

**Re: the Dispute Between Artisan Ales Consulting Inc., a Private Person
from Canada, and Alberta Regarding Beer Mark-ups**

Designation: 16/17-10 BEER

Submission of Artisan Ales, Written Representations

February 28, 2017

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Part I – Overview

1. In October 2015, Alberta adopted a measure to promote the sale of “made-in-Alberta” craft beer over the craft beer of other Canadian provinces. The measure imposed a higher mark-up (a revenue-raising fee) on the sale of out-of-province beer in Alberta. In some cases, this mark-up was over five times higher than the mark-up imposed on the sale of Alberta craft beer.
2. This measure breaches Alberta’s obligations under Chapter Ten of the Agreement on Internal Trade (the “Agreement”). Chapter Ten obliges Alberta to treat the beer of other provinces equally and to refrain from creating obstacles to internal trade in beer.
3. In August 2016, after this proceeding began, Alberta attempted to bring the measure into compliance with the Agreement. The revised measure creates notionally equal mark-ups while rebating the increase to Alberta brewers. It remains non-compliant with the Agreement.
4. Throughout both incarnations, the measure has injured Artisan Ales Consulting Inc. (“Artisan Ales”), an importer of craft beer into Alberta from other Canadian provinces. The sales of Artisan Ales have fallen by a third, while overall imports of craft beer into Alberta have fallen by a similar magnitude. Artisan Ales requests that the Hearing Panel established for this complaint (the “Panel”) recommend that Alberta immediately return to treating the craft beer of all provinces and territories equally.

Part II – Facts

A. Mark-ups and the sale of beer in Alberta

5. The Alberta Gaming and Liquor Commission (the “Commission”) imposes a mark-up on the sale of beer in Alberta pursuant to section 80 of the [Gaming and Liquor Act](#), R.S.A. 2000, c. G-1 (the “Act”). The mark-up’s purpose is to raise revenue for the provincial government for, among other things, hospitals, health care, and infrastructure.¹ This revenue is reflected in the

¹ Affidavit of Jody Korchinski, sworn November 7, 2016 (Court of Queen’s Bench, Application of Great Western Brewing Company), paras. 13-15 (Book of Documents of Artisan Ales, Tab 28).

fact that, in fiscal year 2014-2015, Alberta earned a net income of 767 million dollars from the Commission's liquor operations.²

6. For the sale of imported craft beer, the collection of the mark-up occurs as follows:
 - a. To sell beer in Alberta, out-of-province brewers must be represented by a registered liquor agency.³
 - b. Apart from beer distributed by Molson, Labatt, and Sleeman, agents importing beer into Alberta must ship their beer to the Commission's warehouse, operated by Connect Logistics.⁴
 - c. The agents must pay Connect Logistics to store the beer until it is sold to a person, such as a restaurant, permitted to purchase beer on a wholesale basis.⁵ If the beer is not purchased, registered liquor agencies must pay Connect Logistics a destruction fee.⁶
 - d. The purchaser pays the cost of the beer to the Commission.⁷ The Commission then deducts the mark-up before remitting the sale proceeds to the agent.⁸
7. Beer produced in Alberta can be distributed in alternative channels than Connect Logistics. The beer is nevertheless subject to the mark-up. For example, Alberta brewers can

² Alberta, Budget 2015, Fiscal Tables, page 103 (Book of Documents of Artisan Ales, Tab 19).

³ Alberta Gaming and Liquor Commission, [Liquor Agency Handbook](#), 2.1.2 ("A supplier must either appoint a registered agency or register its own company as a liquor agency to represent its products.") (Book of Documents of Artisan Ales, Tab 9).

⁴ This is the effect of s. 6.1.1 and s. 6.3.1 of the Alberta Gaming and Liquor Commission, [Liquor Licensee Handbook](#), which restricts sales in Alberta to sales from the Commission's warehouse, Alberta brewers, and Molson, Labatt, and Sleeman (Book of Documents of Artisan Ales, Tab 8).

⁵ Witness Statement of Mike Tessier, February 27, 2017, para. 5.

⁶ Witness Statement of Mike Tessier, February 27, 2017, para. 5.

⁷ Witness Statement of Mike Tessier, February 27, 2017, para. 5.

⁸ Witness Statement of Mike Tessier, February 27, 2017, para. 5.

sell beer on their premises.⁹ These brewers remit the mark-up on these sales directly to the Commission.¹⁰

B. The Small Brewer Mark-Up

8. The Commission has historically imposed a lower mark-up on the beer of small brewers (the “Small Brewer Mark-Up”). Prior to the measures at issue in this complaint, the Small Brewer Mark-Up applied in increments based on a brewer’s annual worldwide production, regardless of the origin of the beer. Table 1 lists the production thresholds and associated mark-ups in effect on October 27, 2015.

Table 1: Beer mark-up in effect on October 27, 2015¹¹

Annual worldwide production	Mark-up
<20,000 hectolitres (HL)	\$0.20 per litre
20,000-200,000 HL	\$0.51 per litre
200,000-400,000 HL	\$0.51 per litre for sales in Alberta up to 200,000 HL \$1.20 per litre for sales in Alberta above 200,000 HL
>400,000 HL	\$1.20 per litre (on all production)

} **Small Brewer Mark-Up**

9. As of October 27, 2015, the Small Brewer Mark-Up applied to the beer of approximately 215 brewers from Alberta, Canada, and elsewhere.¹²

⁹ Alberta Gaming and Liquor Commission, [Liquor Agency Handbook](#), 3.8.6.1 (Book of Documents of Artisan Ales, Tab 9).

¹⁰ Alberta Gaming and Liquor Commission, [Liquor Licensee Handbook](#), 3.7.1 (Book of Documents of Artisan Ales, Tab 8).

¹¹ Alberta Gaming and Liquor Commission, Mark-up Rate Schedule, Effective March 27, 2015 (Book of Documents of Artisan Ales, Tab 13).

¹² Alberta Gaming and Liquor Commission, Brewers qualifying for reduced rates, (accessed October 27, 2015) (Book of Documents of Artisan Ales, Tab 14).

C. The Measure (October 2015)

10. On the afternoon of October 27, 2015, Alberta announced changes to the Small Brewer Mark-up to come into effect the following day, October 28, 2015.¹³

11. Specifically, Alberta raised the mark-up on all small brewers located outside of Alberta, British Columbia, and Saskatchewan (the “New West Partnership”) to the maximum rate of \$1.25 per litre. Of these small brewers, thirty-one were located in other Canadian provinces and territories.¹⁴ For the smallest brewers (those with annual production of less than 10,000 HL), this was an increase of 525%, from \$0.20 per litre to \$1.25 per litre. The balance of this submission describes the change in eligibility for the Small Brewer Mark-Up as the “Measure”. Alberta also implemented other changes to the Small Brewer Mark-up which are not material to this complaint.¹⁵

12. Alberta described the Measure as a “refinement” of the Small Brewer Mark-up designed to “promote made-in-Alberta products”.¹⁶ The Commission explained that the change to the Small Brewer Mark-up would “encourage economic diversification and allow more opportunities for local production.”¹⁷

¹³ Alberta Gaming and Liquor Commission, Memorandum to Registered Agencies, October 27, 2015 (Book of Documents of Artisan Ales, Tab 15).

¹⁴ See Witness Statement of Mike Tessier, February 27, 2017, para. 19, reviewing Alberta Gaming and Liquor Commission, Brewers qualifying for reduced rates, (accessed October 27, 2015) (Book of Documents of Artisan Ales, Tab 14).

