

## **ABSTRACT:**

### **Let the wine flow: An examination of Canada's internal and external restrictions on trade in wine, and possible means of reducing both**

#### **PROBLEM/OBJECTIVE:**

To consider the internal restrictions on trade in wine between provinces within Canada; the external trade restrictions operating with respect to foreign wine imports and sales; the provisions governing trade in wine in Canada's major free trade agreements; along with recent challenges and changes to these restrictions, in order to determine potential means by which these restrictions might be relaxed to improve both internal and external trade in wine.

#### **MOTIVATION FOR CHOOSING THIS TOPIC:**

As my interest in wine has grown over the past two decades, so too has the quantity and quality of wine from both my home province of British Columbia, and that of Canada more broadly. As a Canadian federal civil servant living in Ottawa, thousands of kilometers away from BC, it has always been difficult to get wine from home, and I would always bring it back to Ontario on the plane with me. The first time I brought an entire case back to Ontario with me, I remember the airline employee telling me that it was technically illegal. I remember that I didn't quite believe her until I looked it up later.

A decade later, nothing much seemed to have changed. Like many interested observers, I was disappointed when at the end of 2018, the Supreme Court of Canada declined to uphold the decision of a trial judge to strike down provincial legislation that had the effect of prohibiting interprovincial trade in alcohol as being unconstitutional (and thus of no force and effect), for - admittedly legitimate - concerns about the impact on the principle that there should be a very high bar for overturning decisions of higher courts, which was not met in the case decided. The Court also found that the overarching purpose was not to effect interprovincial trade in a like manner to a tariff, even though this was an incidental effect of the legislation. Given that this court case did not turn out as I had wished, I wanted to investigate what other prospects existed for opening up internal trade in wine within Canada.

As a general oenophile, I was also interested in investigating what the potential was for opening up trade in wine more broadly, and reducing the limits currently imposed by many provincial monopolies. As much as I love Canadian wines, I also love well-made wine from around the world, and as a consumer, I would like to see more access to such wines, without the imposition of unnecessarily restrictive measures on their importation. I thus decided to look into what the difference restrictions are that operate with respect to importing wine into Canada, and what ways might exist to alleviate those restrictions.

#### **METHODOLOGY:**

In order to understand the existing restrictions on trade in wine within provinces, I focused on Canadian federal and provincial legislation, and related press releases, notices, and transcripts of debate within the House of Commons and Senate of Canada, in addition to recent judgments of the Supreme Court of Canada and relevant trial decisions.

In order to understand the existing restrictions on the import of wine into Canada, I focused on Canada's most important free trade agreements, along with the provisions of the General Agreement on Trade and Tariffs, pursuant to Canada's membership in the WTO, and the complaints that have been addressed to Canada with respect to its wine measures in that forum.

In order to put my own analysis of these sources, I also sought out external commentary on all of the above.

#### **CONTENT:**

1. Introduction – explains the current wine import market of Canada, and why there is growing interest in ensuring easier access.
2. Overview of the existing restrictions on the sale of wine between provinces in Canada, including in federal and provincial legislation.
3. An examination of the recent legal challenge to Canada's internal restrictions on wine, found in the Supreme Court of Canada case *R. v. Comeau*.
4. Overview of existing restrictions on the importation of wine into Canada, including import controls, customs, and excise; the operation of additional provincial requirements; and the extent to which Canada's major trade agreements (CETA, CPTPP, CUSMA) operate to alleviate any of these restrictions.
5. An examination of recent legal challenges to Canada's external restrictions on importing wine, in the form of two related WTO complaints brought by the US and Australia against Canada's measures governing the sale of wine.
6. A consideration of recent, pending, and potential changes to Canada's internal and external restrictions on importing wine, which included an unexpected change to federal legislation removing major restrictions in July 2019, as well as a look at the changes that will still need to take place at the provincial level. Also includes a look at what the next steps might be in the pending WTO disputes.
7. Conclusion

#### **CONCLUSION:**

While I had gone into the research element of the paper presuming that the best way forward would be via the courts, a number of very recent political commitments made – and more importantly, kept – have seemed to light the way towards an eventual removal, or at least a strong reduction in, Canada's internal barriers to trade. With this more open internal environment, Canada's wine industry should be able to spread sufficient roots to stabilize its domestic market base, and prepare to weather a more open external trade policy in wine, particularly given the potential benefits that a wine industry with more breadth and depth may be able to realize in targeted foreign markets as well. It thus seems that increased external trade will be realized the most quickly and with the fewest problems if internal trade in wine in Canada is strengthened first, as this will lay the groundwork for internal support for lessening of external restrictions. It also seems clear that continued legislative and regulatory changes will need to form the basis of this action, rather than pursuing legal challenges.