

The marketing and sale of beer and alcoholic beverages in Canada

Questions

Do the regulations violate non-discrimination provisions of GATT?

May Canada use state trading monopolies to regulate imports of this kind?

Are Canada's provisions valid public health regulations or illegal discrimination?

Response

The use of state trading monopolies by Canada is consistent with Article XVII of the GATT agreement. Article XVII permits state trading monopolies but requires that they not discriminate among importers or exporters when they make purchases or sales. This principle of non-discrimination is also stated within Article I. Article I describes the principle of most-favoured-nation treatment (MFN) where countries should treat trading partners equally and likewise treat foreign and domestic goods and services in the same way. As will be seen, Canada is in violation of both Article XVII and Article I, as Canada is essentially discriminating between Canadian beer and foreign beers as the liquor boards are showing the domestic "like" product preferential treatment.

Furthermore, in a similar way that Thailand were found to be in breach of Article XI:1 (Thailand Restrictions on Importation of Cigarettes, 1990), Canada's actions seem to be inconsistent with Article XI:1 which reads: "no prohibitions or restrictions made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any party on the importation of any product of the territory of an other party."

It can be expected that Canada has set a minimum price for domestic beer in order to pursue a social-policy objective; to ensure the responsible use of beverage alcohol through an across-the-board pricing mechanism. Canada may insist that it's actions are consistent with GATT principles using Article XX(b) in its defence. Article XX(b) includes general exceptions to Article XI, of which the following is specifically relevant: Nothing in this agreement shall be construed to prevent the adoption or enforcement by any country of measures: ... (b) necessary to protect human, animal or plant life or health. On these grounds, it would need to be established that alcoholic beverages caused serious risk to human health. Scientific evidence shows that alcoholic beverages do pose serious risk to human life, however may all the restrictions that Canada has in place be considered as "necessary" in terms of Article XX(b)?

Although Canada can act in accordance to Article III:4 through imposing laws and regulations affecting the internal sale and distribution of imported alcoholic beverages, the restrictions that Canada currently have in place are not "necessary" as they are discriminatory. Canada treats imported products less

favourably than “like” products of national origin, and thus Canada can not be considered to be operating coherently under Article XX(b) as the restrictions are not necessary but discriminatory.

As a result of the fact that Canada is unfairly discriminating imports and exports Canada must either eliminate the liquor boards and free the market for imports, or alternatively treat domestic and foreign imports the same and thus enable the use of Article XX(b) in order to pursue public health regulations.

References

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