¹⁵ Alberta increased the number of increments within the Small Brewer Mark-Up, and modified the thresholds for each increment. Alberta also modified the Small Brewer Mark-Up such that the mark-up paid would increase on a graduated rate. In other words, higher mark-up rates applied only to production above the various applicable thresholds (rather than to the entirety of a small brewer’s production). See Alberta Gaming and Liquor Commission, Mark-up Rate Schedule, Effective October 28, 2015 (Book of Documents of Artisan Ales, Tab 16).

¹⁶ Alberta, Budget 2015 – Overview, page 7 (“Liquor mark-ups increase 5%, effective October 28, and the mark-up structure is being refined to promote made-in-Alberta products.”) (Book of Documents of Artisan Ales, Tab 17).

¹⁷ Alberta Gaming and Liquor Commission, [Budget 2015 - Liquor Mark-up, Questions and Answers](#), page 3 (Book of Documents of Artisan Ales, Tab 20).

13. Table 2 describes the production thresholds and associated mark-ups following the changes implemented on October 28, 2015.

Table 2 – Beer mark-up effective October 28, 2015¹⁸

Annual worldwide production	Brewers located in Alberta, British Columbia, and Saskatchewan	Brewers located outside of Alberta, British Columbia, and Saskatchewan
<10,000 HL	\$0.10 per litre	\$1.25 per litre
10,000-50,000 HL	\$0.30 per litre	
50,000-200,000 HL	\$0.55 per litre	
200,000-400,000 HL	\$1.25 per litre (on production above 200,000 HL)	
>400,000 HL	\$1.25 per litre (on all production)	

D. The Amended Measure (August 2016)

14. Artisan Ales requested that Canada initiate proceedings in respect of the Measure on April 15, 2016.¹⁹ This request formed the basis of the present proceeding.

15. After this request, on July 12, 2016, Alberta announced further changes to the mark-up schedule. Effective August 5, 2016, a notional mark-up of \$1.25 would apply to the beer of all provinces, including Alberta.²⁰ However, craft beer made in Alberta would benefit from a per-litre grant under a new “Alberta Small Brewers Development Program”.

16. For Alberta brewers with sales in Alberta of up to 150,000 hectolitres, the grant exactly equals the difference between \$1.25 and the previous Small Brewer Mark-Up. To illustrate, Table 3 summarizes the mark-up, the grant, and the effective amount imposed on Alberta and imported beer for brewers with annual sales in Alberta of up to 10,000 hectolitres.

¹⁸ Alberta Gaming and Liquor Commission, Mark-up Rate Schedule, Effective October 28, 2015 (Book of Documents of Artisan Ales, Tab 16).

¹⁹ Request for Canada to Initiate Proceedings, Letter from Benjamin Grant to Stephen Fertuck, April 15, 2016 (without enclosures) (Book of Documents of Artisan Ales, Tab 1).

²⁰ Alberta Gaming and Liquor Commission, [Mark-up Rate Schedule, Effective August 5, 2016](#) (Book of Documents of Artisan Ales, Tab 25).

Table 3 – Effect of the Amended Measure, Brewer with less than 10,000 HL annual sales in Alberta

	Alberta beer	Out-of-province beer
Notional mark-up	\$1.25 per litre	\$1.25 per litre
Grant under the Alberta Small Brewers Development Program	\$1.15 per litre	Nil.
Net cost	\$0.10 per litre	\$1.25 per litre

Schedule 1 to this submission summarizes this information for sales up to 150,000 hectolitres.

17. For Alberta brewers with annual sales above 150,000 hectolitres, the grant gradually steps down until it reaches zero at annual sales of 300,000 hectolitres.²¹ There are relatively few Canadian brewers with sales in Alberta within this threshold. Artisan Ales is aware of three breweries which may be in this category: Big Rock Brewery, Great Western Brewery, and Pacific Western Brewery.²²

18. Alberta described the new grant program and the changes to the Small Brewer Mark-up as working “in concert”.²³ One Alberta small brewer explained the combined effect of the mark-up and the grant program as follows:

We have sold the beer, we have collected the money from the sales of our beer, and we have already paid the government that tax on the beer that we’ve sold, and we simply get that tax back from this grant program. So, that’s one of the confusing points for some people, they’re referring to this as a handout, or that taxpayers’ dollars are subsidizing these brewers, but it’s not the case.²⁴ [emphasis added]

²¹ Alberta, [Alberta Small Brewers Development Program – Terms and Conditions](#), page 8 (Book of Documents of Artisan Ales, Tab 26).

²² Witness Statement of Mike Tessier, February 27, para. 21.

²³ Letter from Joe Ceci to Susan Green, July 11, 2016 (Book of Documents of Artisan Ales, Tab 22).

²⁴ Transcript, Rebel News, “[Notley NDP’s beer tax, protectionist grants ‘pit businesses against one another’](#)”, October 4, 2016 (Book of Documents of Artisan Ales, Tab 29).

19. The other salient aspects of the grant program are as follows:
- a. The program is created pursuant to the authority of the Minister of Agriculture and Rural Development under section 2 of the [Agriculture and Rural Development Grant Regulation](#), Alta Reg 58/1998 (the “Regulation”).²⁵
 - b. Eligible brewers receive the grant on a monthly basis, calculated by multiplying the brewer’s previous sales in Alberta by the per-litre grant amount.²⁶
 - c. The grant is restricted to sales in Alberta.²⁷
20. The balance of this submission collectively describes the changes implemented on August 5, 2016 to the Small Brewer Mark-up and the Alberta Small Brewers Development Program as the “Amended Measure”.
21. Beyond the 31 Canadian brewers affected by the Measure, the Amended Measure affected a further 48 Canadian brewers based in Saskatchewan and British Columbia.²⁸

E. Artisan Ales

22. Artisan Ales is a registered liquor agency, importing craft beer into the Alberta, Saskatchewan, and Manitoba markets.²⁹ The majority of the sales of Artisan Ales in Alberta are beers produced in Quebec, though the company also markets craft beers produced in Europe.³⁰

²⁵ Alberta, [Alberta Small Brewers Development Program – Terms and Conditions](#), s. 14(e) (Book of Documents of Artisan Ales, Tab 26).

²⁶ Alberta, [Alberta Small Brewers Development Program – Terms and Conditions](#), s. 9 (Book of Documents of Artisan Ales, Tab 26).

²⁷ Alberta, [Alberta Small Brewers Development Program – Terms and Conditions](#), s. 2, definition of “qualifying product” (Book of Documents of Artisan Ales, Tab 26).

²⁸ Witness Statement of Mike Tessier, February 27, 2017, para. 20, reviewing Alberta Gaming and Liquor Commission, Brewers Qualifying for Reduced Rates, January 4, 2016 (Book of Documents of Artisan Ales, Tab 21); Affidavit of Jody Korczynski, sworn November 7, 2016 (Court of Queen’s Bench, Application of Great Western Brewing Company), para. 23 (Book of Documents of Artisan Ales, Tab 28).

²⁹ Witness Statement of Mike Tessier, February 27, 2017, paras. 3, 4.

³⁰ Witness Statement of Mike Tessier, February 27, 2017, para. 14.

At the time of the Measure, Artisan Ales marketed (in Alberta) the craft beer of four Quebec brewers subject to the Small Brewer Mark-up.³¹

F. Other challenges to the Measure and the Amended Measure

23. Following the Measure, Steam Whistle Brewing Inc. (“Steam Whistle”), an Ontario brewer, began an application in the Alberta Court of Queen’s Bench alleging that the Measure was unconstitutional under sections 53 and 121 of the *Constitution Act, 1867*. On January 18, 2016, Steam Whistle obtained an injunction which allowed Steam Whistle to continue paying the Small Brewer Mark-Up pending the hearing of its application.³²

24. Following the Amended Measure, Great Western Brewing Company (“Great Western”), a Saskatchewan brewer, initiated an application in the Alberta Court of Queen’s Bench alleging that the Amended Measure was unconstitutional. Great Western also obtained an injunction allowing it to continue paying the Small Brewer Mark-Up pending the hearing of its application.³³

25. The applications of Steam Whistle and Great Western will be heard together. They have yet to be heard.

Part III – The Panel has jurisdiction to examine the Measure and the Amended Measure

26. The Panel has jurisdiction to examine whether the Measure is inconsistent with the Agreement. All requirements for the Panel to exercise this jurisdiction have been met:

- a. The Measure and the Amended Measure are subject to the obligations of Articles 401 and 403 and are capable of being challenged under Chapter Seventeen of the Agreement.

