

Canada Memorandum Of Understanding On Provincial Beer Marketing Practices

The Government of the United States and the Government of Canada (hereafter referred to as the United States and Canada, respectively) reaffirm their Agreement in Principle of April 25, 1992, which is hereby made an integral part of this Memorandum of Understanding (MOU), and enter into this MOU to provide further details on how the terms of the Agreement in Principle are to be implemented. In the event of any inconsistency between this MOU and the Agreement in Principle, this MOU will prevail to the extent of the inconsistency.

1. Agreement in Principle . Canada will ensure that the terms of the Agreement in Principle scheduled for implementation by June 30, 1992 are implemented immediately; where such terms have already been implemented, Canada will provide the United States with written information confirming such implementation (unless the information has already been provided). Canada will ensure that the terms of the Agreement in Principle scheduled for implementation by September 30, 1993 will be implemented by that date and, where applicable, will be implemented in the manner identified during the course of negotiations unless as otherwise provided below. Notification of implementation will be provided to the United States in accordance with paragraph 4 below.

2. Canadian competent authorities reserve the right to introduce or modify measures or practices pertaining to the importation, distribution, sale or pricing of beer, but may not introduce or modify any such measures or practices in a manner that is inconsistent with Canada's obligations under this MOU or under the General Agreement on Tariffs and Trade (GATT), including the obligations of national treatment and the GATT Panel Report of September 18, 1991, entitled Panel on Canada - Import, Distribution, and Sale of Certain Alcoholic Drinks by Provincial Marketing Agencies .

3. Ontario. In addition to paragraph 1,

(a) Beer exported from the United States to the province of Ontario will have access to the Brewers Retail Incorporated (BRI) store system and its services will be made available upon the date this MOU enters into effect. The terms of that access, and the fees to be charged, are set forth in the Annex to this MOU, which constitutes an integral part of this MOU; no BRI charges, fees, or levies may be introduced or increased except as set forth in the Annex. With the exception of the BRI service fee, all terms of access to BRI for U.S. beer will be no worse than terms applicable to beer of BRI shareholders. Subject to paragraph 5(b) below, the Liquor Control Board of Ontario (LCBO) will immediately order, for sale in the BRI, U.S. beer currently listed in the LCBO that a U.S. brewer agrees to be sold in the BRI.

(b) Effective the first Monday following 21 days from the coming into effect of this MOU, Ontario's minimum retail price for beer, exclusive of the environmental levy and the applicable container deposit, will be no higher than the following:

Alcohol content

(by volume)

<4.1%

>4.1% but <4.9%

>4.9%

Minimum retail price

(per litre)

Cdn\$2.49

Cdn\$2.53

Cdn\$2.60

The minimum price may be adjusted annually by no more than the provincial consumer price index (CPI), based on the most recent 12-month period for which data from Statistics Canada are available.

(c) The LCBO may apply, effective immediately, out-of-store cost-of-service fees on U.S. beer not to exceed Cdn\$0.1018 per liter excluding delivery to LCBO and BRI stores, and Cdn\$0.164 per liter including delivery to LCBO and BRI stores. The LCBO service fees may be adjusted annually by the LCBO by no more than the provincial CPI, based on the most recent 12-month period for which data from Statistics Canada are available. The LCBO may not apply fees, other than the out-of-store cost-of-service fees, on U.S. beer that are higher than the lowest fees applied to Canadian beer, including Ontario beer.

4. Transparency/prior notification .

(a) Canada will provide written notice to the United States, to the fullest extent possible in advance of implementation, of all new provincial measures or practices pertaining to importation, distribution, sale or pricing of beer in Canada, and of any changes to existing measures or practices that affect the operation of this MOU. In circumstances where notice prior to implementation is not possible, such as with regard to measures in a provincial budget that are confidential until implemented, Canada will provide written notice promptly (within 14 days of implementation). In addition, by December 1, 1993, Canada will provide a written summary to the United States of all existing measures or practices pertaining to the importation, distribution, sale or pricing of beer in Canada that affect the operation of this MOU, including the citations of existing provincial laws and regulations and copies of liquor board operating procedures and manuals, and will update the summary report and material at least 14 days prior to the second consultations set forth in paragraph 6(a). Taken together, the notifications and summary reports will be sufficiently specific to permit the United States to understand the operation of these measures or practices and to determine their consistency with this MOU.

(b) The United States may, at any time, request in writing information on any federal or provincial measure or practice pertaining to importation, distribution, sale or pricing of beer in Canada. Canada will provide such information promptly (within 30 days after the date of the request) and with the specificity set forth in paragraph (a). The United States may request consultations under paragraph 6 below if it considers that the requested information has not been provided.

(c) The United States will maintain the confidentiality of any confidential information provided by Canada pursuant to this MOU, including as appropriate, classifying it as information received in confidence from a foreign government. Confidential information does not include information that is otherwise publicly available.

5. Elimination of duties

(a) Canada will immediately terminate the 50 percent ad valorem duties imposed on beer brewed by Heileman and Stroh.

(b) The United States will terminate the action taken under section 301 by immediately terminating the 50 per cent ad valorem duties imposed on beer brewed or bottled in Ontario (subject to monitoring as required under U.S. law); and

(c) Canada will immediately reduce to "free" the FTA rate of duty on beer originating in the United States imported into Canada.

6. Consultations.

(a) The United States and Canada will consult twice, no later than January and September 1994, respectively, unless the Parties otherwise agree to another timetable for the two consultations, regarding all aspects of the implementation and operation of this MOU.

