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HOCKIN ANNOUNCES BEER AGREEMENT WITH THE UNITED STATES

The Honourable Tom Hockin, Minister for International Trade, announced today that Canada and the United States have come to a final negotiated agreement in the long-standing dispute over provincial beer marketing practices. The agreement takes effect immediately.

"I am very pleased that we have finally come to a satisfactory resolution of this issue," Mr. Hockin said. "This agreement averts a beer war with the United States, it protects Canadian jobs, it provides new opportunities for Canadian beer companies, and will give wider choice to Canadian consumers."

"We have also effectively resolved the issues arising from a finding by the General Agreement on Tariffs and Trade (GATT) in 1991 that certain provincial practices relating to the pricing and distribution of beer were inconsistent with Canada's GATT obligations."

"This is a national agreement that provides a very positive result for all provinces," the Minister noted. "It reflects the input and political will by all parties, including the provinces and Canadian industry, to finally put an end to this prolonged dispute."

"However, just as we are opening our border to U.S. beer, we expect the United States to fulfil its obligations under the GATT and remove federal and state measures that discriminate against Canadian beer exports."

Canadian officials have been involved in intensive discussions with their U.S. counterparts over the past few months to resolve the dispute. In the course of the negotiations, the federal government worked very closely

with the provinces and beer industry to achieve a satisfactory resolution. All of the provinces have confirmed that they intend to implement any changes to their respective systems required by the Memorandum of Understanding (MOU).

As a result of this agreement, the United States has agreed to lift last year's retaliatory action against Ontario beer exports. Likewise, Canada will remove its matching duty that was placed on some imports of U.S. beer into Ontario. Both these measures will take effect immediately.

In addition, imported beer will have greater access to the Canadian market. In particular, U.S. beer will soon appear in the Brewers Retail Inc. (BRI) network of stores in Ontario. Access to BRI stores had been limited to Canadian beer. At the same time the MOU requires no change to Ontario's environmental levy and allows the provinces to maintain GATT-consistent import monopolies and minimum prices.

"This opening of the border will result in new trading opportunities for U.S. beer and wider choice for Canadian consumers," noted Mr. Hockin. "Now that the threat of retaliatory action has been removed, we also expect Canadian companies to take advantage of new trading opportunities in the U.S. and build on the nearly \$200 million in beer exports to that market in 1992."

The Minister noted, however, that Canada will continue to press the United States to implement the GATT panel involving U.S. federal and state measures affecting Canadian beer and wine exports. "We have raised the issue regularly in the GATT Council and have had a number of discussions with the U.S. on this matter. If the United States is serious about market access and competitiveness for U.S. beer exporters, then they too must provide the same access for Canadian beer companies and remove all discriminatory measures."

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Backgrounder

CANADA-U.S. BEER DISPUTES

GATT PANEL ON THE IMPORT, DISTRIBUTION AND SALE OF BEER BY CANADIAN PROVINCIAL MARKETING AGENCIES ("BEER I")

- In May 1990, the H.G. Heileman Brewing Company submitted a petition to the U.S. Trade Representative under the U.S. Trade Act of 1974 (as amended by the Omnibus Trade and Competitiveness Act of 1988). Subsequently, the Stroh Brewery Company filed a similar petition targeted at the province of Ontario. These petitions alleged unfair practices relating to the listing, pricing and distribution of beer.
- In response to these petitions, the U.S. initiated GATT dispute settlement proceedings and requested GATT Article XXIII.1 consultations with Canada, which took place on July 20, 1990.
- On December 12, 1990, the U.S. requested the GATT contracting parties in Geneva to establish a GATT panel to examine the listing, pricing and distribution practices of provincial liquor boards with respect to beer.
- The panel provided its findings to Canada and the U.S. on September 18, 1991. The panel found several provincial measures related to the pricing, distribution and sale of beer to be inconsistent with the General Agreement.
- The panel report was adopted by GATT Council February 18, 1992. The report contained the recommendation that Canada "report to the Contracting Parties on the measures taken in respect of access to points of sale and differential mark-ups before the end of March 1992 and in respect of the other matters before the end of July 1992." Canada confirmed to the Council its commitment to abide by the panel's recommendations.
- On March 31, 1992, Canada advised the contracting parties of measures the provinces would be taking to ensure observance of the GATT. A timetable for the changes was also provided. The U.S. objected to the proposals, regarding them as too limited, and to the amount of time allowed for their introduction (up to three years).
- On April 25, 1992, Canada and the U.S. reached an agreement-in-principle in which Canadian provinces undertook to implement certain measures in exchange for the withdrawal by the U.S. of the threat of retaliatory action.