³¹ Witness Statement of Mike Tessier, February 27, 2017, para. 8.

³² Justice Wilson, Interim Injunction Order, Steam Whistle Brewing Inc., January 18, 2016 (Book of Documents of Artisan Ales, Tab 33).

³³ Justice Wilson, Interim Injunction Order, Steam Whistle Brewing Inc. and Great Western Brewing Company Ltd., November 8, 2016 (Book of Documents of Artisan Ales, Tab 35).

- b. Artisan Ales has satisfied all of the procedural requirements necessary for the Panel to hear its complaint.

27. The Amended Measure does not oust the Panel's jurisdiction to examine the Measure. Rather, the Panel should consider the effect of the Amended Measure when determining the injury, denial of benefit, and impairment caused by the Measure and when developing its recommendations, if any, to assist in resolving the dispute.

A. The Measure and the Amended Measure can be challenged under the Agreement

28. The Measure and the Amended Measure consist of a mark-up schedule enacted pursuant to the Act and a grant program enacted pursuant to the Regulation. These measures are subject to Articles 401 and 403 of the Agreement and are capable of being challenged by a private person under Chapter 17.

29. Under Article 1713, a private person may request that proceedings be initiated in respect of the actual measures of a party.³⁴ The mark-up and the grants are actual measures within the meaning of the Agreement. They actually exist, and the Agreement defines a measure broadly, as "any legislation, regulation, directive, requirement, guideline, program, policy, administrative practice or other procedure".³⁵

30. Chapter Ten of the Agreement establishes the parties' obligations in respect of beer and other beverage alcohol products. It adopts Articles 401 and 403, articles which contain two of the core obligations of the Agreement:

³⁴ Article 1713(1) states:

A Person of a Party may request that a Party with which the Person has a substantial and direct connection within the meaning of Articles 1703(6), (7) or (8) initiate, on the Person's behalf, Proceedings under Part A regarding the actual measure of another Party.

³⁵ Article 200: Definitions of General Application.

- a. Article 401 requires that parties accord the goods of other parties treatment “no less favourable” than the best treatment accorded to their own goods.³⁶
- b. Article 403 prohibits parties from adopting measures which “operate to create an obstacle to internal trade”.³⁷

31. Articles 401 and 403 of the Agreement apply to the Measure and the Amended Measure through the provisions of Chapter Ten. This works as follows.

32. First, Article 1001 states that Chapter Ten applies to “measures adopted or maintained... relating to trade in beverage alcohol products” [emphasis added]. Beverage alcohol products are defined as including beer.³⁸ The Measure and the Amended Measure consist of mark-ups charged on the sale of beer and grants paid on the sale of beer. They “relate to” trade in beer and therefore fall within the general scope of Chapter Ten.

33. Second, Article 1000 confirms that Articles 401 and 403 apply to Chapter Ten except as otherwise provided in Chapter Ten.³⁹ Nothing in Chapter Ten excludes the Measure or the Amended Measure from the obligations of Articles 401 and 403.

³⁶ The relevant part of Article 401 states:

...each Party shall accord to goods of any other Party treatment no less favourable than the best treatment it accords to:

(a) its own like, directly competitive or substitutable goods; and

(b) like, directly competitive or substitutable goods of any other Party or non-Party.

³⁷ The relevant part of Article 403 states:

...each Party shall ensure that any measure it adopts or maintains does not operate to create an obstacle to internal trade.

³⁸ Article 1013: Definitions states:

beverage alcohol products means wine and wine products, spirits and spirits products, beer and beer products or other beverage alcohol products controlled by a competent authority...

³⁹ The relevant part of Article 1000: Application of General Rules states:

For greater certainty, Articles 400 (Application), 401 (Reciprocal Non-Discrimination), 403 (No Obstacles), 404 (Legitimate Objectives), 405 (Reconciliation) and 406 (Transparency) apply to this Chapter, except as otherwise provided in this Chapter.

34. Finally, Articles 1004 and 1005 of Chapter Ten specify how the obligations in Articles 401 and 403 operate in the context of beverage alcohol products.

35. Article 1004 provides a non-exhaustive list of examples of measures subject to Article 401, but does not otherwise limit the scope of the non-discrimination obligation.⁴⁰ The obligation in Article 401 accordingly applies with full force to the Measure and the Amended Measure, as measures relating to trade in beer.

36. Article 1005 specifies that Article 403 applies to, among other things, measures such as administrative decisions.⁴¹ The mark-ups imposed by the Measure and the Amended Measure are administrative decisions of the Commission under the Act. The grants paid under the Amended Measure are administrative decisions of the Minister under the Regulation. Accordingly, Article 403 applies to both the Measure and the Amended Measure.

37. As a result, the Panel has jurisdiction to examine whether the Measure and the Amended Measure are consistent with Articles 401 and 403 of the Agreement, provided that Artisan Ales satisfies the necessary procedural requirements for the Panel to hear its complaint. These requirements are discussed in greater detail below.

⁴⁰ The relevant part of Article 1004: Reciprocal Non-Discrimination states:

Article 401 (Reciprocal Non-Discrimination) applies, in particular, to measures in respect of:

(a) listing;

(b) pricing;

(c) access to points of sale;

(d) distribution;

(e) merchandising; and

(f) cost of service, fees and other charges.

⁴¹ The relevant part of Article 1005: No Obstacles states:

Article 403 (No Obstacles) applies to measures such as:

(a) administrative procedures, requirements and decisions;

(b) labelling and packaging regulations and requirements;

(c) oenological regulations, requirements and standards; and

(d) advertising regulations and requirements.

B. Chapter Six does not limit the obligations in Chapter Ten

38. Alberta may argue that Artisan Ales can only challenge the Measure and the Amended Measure under the provisions of Chapter Six of the Agreement. Chapter Six establishes obligations related to “incentives”, defined as a financial contribution to an enterprise or as income or price support to an enterprise.⁴² Specifically, Article 608(1) requires parties not to discriminate against the enterprises of other parties when providing incentives within their own territory,⁴³ and Article 608(3) creates a code of conduct for incentives.⁴⁴ This code of conduct cannot be enforced through the dispute resolution process in Chapter 17.⁴⁵

39. If advanced, this submission should be rejected.

40. Chapter Six creates *additional* obligations on parties beyond the obligations contained elsewhere in the Agreement. Nothing in Chapter Six narrows the obligations contained in other chapters of the Agreement, including Chapter Ten.

41. In fact, the Agreement explicitly confirms that the obligations of Chapter Ten take precedence over Chapter Six in the event of any inconsistency. This principle is expressed in

⁴² Article 616: Definitions states:

incentive means:

(a) a contribution with a financial value that confers a benefit on the recipient, including cash grants, loans, debt guarantees or an equity injection, made on preferential terms; or

(b) any form of income or price support which results directly or indirectly in a draw on the public purse...

⁴³ Article 608(1) states:

No Party shall, in the provision of incentives to enterprises located in its territory, discriminate against an enterprise on the basis that:

(a) the enterprise is owned or controlled by an investor of another Party; or

(b) the head office of the enterprise is located in the territory of another Party.

