

Annex III.8

Wine and Distilled Spirits

Canada

1. Except as provided in paragraphs 3 through 6, in respect of any measure related to the internal sale and distribution of wine and distilled spirits, Article III.2 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 Article III.2.
2. The Party asserting that paragraph 1 applies to one of its measures shall have the burden of establishing the validity of such assertion.
3.
 - (a) Any measure related to the listing of wine and distilled spirits of the other Party shall:
 - (i) conform with Article III.2;
 - (ii) 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;
 - (iii) establish administrative appeal procedures for listing decisions that provide for prompt, fair and objective rulings;
 - (iv) be based on normal commercial considerations;
 - (v) not create disguised barriers to trade; and
 - (vi) be published and made generally available to persons of the other Party;
 - (b) Notwithstanding paragraph 3(a) and Article III.2, and provided that listing measures of British Columbia otherwise conform with paragraph 3(a) and Article III.2, automatic listing measures in the province of British Columbia may be maintained provided they apply only to existing estate wineries producing less than 30,000 gallons of wine annually and meeting the existing content rule.
4.
 - (a) 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;
 - (b) Notwithstanding Article III.2, Article I (Definitions) except for the definition of "distilled spirits", Article IV.3 (Wine), and Annexes A, B, and C, of the *Agreement between Canada and the European Economic Community concerning Trade and Commerce in Alcoholic Beverages*, dated February 28, 1989, shall apply with such changes as the circumstances may require;

- (c) All discriminatory mark-ups on distilled spirits shall be eliminated immediately on the date of entry into force of this Agreement. Cost-of-service differential mark-ups as described in subparagraph (a) shall be permitted;
 - (d) Any other discriminatory pricing measure shall be eliminated on the date of entry into force of this Agreement.
5. (a) Any measure related to distribution of wine or distilled spirits of the other Party shall conform with Article III.2;
- (b) Notwithstanding subparagraph (a), and provided that distribution measures otherwise ensure conformity with Article III.2, a Party may:
- (i) maintain or introduce a measure limiting on-premise sales by a winery or distillery to those wines or distilled spirits produced on its premises; and
 - (ii) maintain a measure requiring existing private wine store outlets 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;
- (c) 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 other Party, whether or not such wine is bottled in Quebec.
6. Unless otherwise specifically provided in this Annex, the Parties retain their rights and obligations under the GATT 1994 and agreements negotiated under the WTO Agreement.
7. The Parties will refer issues related to this Annex to the Subcommittee on Agriculture established under Article III.14.
8. For purposes of this Annex:

wine includes wine and wine-containing beverages.