(b) In addition, the United States and Canada will consult upon written request of either Party with respect to any matter(s) concerning this MOU, including with respect to any matter(s) notified in paragraph 4(a). The other Party will respond to a request for consultations within 10 days of the request. Consultations will commence within 30 days of the request, and will be concluded within 30 days thereafter, unless the Parties agree to a longer period. The purpose of the consultations will be to clarify the facts and to arrive at a mutually acceptable solution in conformity with this MOU.

7. Termination

(a) If, following consultations under paragraph 6, the Parties fail to reach a mutually acceptable solution, and a Party considers that the other Party has failed to implement the MOU satisfactorily, including, notwithstanding paragraph 2, as a result of a province's introduction of a new measure or a province's modification of an existing measure that the United States considers materially impairs the United States' terms of access, either Party may terminate the MOU in whole or in part by giving written notice to the other Party at least 30 days in advance.

(b) In any event, either Party may terminate this MOU by giving written notice to the other Party at least 60 days in advance.

8. Reservation of rights . Nothing in this MOU will be construed as a waiver of either Party's respective rights under international agreements, including GATT.

9. This MOU enters into effect on the date of signature.

Done at _____ On _____

ANNEX

TERMS OF ACCESS OF U.S. BEER

TO ONTARIO'S BREWERS RETAIL INCORPORATED

Measures pertaining to the Brewers Retail Inc.

1. BRI Basic Service Fee

The BRI basic service fee will be set at:

Package Beer Draught Beer

Cdn \$0.363 per litre Cdn \$0.300 per litre

The basic service fee includes all retailing through the BRI, sales to licensed establishments (including on-premise draught, container pick-up, draught equipment services); recovery of standard containers; inventory management; and refrigeration and product rotation.

Adjustments to the basic BRI service fee may be done annually as long as they do not exceed the provincial CPI, based on the most recent 12-month period for which data from Statistics Canada are available. Further adjustments to the BRI basic service fee above the provincial CPI may be made annually when justified by, and based on, changes to costs as determined by audited financial statements 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 consultation by the Parties. In such consultation, the audited financial statements will be available for review by the Parties.

2. Fees for Optional Services

a. Non-Standard Containers

Industry standard bottles which do not require sorting are exempt from the non-standard container fees. Cans, and single aperture kegs of approximately 30 litres and 58.6 litres capacity, are considered to be standard containers and are exempt from the non-standard container fees. The non-standard container fees are as follows:

Package Beer Draught Beer

Cdn \$0.10 per litre Cdn \$1.00 per keg

b. Service for Handling Empty Containers not sold in BRI

Where a brewer elects to retail a beer brand in both the LCBO and the BRI, for the volume of a beer brand retailed by the LCBO and returned for deposit refund to BRI, an empty purchase fee of Cdn \$0.05 per litre is assessed.

3. Additional BRI Service Fees

BRI will offer additional services at additional costs. New services may be added depending upon user demand. The following in paragraph (a) represents an additional service and fee assessed by BRI:

a. BRI Transfer Service

If a brewer elects to self-deliver from the LCBO warehouse to BRI stores, the brewer may contract the BRI to transfer product from BRI depots to BRI retail stores at a cost of Cdn \$0.09 per litre.

b. Other Fees

None of the above limits the ability of the brewer to engage BRI to perform specialty services on its behalf at an agreed to price.

c. Adjustments

Adjustments to additional services and the listing administration fee may be made annually by an amount no more than the provincial CPI based on the most recent 12-month period for which data is available. Further adjustments to these fees above the provincial CPI may be made when justified by, and based on, changes to costs as determined by audited financial statements to verify actual costs. The justification and basis for such adjustments of these fees above the provincial CPI would be subject to prior consultation by the Parties. In such consultation, the audited financial statements will be available for review by the Parties.

4. Listing Administration

There is a one-time listing administration fee of Cdn\$22,900 per SKU (Stock Keeping Unit) (per brand package size).

Prior to being made available for sale through BRI, all users must sign a BRI user agreement, and all products must have received all necessary LCBO technical approvals before being offered for sale.

The BRI will sell any beer that meets the LCBO technical listing requirements.

5. SKU Management Policy

The BRI manages product mix and availability at the store level, not on a system-wide basis. Each brand having less than the designated threshold market share (0.5%) in a given BRI store after one year of sale in that store will be made available to customers in a single package size choice in that store, and available to the consumer at all price points, as designated by the brewer.

6. Merchandising Policy

All brewers may participate in BRI in-store merchandising and related products programs as approved by the LCBO.

7. Dispute Settlement

To ensure fairness, BRI will establish a clear process for addressing disputes including the services of an independent commercial arbitrator as required.

8. The BRI will use best efforts to provide the same standard of service to all suppliers, including non-shareholders.

Measures Pertaining to the Government of Ontario

1. BRI Store Fee

All brewers selling in the BRI store system must pay an annual administration fee to the LCBO of Cdn\$105.00 per store in which a brewer sells its beer (i.e. if a brewer sells in 10 BRI stores, its fee will be Cdn\$1,050.00 (10 x Cdn\$105.00)).

2. Technical Approval

All beer currently listed with the LCBO has already been granted technical approval for sale in Ontario. Any new brand must first receive technical approval from the LCBO before it can be sold in BRI (but does not require LCBO store listing approval).

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.