⁴⁴ Article 608(3) states:

The Code of Conduct on Incentives set out in Annex 608.3 applies to the Parties.

⁴⁵ See Article 1701(3)(a).

Annex 1813, among other rules for the interpretation of the Agreement. Annex 1813 defines Chapter Six as a “horizontal chapter” and Chapter Ten as a “vertical chapter”. Vertical chapters spell out the parties’ obligations within their own scope, while horizontal chapters apply both to their own scope and to the scope of vertical chapters.⁴⁶ Section 4 of Annex 1813 states that:

In the event of an inconsistency between a vertical chapter and a horizontal chapter, the vertical chapter prevails to the extent of the inconsistency, except as otherwise provided.

42. Chapter Ten prohibits discrimination and obstacles to trade in beer. Chapter Six does not provide otherwise. But even if it did, Annex 1813 means that Chapter Ten’s obligations would prevail.

C. Artisan Ales has met all of the procedural requirements for this complaint to be heard

43. Artisan Ales has taken all of the steps required in the Agreement for a private person to bring forward a complaint:

- a. Artisan Ales requested that the federal government (with whom Artisan Ales has a substantial and direct connection) initiate proceedings in respect of the Measure, pursuant to Article 1712 of the Agreement.⁴⁷
- b. The federal government chose not to initiate proceedings.⁴⁸
- c. Artisan Ales requested the initiation of proceedings pursuant to Article 1713 of the Agreement within 60 days of receiving or being deemed to have received notice that the federal government would not initiate proceedings.⁴⁹

⁴⁶ See section 1 of Annex 1813.

⁴⁷ Request for Canada to Initiate Proceedings, Letter from Benjamin Grant to Stephen Fertuck, April 15, 2016 (without enclosures) (Book of Documents of Artisan Ales, Tab 1).

⁴⁸ Decision by Canada regarding Request for Proceedings, Letter to Benjamin Grant from David Dunbar, June 10, 2016 (Book of Documents of Artisan Ales, Tab 2).

⁴⁹ Request for Initiation of Proceedings, Letter from Benjamin Grant to Secretariat, July 13, 2016 (Book of Documents of Artisan Ales, Tab 3).

- d. The screener appointed by the federal government under Article 1714 of the Agreement approved the request of Artisan Ales to initiate proceedings.⁵⁰
- e. Pursuant to Article 1715 of the Agreement, Artisan Ales requested consultations with Alberta, the complaint recipient, within 60 days of receiving the screener's approval.⁵¹
- f. Pursuant to Article 1716 of the Agreement, Artisan Ales requested that the Secretariat establish a panel within 180 days of the delivery of the request for consultations.⁵²

44. The Panel therefore has jurisdiction to examine the Measure and the Amended Measure for their consistency with the Agreement.

D. The Amended Measure does not oust the Panel's jurisdiction

45. Alberta may take the position that Artisan Ales does not have standing to proceed with its complaint since, after Artisan Ales began this proceeding, Alberta introduced the Amended Measure. Alberta may submit that Artisan Ales must begin a second proceeding in order to challenge the Amended Measure.

46. Nothing in the text of the Agreement, the decisions of previous panels, or the policy animating the Agreement would support such a position.

47. The text of the Agreement gives a panel no jurisdiction to dismiss a complaint because the responding party has amended or replaced the measure at issue. The only requirements for a complaint to be heard are the procedural requirements reviewed above, all of which Artisan Ales satisfies. Once these requirements are met:

- a. The disputants *shall* appoint a panellist to the Panel (Article 1717(2));

⁵⁰ Artisan Ales, [Report of the Screener](#), August 15, 2016 (Book of Documents of Artisan Ales, Tab 4).

⁵¹ Request for Consultations, Letter from Benjamin Grant to Shawn Robbins, August 27, 2016 (Book of Documents of Artisan Ales, Tab 5).

⁵² Request for Panel, Letter from Benjamin Grant to Secretariat, January 30, 2017 (Book of Documents of Artisan Ales, Tab 6).

- b. These panellists *shall* appoint a third panellist to the Panel (Article 1717(4));
- c. The Panel *shall* follow the rules of procedure of Annex 1718(1); and
- d. The Panel *shall* issue a report which shall contain, among other things, a determination as to whether the measure in question is inconsistent with the Agreement (Article 1719).

48. Furthermore, to the extent that Artisan Ales should have begun a second proceeding after the Amended Measure, this defect or irregularity is cured by section 4 of Annex 1718(1), which states that “no proceeding is invalid by reason of a defect in form or a technical irregularity”.

49. Accordingly, the Agreement’s text requires the Panel to determine the complaint of Artisan Ales. This is consistent with the reports of previous panels, which emphasize the capacity of a hearing panel to deal with the real substance of a dispute.

50. In *Ontario – Dairy Analogues I*, the respondent Ontario objected to the panel’s jurisdiction to make recommendations with respect to a statutory provision that the complaining parties (which included Alberta) failed to specifically raise in their request for consultations. The panel rejected this submission, finding such a “restrictive and technical approach” inconsistent with the spirit and letter of the Chapter Seventeen, which contemplated that consultations under Chapter Seventeen would identify and focus the issues in dispute.⁵³ It was a natural result of this consultation process that the measures at issue might evolve as the parties moved from consultations to a hearing panel.

51. In *Quebec – Dairy*, the respondent Quebec objected because the complaining party had not included a particular provision in its request for consultation or in its request to establish a panel. The panel agreed with the conclusion in *Ontario – Dairy Analogues I* and rejected a “technical and restrictive approach” to the panel’s jurisdiction. The panel concluded that the key initiating documents in the complaint process – the request for consultations and the request for panel – must simply allow the Panel and the responding party to identify three core

⁵³ [Report of the Article 1704 Panel Concerning the Dispute Between Alberta / British Columbia and Ontario Regarding Ontario’s Measures Governing Dairy Analogs and Dairy Blends](#) (2004), at page 31 ([Ontario – Dairy Analogues I](#)) (Book of Documents of Artisan Ales, Tab 46).

elements of the dispute: the good upon which the complaint bears, the impugned legislation, and the measures complained of, in some descriptive form.⁵⁴

52. Here, the request for consultations and the request for panel allow Alberta and the Panel to identify these three elements:⁵⁵

- a. This complaint evidently relates to beer.
- b. The requests make clear that this complaint relates to the mark-up schedule (which is issued pursuant to the Act) and the Alberta Small Brewers Development Program (which is operated under the Regulation).
- c. The requests make clear that this complaint concerns the differential mark-up rates imposed on imported beer by the Measure and the Amended Measure.

53. In addition to the text of the Agreement, and the precedents set by previous panels, policy considerations further support the jurisdiction of the Panel to examine the Measure and the Amended Measure. Chapter 17 has a mandatory consultation period. This consultation may naturally lead a responding party to replace the impugned measure with a measure considered by the responding party to be consistent with the Agreement. In such circumstances, it would be surprising if an unsatisfied complaining party could not then proceed to convene a hearing panel. It would be surprising if the complaining party was required to start the process again. Such a requirement could allow responding parties to delay, perhaps indefinitely, the resolution of the dispute. This result would thwart the text and spirit of Chapter Seventeen.

54. In sum, the text, practice, and policy of the Agreement require the Panel to examine the Measure. This does not mean that the Amended Measure is irrelevant. It is relevant to two aspects of the complaint.

⁵⁴ [*Report of Article 1703 Panel Regarding the Dispute between Saskatchewan and Québec Concerning Dairy Blends, Dairy Analogues and Dairy Alternatives*](#) (2014), at page 13-14 ([Quebec – Dairy](#)) (Book of Documents of Artisan Ales, Tab 49).

