

Canada Agreement On Beer Market Access In Quebec And British Columbia Beer Antidumping Cases (1994)

THE UNITED STATES TRADE REPRESENTATIVE

Executive Office of the President

Washington, D.C. 20506

The Honorable Roy MacLaren

Minister for International Trade

Lester B. Pearson Building

125 Sussex Drive

Ottawa, Canada KIA OG2

Dear Minister MacLaren:

I confirm receipt of your letter dated April 29, 1994, that reads as follows:

Dear Ambassador Kantor:

On the basis of consultations under the Canada-United States Memorandum of Understanding on Provincial Beer Marketing Practices (MOU), we have been able to agree to the attached annex pertaining to the access of U.S. beer to the Quebec market. I propose that this letter and your letter of confirmation in reply will formalize the annex's incorporation into the MOU. My Government is prepared to engage in future consultations with a view to finding a mutually acceptable solution to the minimum pricing issue.

With respect to British Columbia, Mr. Tom MacDonald of this Department sent a letter to Mr. David Weiss of your office outlining interim and permanent changes to the province's warehousing policy that respond to U.S. concerns in this area.

Finally, I can also confirm that my colleague, the Minister of Finance, will request the Canadian International Trade Tribunal (CITT) to undertake a review, under Section 76 of the Special Import Measures Act, of the 1991 decision of the CITT concerning the imposition of antidumping duties on certain U.S. beer imported into the Province of British Columbia. In his request, my colleague will raise the issues of the existence of a regional industry and a concentration of imports (should a regional industry be found to exist), and whether revocation of the order is likely to result in injury. Such a review by the CITT under Section 76 will constitute a mutually satisfactory solution to the GATT dispute arising from the October 1991 decision of the CITT. The Parties will notify the Chairman of the Panel on "Canada - Anti-Dumping Duties on Imports of Beer From the United States" accordingly.

The Honorable Roy MacLaren

Page Two

I look forward to acknowledgement of this letter.

Yours sincerely,

Roy MacLaren

This exchange of letters shall constitute an agreement between our two governments to incorporate the attached document, entitled "Terms of Access of U.S. Beer to the Quebec Market", as an Annex to the United States-Canada Memorandum of Understanding on Provincial Beer Marketing Practices (hereafter referred to as the MOU).

In addition, as you are aware, the United States does not accept that the practice of minimum price requirements is consistent with Canada's obligations under this MOU or under the General Agreement on Tariffs and Trade (GATT). Therefore, in regard to such practices, the United States reserves all rights under international agreements, including the MOU and the GATT. I confirm that by this exchange of letters our two governments agree to engage in future consultations for the purpose of finding a mutually acceptable solution to the minimum pricing issue.

We also note that the Minister of Finance of Canada will request the Canadian International Trade Tribunal (CITT) to undertake a review of the 1991 decision of the CITT concerning the imposition of anti-dumping duties on certain U.S. beer imported into the Province of British Columbia. Such a review by the CITT under Section 76 will constitute a mutually satisfactory solution to the GATT dispute arising from the October 1991 decision of the CITT. The Parties will notify the Chairman of the GATT Panel on "Canada - Anti-Dumping Duties on Imports of Beer From the United States" accordingly.

Finally, the United States, without prejudice to its rights under international agreements, including the MOU and the GATT, notes the arrangements regarding the beer market access issues in British Columbia noted in your letter.

Sincerely,

Michael Kantor

ANNEX

TERMS OF ACCESS OF U.S. BEER

TO THE QUEBEC MARKET

In addition to paragraph I of the United States - Canada Memorandum of Understanding on Provincial Beer Marketing Practices (MOU), beer exported from the United States to the province of Quebec may be distributed to all duly licensed points of sale in Quebec in accordance with the terms and conditions of access and the applicable fees set forth in this annex, which constitutes an integral part of the MOU.

1. Beer Distributor's Permit

A. A U.S. brewer who does not have a Quebec brewer's permit may market its beer privately in Quebec if it holds a beer distributor's permit (hereafter referred to as a "distributor's permit") issued by the Regie des alcools, des courses et des jeux (RACJ) in accordance with conditions prescribed by law. The distributor's permit and warehouse permit shall be granted by the RACJ provided that the application for such permits satisfies the applicable laws, regulations and precedents.

B. The processing cost for a distributor's permit is C\$86. The publishing cost for a distributor's permit is C\$89.02.

C. The RACJ shall render a decision on an application for a brewer's, distributor's, or warehousing permit as expeditiously as possible and under normal circumstances no later than eight weeks from the date that a complete application, including all required documentation, is submitted. A brewer or distributor shall have the right to appeal any decision by the RACJ in accordance with applicable laws and regulations.

