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ANNEX 3 B

DISTILLED SPIRITS, WINE, BEER, AND OTHER ALCOHOL BEVERAGES

Section A: Internal Sale and Distribution of Distilled Spirits, Wine, Beer, or other Alcohol Beverages

1. For the purposes of Section A:

commercial considerations means price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in the commercial decisions of a privately owned enterprise in the relevant business or industry;

distilled spirits include distilled spirits and distilled spirit containing beverages; and

wine includes wine and wine-containing beverages.

2. This Section applies to any measure related to the internal sale and distribution of distilled spirits, wine, beer, or other alcohol beverages¹.

3. Except as otherwise provided in this Section, Article 2.3 (National Treatment and Market Access for Goods – National Treatment) shall not apply to:

- (a) a non-conforming provision of any measure related to the internal sale and distribution of wine or distilled spirits in existence on January 1st 1989;
- (b) the continuation or prompt renewal of a non-conforming provision of a measure referred to in subparagraph (a); or
- (c) an amendment to a non-conforming provision of a measure referred to in subparagraph (a) to the extent that the amendment does not decrease its conformity with Article 2.3 (National Treatment and Market Access for Goods – National Treatment).

4. The Party asserting that paragraph 3 applies to a measure shall have the burden of establishing that the measure meets the conditions set out in paragraph 3.

5. All measures related to distribution of distilled spirits, wine, beer, or other alcohol beverages shall conform with Article 2.3 (National Treatment and Market Access for Goods – National Treatment).

¹ Paragraphs 3 and 4 of Section A do not apply to Mexico.

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6. Notwithstanding paragraph 5, and provided that distribution measures otherwise ensure conformity with Article 2.3 (National Treatment and Market Access for Goods – National Treatment), Canada may maintain a measure in existence on January 1, 1989, requiring private wine store outlets in existence on October 4, 1987, in the provinces of Ontario and British Columbia to discriminate in favor of wine of those provinces to a degree no greater than the discrimination required by such measure in existence on January 1, 1989.

7. 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 Parties, whether or not such wine is bottled in Quebec.

8. If a Party requires that distilled spirits, wine, beer, or other alcohol beverages be listed to be distributed or sold in its territory, all measures related to listing shall:

- (a) conform with Article 2.3 (National Treatment and Market Access for Goods – National Treatment);
- (b) not create disguised barriers to trade;
- (c) be based on commercial considerations; and
- (d) be transparent, including providing transparent criteria for decisions regarding listing.

9. If a Party requires that distilled spirits, wine, beer, or other alcohol beverages be listed to be distributed or sold in its territory, that Party shall, with regard to the decisions of the entity exercising governmental authority regarding the listing:

- (a) provide for a prompt decision on any listing application;
- (b) provide prompt written notification of decisions regarding a listing application to the applicant and, in the case of a negative decision, provide for a statement of the reason for refusal; and
- (c) establish administrative appeal procedures for listing decisions that provide for prompt, fair, and objective rulings.

10. If a distributor or retailer exercises governmental authority regarding internal sale or distribution of distilled spirits, wine, beer, or other alcohol beverages, any price mark-ups charged by that entity shall conform with Article 2.3 (National Treatment and Market Access for Goods – National Treatment) and that entity shall accord treatment to distilled spirits, wine, beer, or other alcohol beverages of another Party no less favorable than the treatment accorded to a like product of any other Party to the Agreement or a non-Party.

11. If a distributor or retailer exercises governmental authority regarding internal sale or distribution of distilled spirits, wine, beer, or other alcohol beverages, that entity may charge the

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actual cost-of-service differential between distributing or selling distilled spirits, wine, beer, or other alcohol beverages of another Party and distributing or selling domestic or regional product. The cost-of-service shall be reasonable and commensurate with service. Any such cost-of-service differential shall not exceed the actual amount by which the audited cost of service for the product of the exporting Party exceeds the audited cost of service for the product of the importing Party.

12. A Party may maintain or introduce a measure limiting on premise sales by a winery or distillery to those wines or distilled spirits produced on its premises.