⁵⁵ Request for Consultations, Letter from Benjamin Grant to Shawn Robbins, August 27, 2016 (Book of Documents of Artisan Ales, Tab 5); Request for Panel, Letter from Benjamin Grant to Secretariat, January 30, 2017 (Book of Documents of Artisan Ales, Tab 6).

55. First, the Amended Measure could be relevant in the Panel’s assessment of whether the Measure has impaired internal trade, caused an injury, or denied a benefit. An amended measure might mitigate the harmful effects of an initial, offending measure. The Panel can accordingly consider whether the Amended Measure has removed the injury, impairment, or denial of benefit caused by the Measure here.

56. Second, the Amended Measure could be relevant to the Panel’s recommendations to resolve the dispute (assuming the Panel determines that the Measure is inconsistent with the Agreement, and has caused an injury, denial of benefit, or impairment of internal trade). As part of its report, the Panel must make “recommendations, if requested by a Disputant, to assist in resolving the dispute”.⁵⁶ This language permits the Panel to consider all factors relevant to the dispute, including whether the Amended Measure has brought Alberta into compliance with the Agreement.

57. This submission will accordingly address the Amended Measure as it relates to these two aspects of the complaint. First, however, the submission will address why the Measure is inconsistent with the Agreement.

Part IV – The Measure is inconsistent with the Agreement

A. The Measure is inconsistent with Article 401

58. The Measure treats the craft beer of other provinces less favourably than the craft beer of Alberta. It is inconsistent with Article 401.

59. Previous panels have applied a straightforward, two-prong test to determine whether a measure is inconsistent with Article 401:

- a. Does the measure discriminate against the goods of one Party to the benefit of the goods of another Party?
- b. Are the goods discriminated against “like, directly competitive or substitutable with the goods of another Party?”⁵⁷

⁵⁶ Article 1719(3)(d).

⁵⁷ See [Quebec – Dairy](#), at page 16, and the cases cited therein.

60. The Measure meets these criteria:
- a. The Measure discriminates against craft beer produced in other provinces and territories to the benefit of craft beer produced in Alberta. It imposes mark-ups up to 525% higher on the craft beer of other provinces compared to the craft beer of Alberta.
 - b. Craft beer produced in other provinces is “like, directly competitive or substitutive” with craft beer from Alberta, and the products sold by Artisan Ales compete with craft beers produced in Alberta.⁵⁸
61. Accordingly, the Measure is inconsistent with Article 401.

B. The Measure is inconsistent with Article 403

62. The Measure is also inconsistent with Article 403, which prohibits obstacles to trade. In *Quebec – Dairy*, the panel defined an obstacle to trade as a measure that “impedes trade”, and confirmed that a measure need not restrict or prohibit trade completely to be inconsistent with Article 403.⁵⁹
63. The Measure impedes trade. The increased mark-up raises the cost of importing beer into Alberta from other provinces and territories. Table 4 breaks down the costs of a typical case of six bottles of beer, marketed by Artisan Ales and retailed for \$19.86.⁶⁰

⁵⁸ Witness Statement of Mike Tessier, February 27, para. 3.

⁵⁹ [Report of the Article 1704 Panel Concerning the Dispute Between Alberta and Québec Regarding Québec’s Measure Governing the Sale in Québec of Coloured Margarine](#) (2005), at page 26 ([Quebec – Margarine](#)) (“In the Panel’s view, applying the ordinary dictionary definition of the term, an obstacle to trade is created when a measure impedes trade. It need not restrict or prohibit it entirely; an obstacle is created simply when trade is impeded.”) (Book of Documents of Artisan Ales, Tab 48).

⁶⁰ Witness Statement of Mike Tessier, February 27, para. 7.

Table 4 – Costs breakdown of a representative product of Artisan Ales

Retail Price (including GST)	\$19.86
Cost of beer from brewer	\$8.50
Shipping	\$1.50
Warehousing	\$0.75
Delivery to retailer	\$0.43
Retailer margin	\$3.89
Bottle deposit	\$0.60
Mark-up	\$0.41 (\$0.20 per litre x 2.046L)
GST	\$1.59
Artisan Ales overhead	\$1.69
Artisan Ales net profit	\$0.50

64. As can be seen, in this example, Artisan Ales earned \$0.50 in net profit after taking into account its costs, including the mark-up. The Measure resulted in an increase to the mark-up of 525%, increasing the cost of the product by \$2.06. This is over four times the profit margin of the importer. Artisan Ales was forced to raise its prices or lose money in order to continue to import this product. This economic reality has impeded internal trade in craft beer into Alberta, which is discussed in more detail below.

C. The Measure is not protected by any exception to the Agreement

65. In limited circumstances, the Agreement allows parties to adopt measures inconsistent with Article 401 and 403. None of the exceptions apply here.

66. This submission addresses the two most salient exceptions in the Agreement. If Alberta alleges additional exceptions apply, Artisan Ales will address those exceptions through a supplementary submission, subject to the direction of the Panel, or at the hearing of the complaint.

67. Article 404 allows a party to adopt a measure inconsistent with Articles 401 and 403 if the measure has the purpose of pursuing a “legitimate objective” and meets certain other criteria.

68. The Measure does not have a legitimate objective. Article 200 defines legitimate objective, and indicates that the definition “does not include protection of the production of a

Party”. The stated aim of the Measure is to promote made-in-Alberta craft beer or, in other words, to protect the production of craft beer in Alberta. This is not a legitimate objective.

69. Article 1801 allows parties to adopt measures as part of a general framework of regional economic development. However, Article 1801(6) excludes the chapters listed in Annex 1801.6B from the exception for regional economic development programs. The list of excluded chapters includes Chapter Ten. Article 1801 accordingly has no application here.

Part V – The Measure and the Amended Measure have impaired internal trade and caused an injury or a denial of a benefit

70. The Measure has impaired internal trade between provinces and caused injury and a denial of benefit to Artisan Ales and other parties.

71. To establish an injury, denial of benefit, or impairment, a complainant must only show the loss of an opportunity to participate in a market in an equal footing.⁶¹ A complainant is not required to prove “a demonstrable dollar amount” of their injury, nor is a panel required to rule on the extent of the injury.⁶² A detailed economic analysis is not necessary. Rather, a panel can make a “common sense determination” whether the measure “has impaired or would impair internal trade or has caused or would cause injury”.⁶³

72. The relatively modest threshold to establish an injury, impairment, or denial of benefit reflects the core assumption of the Agreement – barriers to trade presumptively harm the Canadian economy and should be eliminated as much as possible. Two of the mutually agreed principles of the parties to the Agreement enumerated in Article 101(3) reflect in particular this core assumption:

⁶¹ [*Report of the Article 1716 Panel Concerning the Dispute Between Farmers Co-operative Dairy Limited of Nova Scotia and New Brunswick Regarding New Brunswick’s Fluid Milk Distribution Licensing Measures*](#) (2002), at page 23 (“New Brunswick – Fluid Milk”) (Book of Documents of Artisan Ales, Tab 45); followed in [*Report of the Article 1704 Panel Concerning the Dispute Between Alberta and Canada Regarding the Federal Bank Act - Cost of Borrowing \(Banks\) Regulations*](#), (2004), at page 46 (Book of Documents of Artisan Ales, Tab 47); [*Ontario – Dairy Analogues I*](#), at page 34; and [*Quebec – Dairy*](#), at page 26.

⁶² See the cases cited in note 61.

⁶³ [*Quebec – Margarine*](#), at page 32.

- a. The parties “will not establish new barriers to internal trade”; and
- b. The parties will treat “persons, goods, services, and investments equally, irrespective of where they originate in Canada.”