2. Societe des Alcools du Quebec

When U.S. beer is to be privately distributed in Quebec, the Societe des alcools du Quebec (SAQ), as the sole importer of alcoholic beverages into Quebec, receives orders from the holder of a distributor's permit ("the distributor") and without delay forwards the orders directly to the foreign brewer ("the supplier") specified by the distributor.

The SAQ shall ensure customs clearance and payment of excise taxes. Imported beer shall be cleared through customs expeditiously, in accordance with the law and standard procedures and rules.

The SAQ shall monitor product quality and conformity with labelling in a manner that ensures that U.S. beer is accorded treatment no less favorable than that accorded domestically produced beer.

3. Transportation and Delivery

Suppliers of U.S. beer may choose one of the following three options for having their beer delivered to points of sale in Quebec. A brewer is not required to use one method exclusively, but may decide to utilize more than one method of delivery dependent upon brand:

A. The supplier is responsible for transporting the beer to the distributor's establishment, for onward distribution to points of sale.

The SAQ buys the beer directly from the supplier and resells it to the distributor. All packing, shipping, insurance, transportation, warehousing arrangements and delivery directly to the distributor's establishment are the responsibility of the supplier. Monitoring for product quality and conformity of labelling may be done at the SAQ warehouse or, at the request of the supplier or distributor, at the distributor's warehouse. If such monitoring is done at the SAQ warehouse, under normal circumstances the product will not be unloaded there. The SAQ bills the distributor for the cost of the product plus taxes and service charges and collects the amount billed.

The distributor may then deliver beer directly, or through licensed agents, to licensed points of sale.

B. The SAQ is responsible for transportation and delivery of beer to the distributor's establishment under terms to be mutually agreed upon between the SAQ and the holder of the distributor's permit.

The SAQ buys the beer directly from the supplier and resells it to the distributor. The SAQ arranges for the product to be picked up at the brewery in the United States, ensures transportation of the product to the distributor's establishment via the SAQ warehouse, ensures customs clearance and the payment of excise taxes and monitors product quality and the conformity of labelling. Under normal circumstances, the product will not be unloaded at the SAQ warehouse. The SAQ bills the distributor for the cost of the product plus taxes and service charges and collects the amount billed.

The distributor may then deliver the beer directly, or through licensed agents, to licensed points of sale.

C. The SAQ is responsible for transportation and delivery of beer directly to the SAQ warehouse for distribution, marketing, and sale exclusively through the SAQ's network of stores.

In this case, the SAQ's customary policy and business practices apply.

4. Service Charges

The SAQ assesses service fees to cover the costs of customs clearance and monitoring of product quality and conformity of labelling under each of the options listed in paragraph 3 above. All such service charges are to be based on the principle of fee-for-service: the charges are intended to cover only the SAQ's costs, and may not therefore be in excess of the actual costs of providing these services.

For options 3(A) and (B), the SAQ will charge C\$295 per shipper's bill of lading, which corresponds roughly to one truckload or trailerload. These charges are based on the truck or the trailer containing just one product or size.

If the truck or the trailer contains more than one brand or size, additional service charges will be imposed to cover additional costs, including those associated with quality control. These additional charges will be C\$55 for each additional brand or size. These additional charges assume that the SAQ is able to take a sample of each brand or size in the shipment without having to unload the truck. If the SAQ is required to partially or completely

unload the truck in order to obtain samples for quality control purposes, other charges are added on the same principle of fee-for-service as described above.

These charges will cover all services the SAQ provides with respect to the importation of beer from the United States in accordance with these modes of delivery.

At the request of the distributor, the supplier may deliver beer directly to the distributors warehouse without stopping at the SAQ warehouse. The service charges will then be adjusted to reflect any additional cost of ensuring customs clearance, monitoring for product quality and conformity of labelling. Adjustments may be made to the SAQ service charges noted above as long as they do not exceed the provincial consumer price index (CPI), based on the most recent 12 month period for which data from Statistics Canada are available. Further adjustments to this fee above the provincial CPI may be made when necessary, but not more often than annually, when justified by and based on changes to costs as demonstrated by audited financial statements or other appropriate documentation to verify actual costs.

The justification and basis for an adjustment to the basic service fee above the provincial CPI would be subject to prior notification and consultation between the Parties. In such consultations, the audited financial statements or other appropriate documentation will be available for review by the Parties.

For option 3(c), the fees charged by the SAQ will reflect all costs related to the transportation, importation and supplying of U.S. beer to SAQ stores and through them to establishments licensed for on-premise consumption.

TANC offers these agreements electronically as a public service for general reference. Every effort has been made to ensure that the text presented is complete and accurate. However, copies needed for legal purposes should be obtained from official archives maintained by the appropriate agency.