803: Pricing

1. Where the distributor is a public entity, the entity may charge the actual cost-of-service differential between wine or distilled spirits of the other Party and domestic wine or distilled spirits. Any such differential shall not exceed the actual amount by which the audited cost of service for the wine or distilled spirits of the exporting Party exceeds the audited cost of service for the wine or distilled spirits of the importing Party.

2. Nothing in paragraph 1 and Chapter Five shall prohibit a differential in price mark-ups for wine in excess of that referred to in paragraph 1 prior to January 1, 1995, provided that any such excess does not exceed:

- a) as of January 1, 1989, 75 percent of the base differential referred to in paragraph 3;
- b) as of January 1, 1990, 50 percent of such base differential;
- c) as of January 1, 1991, 40 percent of such base differential;

- d) as of January 1, 1992, 30 percent of such base differential;
 - e) as of January 1, 1993, 20 percent of such base differential;
 - f) as of January 1, 1994, 10 percent of such base differential; and
 - g) as of January 1, 1995 and beyond, 0 percent of such base differential.
3. For purposes of paragraph 2, the base differential shall be calculated by subtracting the permissible cost-of-service differential referred to in paragraph 1 from the mark-up differential applied by the competent authority as of October 4, 1987.
4. All discriminatory mark-ups on distilled spirits shall be eliminated immediately upon the entry into force of this Agreement. Cost-of-service differential mark-ups as described in paragraph 1 above shall be permitted.
5. Any other discriminatory pricing measure shall be eliminated upon entry into force of this Agreement.

Article 804: Distribution

1. Any measure related to distribution of wine or distilled spirits of the other Party shall conform with Chapter Five.
2. Notwithstanding paragraph 1, and provided that distribution measures otherwise ensure conformity with Chapter Five, a Party may:
- a) maintain or introduce a measure limiting on-premise sales by a winery or distillery to those wines or distilled spirits produced on its premises; or
 - b) maintain a measure requiring private wine store outlets in existence on October 4, 1987 in the provinces of Ontario and British Columbia to discriminate in favour of wine of those

provinces to a degree no greater than the discrimination required by such existing measure.

3. Nothing in this Agreement shall prohibit the Province of Quebec from requiring that any wine sold in grocery stores in Quebec be bottled in Quebec, provided that alternative outlets are provided in Quebec for the sale of wine of the United States of America, whether or not such wine is bottled in Quebec.

Article 805: Blending Requirement

Canada shall eliminate any measure requiring that distilled spirits imported in bulk from the United States of America for bottling be blended with any distilled spirits of Canada.

Article 806: Distinctive Products

1. Solely for purposes of standards and labelling, Canada shall recognize the standard for Bourbon Whiskey, including straight Bourbon Whiskey, as described in the laws and regulations of the United States of America. Accordingly, Canada shall not permit the sale of any product as Bourbon Whiskey, including straight Bourbon Whiskey, unless the product has been manufactured in the United States of America and complies with the prescribed standards of the United States of America.

2. Solely for purposes of standards and labelling, the United States of America shall recognize Canadian Whiskey as a distinctive product of Canada. Accordingly, the United States of America shall not permit the sale of any product as Canadian Whiskey unless it has been manufactured in Canada in accordance with the laws and regulations of Canada governing the manufacture of Canadian Whiskey for consumption in Canada.

Article 807: International Obligation

Unless otherwise specifically provided in this Chapter, the Parties retain their rights and obligations under the *General Agreement on Tariffs and Trade* (GATT) and agreements negotiated under the GATT.

Article 808: Definitions

For purposes of this Chapter:

distilled spirits include distilled spirits and distilled spirit-containing beverages;

existing measure means a measure in force as of October 4, 1987;

in existence on October 4, 1987 means, with respect to wine store outlets referred to in subparagraph 2(b) of Article 804, those, that on October 4, 1987, were in operation, were in the process of being built, or for which an application to operate had been approved by the Ontario or British Columbia liquor controlling authority, as the case may be; and

wine includes wine and wine-containing beverages.