A minimal threshold for establishing an injury, impairment, or the denial of a benefit advances these mutually-agreed principles. A minimal threshold allows panels to recommend the removal of all potentially harmful trade barriers, regardless of whether the harm reaches a given magnitude or whether the harm can be precisely demonstrated.

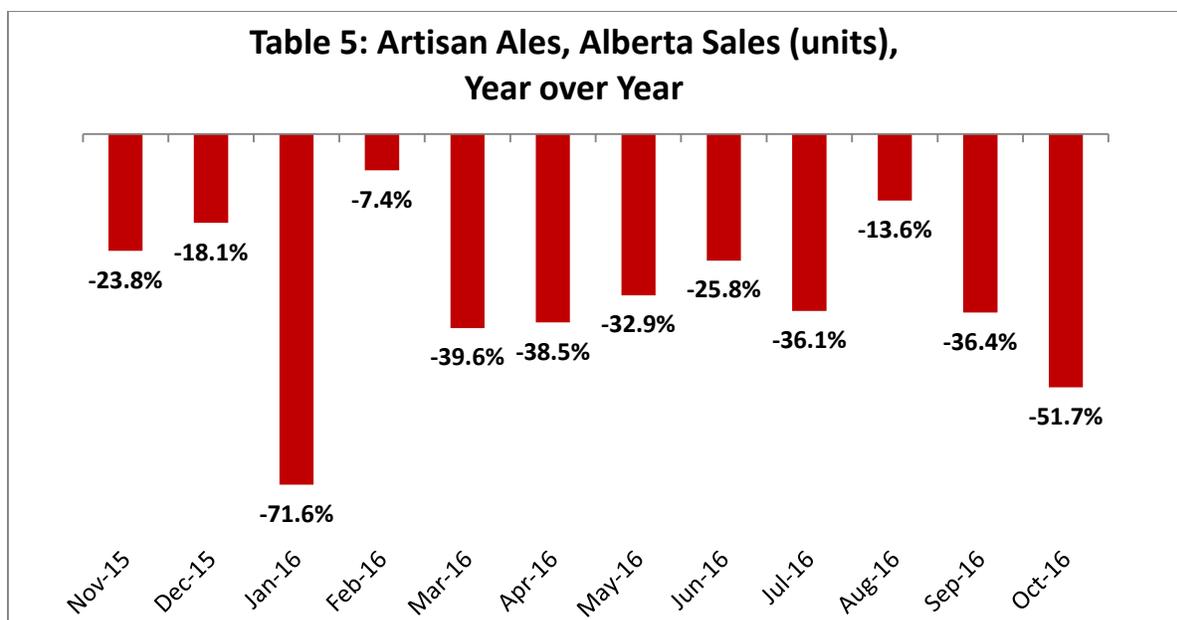
73. The modest threshold also reflects the intent of the Agreement’s dispute resolution procedures. The dispute resolution procedures are designed to quickly remove measures which are inconsistent with the Agreement, not to precisely measure the harm caused by those measures. Unlike a civil proceeding, no damages are available to injured complaining parties. This speedy, less formal process is intended to allow the Panel to make common sense inferences that trade barriers will harm internal trade, cause an injury, and deny a benefit.

74. On its face, the Measure satisfies this modest threshold. Higher mark-ups deny the opportunity to other Canadian brewers to participate in the Alberta market on an equal footing with Alberta brewers. This affects a significant number of brewers: the Measure impacted at least 31 Canadian brewers immediately, and the Amended Measure affected a further 48 Canadian brewers.⁶⁴ Based on this evidence alone, the Panel can make a common sense determination that raising mark-up rates would cause injury, would deny a benefit, and would impair trade in beer between Alberta and other provinces.

75. Further evidence from Artisan Ales, other market participants, and industry data confirms the injury, denial of benefit, and impairment caused by the Measure. The witness statement of Mike Tessier explains the immediate impact of the Measure on the sales of Artisan Ales in Alberta. In each of the 12 months following October 2015, when the Measure came into effect, the sale of beer by Artisan Ales into Alberta declined significantly.⁶⁵ Table 5 shows the extent of these declines.

⁶⁴ Witness Statement of Mike Tessier, February 27, 2017, paras. 19, 20.

⁶⁵ Witness Statement of Mike Tessier, February 27, 2017, para. 12 and Schedule 2: Monthly Sales of Artisan Ales by Volume.



76. In total, for the 12 month period following the Measure, the sales of Artisan Ales decreased by 33% compared to the previous 12 month period.⁶⁶ In dollar terms, for the fiscal year ending on November 30, 2016, the sales of Artisan Ales fell by 32% compared to the previous year, while its net profits fell by 86%.⁶⁷

77. The same impairment, injury, and loss of benefit can be seen in other parts of the marketplace as consumers throughout Alberta faced increased prices and fewer choices for craft beer. In particular, the witness statement of the general manager of Bottlescrew Bill's, a popular Calgary pub specializing in craft beer, shows the effect of the Measure and the Amended Measure at the level of Alberta restaurants. Geoff Allan explains how the Measure and the Amended Measure forced his restaurant to raise prices and reduce the options available to his customers. The effects of the policy are seen through a year-over-year decrease of 14.5% in sales of beers from outside of Alberta, and the removal of several Ontario, Maritime, and British Columbia craft beers from the restaurant.⁶⁸

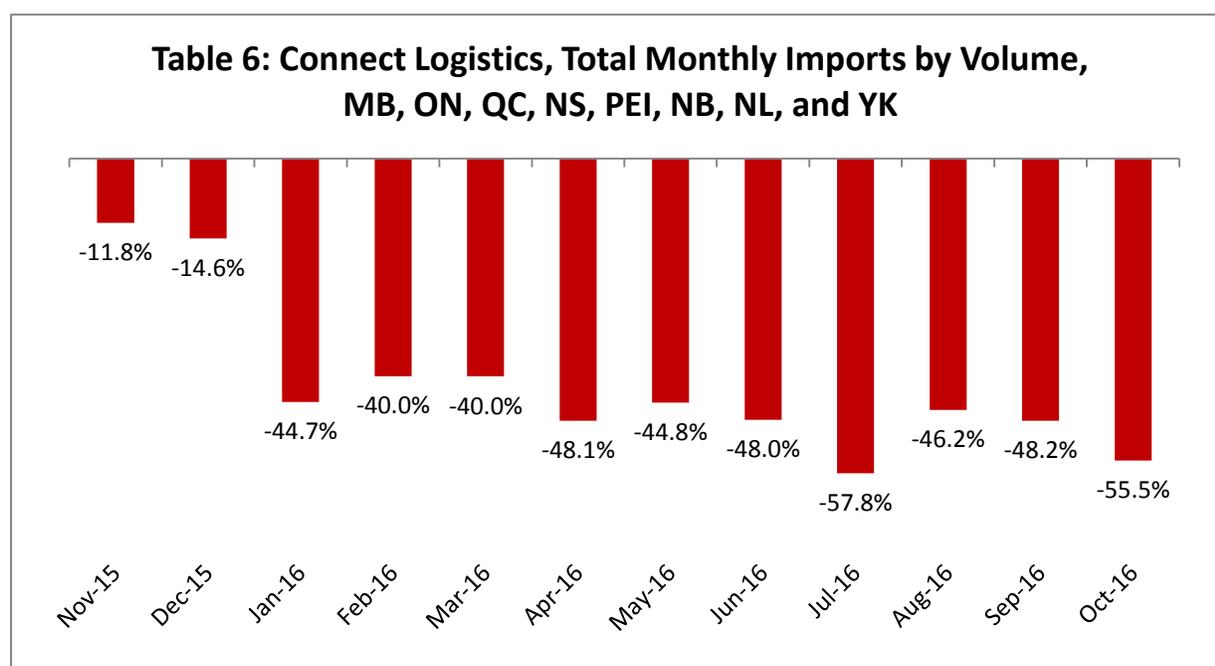
⁶⁶ Schedule 2: Monthly Sales of Artisan Ales by Volume.