13. No Party shall adopt or maintain any measure requiring that distilled spirits, wine, beer, or other alcohol beverages imported from another Party for bottling be blended with any distilled spirits, wine, beer, or other alcohol beverages of the importing Party.

Section B: Distinctive Products

1. Canada and Mexico shall recognize Bourbon Whiskey and Tennessee Whiskey, which is a straight Bourbon Whiskey authorized to be produced only in the State of Tennessee, as distinctive products of the United States. Accordingly, Canada and Mexico shall not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey, unless it has been manufactured in the United States in accordance with the laws and regulations of the United States governing the manufacture of Bourbon Whiskey and Tennessee Whiskey.

2. Mexico and the United States shall recognize Canadian Whisky as a distinctive product of Canada. Accordingly, Mexico and the United States shall not permit the sale of any product as Canadian Whisky, unless it has been manufactured in Canada in accordance with the laws and regulations of Canada governing the manufacture of Canadian Whisky for consumption in Canada.

3. Canada and the United States shall recognize Tequila and Mezcal as distinctive products of Mexico. Accordingly, Canada and the United States shall not permit the sale of any product as Tequila or Mezcal unless it has been manufactured in Mexico in accordance with the laws and regulations of Mexico governing the manufacture of Tequila and Mezcal.

Section C: Wine and Distilled Spirits

1. For the purposes of Sections C and D:

container means any bottle, barrel, cask, or other closed receptacle, irrespective of size or of the material from which it is made, used for the retail sale of wine or distilled spirits;

distilled spirits means a potable alcoholic distillate including spirits made from wine, whiskey, rum, brandy, gin, tequila, mezcal, liqueurs, cordials, and vodka and all dilutions or mixtures thereof for consumption;

label means any brand, mark, pictorial, or other descriptive matter that is written, printed,

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stenciled, marked, embossed, or impressed on, or firmly affixed to a primary container of wine or distilled spirits;

mandatory information means information required by a Party to appear on a wine or distilled spirits container, label, or packaging;

oenological practices means winemaking materials, processes, treatments, and techniques, but does not include labeling, bottling, or packaging for final sale;

single field of vision means any part of the surface of a primary container, excluding its base and cap, that can be seen without having to turn the container; and

wine means a beverage that is produced by the complete or partial alcoholic fermentation exclusively of fresh grapes, grape must, or products derived from fresh grapes and as defined by each Party's laws and regulations.²

2. This Section shall apply to the preparation, adoption, and application of all technical regulations, standards, and conformity assessment procedures adopted or maintained by each Party at the central level of government that may affect trade in wine and distilled spirits between the Parties, other than sanitary or phytosanitary measures or technical specifications prepared by a governmental body for production or consumption requirements of governmental bodies.

3. Each Party shall make its laws and regulations concerning wine and distilled spirits available online.

4. A Party may require that any wine or distilled spirits label be:

- (a) clear, specific, truthful, accurate, and not misleading to the consumer;
- (b) legible to the consumer; and
- (c) that such labels that are not an integral part of the container be firmly affixed to the container.

5. Each Party shall permit mandatory information to be displayed on a supplementary label affixed to a distilled spirits container. Each Party shall permit such supplementary labels to be affixed to an imported distilled spirits container after importation but prior to the product being offered for sale in the Party's territory. A Party may require that the supplementary label be affixed prior to release from customs. For greater certainty, a Party may require that the information indicated on a supplementary label meet the requirements in paragraph 4.

6. A Party may require that information indicated on a supplementary label affixed to a distilled spirits or wine container not conflict with information on an existing label.

² For the United States, the alcohol content of wine must be not less than seven per cent and not more than 24 per cent.