- Subsequent to the agreement-in-principle, the U.S. objected to changes to the pricing system in the province of Ontario. Accordingly, at the July 14 Council meeting, the U.S. requested authority of the GATT Council to retaliate against Canada for these allegedly discriminatory measures. The Council did not approve the request. At the same meeting, Canada offered to have the specific issues raised by the U.S. examined on an expedited basis by the GATT. The U.S. refused this offer.
- On July 24, the U.S. imposed a surtax of 50 percent *ad valorem* on imports of Canadian beer brewed in Ontario. In response, Canada imposed a matching duty on imports of Stroh and Heileman beer into Ontario.
- At the September 29 meeting of the GATT Council, Canada again sought U.S. agreement to submit the issues to an expedited review. The U.S. again refused.
- In December 1992 the U.S. rejected a Canadian proposal to seek binding arbitration of the outstanding issues in terms of their consistency with the GATT panel decisions and the Canada-U.S. agreement-in-principle of April 25, 1992.
- In May 1993, negotiations with the U.S. were resumed. At these discussions, a proposal was presented for granting foreign beer access to the Brewers' Retail network of stores in Ontario and offered significant adjustments to the pricing system in an effort to respond to U.S. concerns.
- On August 5, 1993, Canada and the United States reached final agreement in the Canada-U.S. beer dispute, thus resolving the issues arising out of the GATT panel report.

GATT PANEL ON U.S. FEDERAL AND STATE MEASURES
AFFECTING THE IMPORT OF CANADIAN BEER
("BEER II")

- Canadian alcoholic beverage producers and provinces expressed serious concerns to the federal government regarding a wide range of U.S. states' measures that affect the distribution, taxation, listing, pricing and transportation policies which discriminate against Canadian exports of alcoholic beverages to the U.S. market.
- Canada sought to resolve the difficulties arising from these measures through discussions with the U.S. When the discussions failed to resolve the issues, Canada requested consultations under GATT Article XXIII:1 on February 6, 1991. Two sets of consultations failed to resolve the dispute and Canada requested a GATT panel to examine the matter.

- The panel ultimately found that 2 federal and 60 measures in 39 states and Puerto Rico concerning the taxation, distribution, transportation, licensing and listing of Canadian beer, wine and cider were inconsistent with U.S. obligations under the General Agreement. The panel's report was adopted by the contracting parties at the June 19, 1992 GATT Council meeting.
- Consultations were held with the U.S. in Washington on October 8, 1992 to discuss U.S. plans to implement the panel's findings. During that meeting, Canada pressed the U.S. to implement the panel's findings by the summer of 1993. At these consultations, the U.S. indicated the steps it had taken to comply with the panel's recommendations.
- To date, however, little specific action has been taken to remove the discrimination against Canadian beer, wine and cider exports to the U.S.
- Further consultations were held in May 1993 and the matter is raised at each GATT Council meeting. Canada continues to press the appropriate authorities to take the action required to implement the panel's findings at the federal and state levels.

U.S.-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 18 September 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 comes 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:

Alcohol content (by volume)	Minimum retail price (per litre)
<4.1%	C\$2.49
≥4.1% but <4.9%	C\$2.53
≥4.9%	C\$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 C\$0.1018 per litre excluding delivery to LCBO and BRI stores, and C\$0.164 per litre 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.

Signed in Washington, D.C. on this fifth day of August, One thousand nine hundred ninety-three.

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:

<u>Packaged Beer</u>	<u>Draught Beer</u>
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 this 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 the actual costs. The justification and basis for such adjustments of this 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 both 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 standard containers and are exempt from the non-standard container fees. The non-standard container fees are as follows:

<u>Packaged Beer</u>	<u>Draught Beer</u>
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 Statistics Canada data are available. Further adjustments to these fees 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 the 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 both 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).