⁶⁷ Witness Statement of Mike Tessier, February 27, 2017, para. 16

⁶⁸ Witness Statement of Geoff Allan, February 27, 2017, paras. 3-6.

78. Some Canadian breweries decided to withdraw from the Alberta market on their own initiative rather than wait for the inevitable loss of sales. Two Ontario brewers, Lake of Bays Brewing Company and Muskoka Brewery, publicly announced their departure. Lake of Bays linked the move to “the dramatic tax hike on out-of-province craft beer announced in October 2015”, saying that the “added tax burden was simply too much to bear.”⁶⁹ Muskoka indicated that “...with this new tax increase it’s now unsustainable to sell our beer in those provinces [British Columbia, Alberta, and Saskatchewan]”.⁷⁰

79. Overall market data confirms the experience of individual brewers, restaurants, and importers. A report prepared by Connect Logistics, the distributor of the vast majority of craft beer in Alberta, shows the impairment to internal trade in craft beer caused by the Measure. Table 6 sets out the year-over-year impact for the 12 months following the Measure.⁷¹



⁶⁹ Lake of Bays Brewing Company, [LB Suspends Operations in Alberta](#), April 25, 2016 (Book of Documents of Artisan Ales, Tab 34).

⁷⁰ Muskoka Brewery, [Muskoka Brewery to withdraw from “New West Partnership” provinces](#), November 16, 2015 (Book of Documents of Artisan Ales, Tab 32).

⁷¹ Connect Logistics, Report: Beer Sales by Region, January 26, 2017 (Book of Documents of Artisan Ales, Tab 36); See also Schedule 3: Monthly Imports from MB, ON, QC, NS, PEI, NB, NL, and YK, by Volume.

80. In total, the volume of sales through Connect Logistics from these provinces and territories in the 12 month period following the Measure decreased by 42.5% compared to the previous year.

81. Broader trends do not explain the decrease in imports seen by Artisan Ales, Bottlescrew Bill's, and the Commission's warehouse, Connect Logistics. During the same time period, overall sales of Canadian beer in Alberta (including beer from Alberta) were relatively flat, decreasing only 3% relative to the previous year.⁷²

82. Tables 5 and 6 show that the injury, denial of benefit, and impairment inflicted by the Measure did not stop following the Amended Measure on August 5, 2016. Sales volumes continued to fall in August, September, and October 2016.

83. To reiterate, the Panel can make a common sense determination that the Measure and the Amended Measure caused an injury, denial of benefit, and impairment to internal trade simply because of the unequal playing field created for imported craft beer. The evidence, however, confirms the injury, denial of benefit, and impairment well beyond the modest threshold necessary for the Panel to make a recommendation.

Part VI – The Panel should recommend that the Small Brewer Rates apply to the beer of all parties

84. The Panel's assistance in making a recommendation to resolve the dispute is necessary, as the Amended Measure does not bring Alberta into compliance with the Agreement.

A. The Amended Measure does not bring Alberta into compliance with the Agreement

85. Alberta may take the position, expressed in previous public statements, that all Canadian brewers are now treated equally as their products are subject to the same mark-up of \$1.25 per litre.

86. If advanced, such submission should be rejected.

⁷² Beer Canada (www.brewstats.ca), Alberta, Domestic Sales, November 2014 to October 2016 (Book of Documents of Artisan Ales, Tab 37); See also Schedule 4: Sales by Volume from all Provinces/Territories.

87. Article 401 prohibits both direct and indirect discrimination. Article 401(4) confirms:

The Parties agree that according identical treatment may not necessarily result in compliance with paragraph 1, 2 or 3.

88. Accordingly, several panels have found facially neutral measures to be inconsistent with Article 401. Such facially neutral measures have included:

- a. A prohibition on the sale of certain dairy alternatives, the blending of certain dairy alternatives, and the use of dairy-related words on the packaging of certain dairy alternatives, regardless of the province of origin of the products.⁷³
- b. A prohibition on the sale of yellow margarine, regardless of its province of origin.⁷⁴
- c. A prohibition on the sale of dairy analogs and alternatives, regardless of province of origin.⁷⁵

89. Here, the Amended Measure imposes a facially neutral mark-up. But the mark-up results in unequal treatment when considered together with the second element of the Amended Measure, the grant program.

90. Both of these elements form a single, integrated policy. The mechanics of the grant reflect this, exactly refunding the difference between the Small Brewer Mark-up and the notional mark-up of \$1.25 per litre. As a result, Alberta craft beer continues to enjoy the benefit of the Small Brewer Mark-up, while out-of-province craft beer is subject to the highest mark-up rate.

91. Alberta has confirmed the link between the two elements. In July 2016, when directing the Commission to implement a notional mark-up of \$1.25 on all beer, the Finance Minister and President of the Treasury Board indicated that “This change will work in concert with an Alberta small brewer-focused grant program...”⁷⁶ In response, the Commission acknowledged that the

⁷³ [Quebec – Dairy](#).

⁷⁴ [Quebec – Margarine](#).

⁷⁵ [Ontario – Dairy Analogues I](#).

⁷⁶ Letter from Joe Ceci to Susan Green, July 11, 2016 (Book of Documents of Artisan Ales, Tab 22).

revenue raised by the increased mark-up would support programs “such as the anticipated grant program for small brewers”.⁷⁷

92. Around the time Alberta implemented the Amended Measure, various Alberta brewers observed the obvious link between the two elements:

- a. Graham Sherman at Tool Shed Brewing Company Inc. said: “We have sold the beer. We have collected the money from the sales of our beer and we have already paid the government that tax on the beer that we’ve sold, and we simply get that tax back through this grant program. [emphasis added]”⁷⁸
- b. Dan Allard of Cold Garden Beverage Company said: “Our prices won’t be changing for customers even though we’ll be paying more for the mark-up. Even with all these changes they’re making, nothing is really changing at the end of the day. [emphasis added]”⁷⁹
- c. Neil Herbst, chair of the Alberta Small Brewers Association and owner of Alley Kat Brewing Company said: “We’ve been told that they will make us whole, so that the net will be the same as it would have been under the old system. So there won’t be an impact. [emphasis added]”⁸⁰

93. Viewed as a single policy, the Amended Measure continues to treat the craft beer of other provinces less favourably than the craft beer of Alberta. Imported craft beer is subject to a mark-up of \$1.25, while Alberta craft beer continues to benefit from the Small Brewer Mark-up. The Amended Measure continues to create an obstacle to trade in craft beer into Alberta, whose effects continue to be seen in the marketplace.

⁷⁷ Letter from Susan Green to Joe Ceci, July 12, 2016 (Book of Documents of Artisan Ales, Tab 23).

⁷⁸ Transcript, Rebel News, “[Notley NDP’s beer tax, protectionist grants ‘pit businesses against one another’](#)”, October 4, 2016 (Book of Documents of Artisan Ales, Tab 29).

⁷⁹ Metro News, “[Alberta craft beer grants will likely keep prices the same: association](#)”, August 2, 2016 (Book of Documents of Artisan Ales, Tab 30).

⁸⁰ Global News, “[Alberta backtracks on graduated beer tax for craft brewers](#)”, July 12, 2016 (Book of Documents of Artisan Ales, Tab 31).

B. The equal availability of the Small Brewer Mark-up is the appropriate remedy

94. A specific recommendation to resolve this dispute is necessary to avoid the reintroduction or continuation of the Measure under a new label.