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7. Each Party shall permit the alcoholic content by volume indicated on a wine or distilled spirits label to be expressed by alcohol by volume (alc/vol), for example 12% alc/vol or alc12% vol, and to be indicated in percentage terms to a maximum of one decimal point, for example 12.1%.
8. Each Party shall permit the use of the term “wine” as a product name. A Party may require a wine label to indicate the type, category, class, or classification of the wine.
9. With respect to wine labels, each Party shall permit the information set out in subparagraphs 11(a) through (d) to be presented in a single field of vision for a container of wine. If this information is presented in a single field of vision, then the Party’s requirements with respect to placement of this information are satisfied. A Party shall accept any of the information that appears outside a single field of vision if that information satisfies that Party’s laws, regulations and requirements.
10. Notwithstanding paragraph 9, a Party may require net contents to be displayed on the principal display panel for a subset of less commonly used container sizes if specifically required by that Party’s laws or regulations.
11. If a Party requires a wine label to indicate information other than:
 - (a) product name;
 - (b) country of origin;
 - (c) net contents; or
 - (d) alcohol content,

it shall permit the information to be indicated on a supplementary label affixed to the wine container. A Party shall permit the supplementary label to be affixed to the container of the imported wine after importation but prior to the product being offered for sale in the Party’s territory, and may require that the supplementary label be affixed prior to release from customs. For greater certainty, a Party may require that information on a supplementary label meet the requirements set out in paragraph 4.

12. If there is more than one label on a container of imported wine or distilled spirits, a Party may require that each label be visible and not obscure mandatory information on another label.
13. If a Party has more than one official language, it may require that information on a wine or distilled spirits label appear in equal prominence in each official language.
14. Each Party shall permit placement of a lot identification code on a wine or distilled spirits container, if the code is clear, specific, truthful, accurate, and not misleading, and shall not impose requirements regarding:
 - (a) where to place the lot identification code on the container, provided that the code does not cover up mandatory information printed on the label; and

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- (b) the specific font size, readable phrasing, and formatting for the code provided that the lot identification code is legible by physical means, and if permitted, by electronic means.

15. A Party may impose penalties for the removal or deliberate defacement of any lot identification code on the container.

16. No Party shall require a date mark on a wine or distilled spirits container, label, or packaging, including the following or iterations of the following:

- (a) date of production or manufacture;
- (b) use-by date (recommended last consumption date, expiration date);
- (c) date of minimum durability (best-before date), best quality before date;
- (d) sell-by date;
- (e) date of packaging; or
- (f) date of bottling.

except that a Party may require the display of a date of minimum durability or use-by date on products that could have a shorter date of minimum durability or expiration than would normally be expected by the consumer because of their packaging or container, for example, bag-in-box wines or individual serving size wines; or because of the addition of perishable ingredients.

17. No Party shall require a wine or distilled spirits label or packaging to include translation of a trademark or brand name. A Party may require that a trademark or brand name not conflict with any mandatory information on the label.

18. No Party shall prevent imports of wine from other Parties on the basis that the wine label includes the following terms: chateau, classic, clos, cream, crusted, crusting, fine, late bottled vintage, noble, reserve, ruby, special reserve, solera, superior, sur lie, tawny, vintage, or vintage character.³

19. No Party shall require a wine label or packaging to disclose an oenological practice, except to meet a legitimate human health or safety objective with respect to that oenological practice.

20. Each Party shall permit wine to be labeled as Icewine, ice wine, ice-wine or a similar variation of those terms, only if the wine is made exclusively from grapes naturally frozen on the vine.

21. Each Party shall endeavor to base its quality and identity requirements for any specific

³ Nothing in this paragraph shall be construed to require Canada to apply this paragraph in a manner inconsistent with its obligations under Article A(3) of Annex V of the EU-Canada Wine Agreement, as amended.

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type, category, class, or classification of distilled spirits solely on minimum ethyl alcohol content and raw materials, added ingredients, and production procedures used to produce that specific type, category, class, or classification of distilled spirits.

22. No importing Party shall require imported wine or distilled spirits to be certified by an official certification body of the Party in which territory the wine or distilled spirits were produced or by a certification body recognized by the Party in whose territory the wine or distilled spirits were produced regarding (a) vintage, varietal, regional, or appellation of origin claims for wine; or (b) raw materials and production processes for distilled spirits, except that the importing Party may require:

- (i) that wine or distilled spirits be certified regarding (a) or (b) if the Party in which territory the wine or distilled spirits were produced requires that certification; or
- (ii) that wine be certified regarding (a) if the importing Party has a reasonable and legitimate concern about a vintage, varietal, regional, or appellation of origin claim for wine; or that distilled spirits be certified regarding (b) if certification is necessary to verify claims such as age, origin, or standards of identity.