95. Artisan Ales accordingly requests that the Panel recommend that Alberta immediately bring itself into compliance with the Agreement and, specifically, that Alberta reduce the mark-up on all Canadian beer to an amount equal to the net amount imposed on Alberta beer after taking the grant into account. This recommendation would ensure equal treatment in the Alberta marketplace between the beer of Alberta brewers, Canadian brewers, and the two Canadian brewers currently subject to injunctions (Steam Whistle and Great Western). It would remove the impediment to trade created by the Measure and the Amended Measure.

96. If the above recommendation is made, Artisan Ales takes no position whether, with respect to Alberta craft beer, Alberta should continue to operate the Alberta Small Brewers Development Program. Artisan Ales may reconsider its position in light of any submission of Alberta or Saskatchewan with respect to such a situation.

Part VII – Submissions as to costs

97. Artisan Ales respectfully requests that the parties have the opportunity to confer regarding tariff costs and the allocation of operational costs following the delivery of the Panel's report. If the parties cannot agree, Artisan Ales proposes that the parties make submissions to the Panel in writing regarding these issues.

98. Alternatively, Artisan Ales proposes addressing these issues at the hearing of this complaint.



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**Schedule 1: Comparison of grant program and Small Brewer Mark-Up
(sales in Alberta <150,000 HL)**

Production (hectolitres)	Notional Mark-Up after August 5, 2016 (per litre)	Grant under the Alberta Small Brewers Development Program (per litre)⁸¹	Small Brewer Mark- Up between October 28, 2015 and August 5, 2016 (per litre)⁸²
0-10,256	\$1.25	\$1.15	\$0.10
10,257-10,810	\$1.25	\$1.14	\$0.11
10,811-11,428	\$1.25	\$1.13	\$0.12
11,429-12,121	\$1.25	\$1.12	\$0.13
12,122-12,903	\$1.25	\$1.11	\$0.14
12,904-13,793	\$1.25	\$1.10	\$0.15
13,794-14,814	\$1.25	\$1.09	\$0.16
14,815-16,000	\$1.25	\$1.08	\$0.17
16,001-17,391	\$1.25	\$1.07	\$0.18
17,392-19,047	\$1.25	\$1.06	\$0.19
19,048-21,052	\$1.25	\$1.05	\$0.20
21,053-23,529	\$1.25	\$1.04	\$0.21
23,530-26,666	\$1.25	\$1.03	\$0.22
26,667-30,769	\$1.25	\$1.02	\$0.23
30,770-36,363	\$1.25	\$1.01	\$0.24
36,364-44,444	\$1.25	\$1.00	\$0.25

⁸¹ Alberta, [Alberta Small Brewers Development Program – Terms and Conditions](#), page 7 (Documents of Artisan Ales, Tab 26).

⁸² Alberta Gaming and Liquor Commission, Mark-up Rate Schedule, Effective October 28, 2015 (Documents of Artisan Ales, Tab 16).

44,445-50,877	\$1.25	\$0.99	\$0.26
50,878-52,727	\$1.25	\$0.98	\$0.27
52,728-54,716	\$1.25	\$0.97	\$0.28
54,717-56,862	\$1.25	\$0.96	\$0.29
56,863-59,183	\$1.25	\$0.95	\$0.30
59,184-61,702	\$1.25	\$0.94	\$0.31
61,703-64,444	\$1.25	\$0.93	\$0.32
64,445-67,442	\$1.25	\$0.92	\$0.33
67,443-70,731	\$1.25	\$0.91	\$0.34
70,732-74,358	\$1.25	\$0.90	\$0.35
74,359-78,378	\$1.25	\$0.89	\$0.36
78,379-82,857	\$1.25	\$0.88	\$0.37
82,858-87,878	\$1.25	\$0.87	\$0.38
87,879-93,548	\$1.25	\$0.86	\$0.39
93,549-100,000	\$1.25	\$0.85	\$0.40
100,001-107,407	\$1.25	\$0.84	\$0.41
107,408-116,000	\$1.25	\$0.83	\$0.42
116,001-126,086	\$1.25	\$0.82	\$0.43
126,087-138,095	\$1.25	\$0.81	\$0.44
138,096-150,000	\$1.25	\$0.80	\$0.45

Schedule 2: Monthly Sales of Artisan Ales by Volume⁸³

Source: Connect Logistics, Report: Beer Sales by Region, November 2014 to October 2016, January 26, 2017 (Book of Documents of Artisan Ales, Tab 36).

Month	Sales (units)	Month	Sales (units)	Change
November 2014	492.00	November 2015	374.67	-23.8%
December 2014	502.00	December 2015	411.00	-18.1%
January 2015	482.00	January 2016	137.00	-71.6%
February 2015	422.00	February 2016	390.75	-7.4%
March 2015	528.50	March 2016	319.00	-39.6%
April 2015	455.00	April 2016	279.92	-38.5%
May 2015	456.00	May 2016	305.84	-32.9%
June 2015	574.42	June 2016	426.00	-25.8%
July 2015	506.92	July 2016	324.00	-36.1%
August 2015	464.75	August 2016	401.75	-13.6%
September 2015	418.00	September 2016	265.67	-36.4%
October 2015	520.00	October 2016	251.00	-51.7%
Total	5,821.59		3,886.60	-33.2%

⁸³ For Artisan Ales, units can represent individual kegs, cases of 12 bottles, and cases of 24 bottles. Witness Statement of Mike Tessier, February 27, 2017, para. 12.

Schedule 3: Monthly Imports from MB, ON, QC, NS, PEI, NB, NL, and YK, by Volume⁸⁴

Source: Connect Logistics, Report: Beer Sales by Region, November 2014 to October 2016, January 26, 2017 (Book of Documents of Artisan Ales, Tab 36)

Month	Sales (units)	Month	Sales (units)	Change
November 2014	17,256	November 2015	15,220	-11.8%
December 2014	21,578	December 2015	18,422	-14.6%
January 2015	14,828	January 2016	8,196	-44.7%
February 2015	14,540	February 2016	8,727	-40.0%
March 2015	17,322	March 2016	10,396	-40.0%
April 2015	21,725	April 2016	11,265	-48.1%
May 2015	21,004	May 2016	11,592	-44.8%
June 2015	26,946	June 2016	14,023	-48.0%
July 2015	26,780	July 2016	11,296	-57.8%
August 2015	20,310	August 2016	10,934	-46.2%
September 2015	20,504	September 2016	10,627	-48.2%
October 2015	19,186	October 2016	8,541	-55.5%
Total	241,979		139,240	-42.5%

⁸⁴ Units represent individual kegs or cases of beer. Witness Statement of Mike Tessier, February 27, 2017, para. 18.

Schedule 4: Sales by Volume from all Provinces/Territories

Source: Beer Canada (www.brewstats.ca), Alberta, Domestic Sales, November 2014 to October 2016 (Book of Documents of Artisan Ales, Tab 37).

Month	Sales (hectolitres)	Month	Sales (hectolitres)	Change
November 2014	163,499	November 2015	173,067	5.9%
December 2014	205,161	December 2015	191,144	-6.8%
January 2015	162,544	January 2016	140,904	-13.3%
February 2015	144,966	February 2016	155,997	7.6%
March 2015	187,946	March 2016	187,161	-0.4%
April 2015	189,993	April 2016	189,906	0.0%
May 2015	221,612	May 2016	221,481	-0.1%
June 2015	249,582	June 2016	240,921	-3.5%
July 2015	249,511	July 2016	223,234	-10.5%
August 2015	202,252	August 2016	214,272	5.9%
September 2015	191,469	September 2016	183,726	-4.0%
October 2015	180,894	October 2016	156,045	-13.7%
Total	2,349,429		2,277,858	-3.0%