23. A Party shall normally permit submission of any required certification (other than those required pursuant to paragraph 22), test result, or sample only with the initial shipment of a particular brand, producer, and lot. If a Party requires submission of a sample of the product for the Party's procedure to assess conformity with its technical regulation or standard, it shall not require a sample quantity larger than the minimum quantity necessary to complete the relevant conformity assessment procedure. Nothing in this provision precludes a Party from undertaking verification of test results or certification, for example, if the Party has information that a particular product may be non-compliant.

24. Each Party shall endeavor to assess other Parties' laws, regulations, and requirements in respect of oenological practices, with the aim of reaching agreements that provide for the Parties' acceptance of each other's mechanisms for regulating oenological practices, if appropriate.

25. If an importing Party requires certification for wine or distilled spirits from the Party in whose territory the wine or distilled spirits were produced, the importing Party shall not deny the certification on the basis that the certification was issued from a conformity assessment body accredited and approved by the Party in whose territory the wine or distilled spirits were produced.

26. Each Party shall permit a wine or distilled spirits label to include:

- (a) statements regarding quality⁴;
- (b) statements regarding production processes; and
- (c) drawings, figures, or illustrations;

⁴ Statements regarding quality would include, for example, "premium" or "ultra premium."

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provided they are not false, misleading, obscene or indecent, as defined in each Party's law.

27. Nothing in paragraph 26 affects mandatory information requirements or a Party's ability to enforce its intellectual property, health, or safety laws and regulations.

Section D: Other Provisions

1. Unless urgent problems of human health or safety arise or threaten to arise, a Party shall normally allow a reasonable period of time, as determined by the authority responsible, following the date of entry into force of a measure before requiring wine or distilled spirits that were entered into commerce in the territory of that Party prior to that date of entry into force to comply with the measure in order to allow time for the sale of those products.

For the purpose of this paragraph, a measure means a technical regulation, standard, conformity assessment procedure, or sanitary or phytosanitary measure adopted by a Party at the central level of government that may affect trade in wine and distilled spirits between the Parties, other than technical specifications prepared by a governmental body for production or consumption requirements of governmental bodies.

2. If a Party imposes a mandatory food allergen labelling requirement at the central level of government for wine or distilled spirits, that Party shall:

- (a) not apply the requirement to wines and distilled spirits if no protein from a food allergen is present in the product; or
- (b) provide an exemption⁵ for food allergen sources that have been used in the production of the beverage if:
 - (i) the finished product or class of products does not cause an allergic response that poses a risk to human health; or
 - (ii) the finished product does not contain protein from a food allergen.

For the purpose of this paragraph, "food allergen" means those food allergens that a Party requires to be declared on a wine or distilled spirits label.

3. Each Party shall apply a risk-based approach regarding whether to require, for wine, certificates of analysis for pathogenic microorganisms. In applying a risk-based approach, each Party shall take into account that wine is a microbiological low risk food product.

4. If a central government authority deems that certification of wine is necessary to protect human health or safety or to achieve other legitimate objectives, that Party shall consider the use of the

⁵ For greater certainty, a Party may require the producer, bottler, or importer of the product to establish eligibility for an exemption from the Party's allergen labeling requirement using a scientifically validated testing methodology.

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generic model official certificate in the *Codex Alimentarius Guidelines for Design, Production, Issuance and Use of Generic Official Certificates* (CAC/GL 38-2001), as amended, or the APEC model wine export certificate. A Party requiring certification of wine shall ensure any certification requirements are transparent and non-discriminatory.

5. The Committee on Agricultural Trade established in Article 3.7 (Agriculture – Committee on Agricultural Trade) shall provide a forum for the Parties to:

- (a) monitor and promote cooperation on the implementation and administration of this Annex;
- (b) if appropriate consult on matters and positions relevant to trade in alcohol beverages in international organizations;
- (c) promote trade in alcohol beverages between the Parties under this Agreement; and
- (d) discuss any other matters related to this Annex.