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**MEMORANDUM ON THE CASE OF NEWLAND AND
RICHBREW INC.**

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Introduction

The Ministry of Commerce of Newland hereby comes to present and sustain its arguments on the matter of the alleged restrictions on the importation of beers aroused by RichBrew Inc. The position that will be defended by the State of Newland is that there is no restriction to trade being currently applied in this situation and that RichBrew Inc. is utilizing the WTO's apparatus in order to mitigate Newland's sovereignty over the decisions related to fiscal, environmental and health policies.

Newland is entirely compromised with the promotion of free trade. When the State joined the WTO, it got rid of all of its importation limits, since they were incompatible with the principles and rules of the WTO and with the notion of free trade that the Newland believes. Nonetheless, there are, and there must be, several other measures that impact trade and many other national economic activities, because, although Newland believes in the benefits of free trade, the welfare of its citizens constitute a core principle that guides the activities of the State, and, in order to promote this welfare, it is necessarily to intervene in the economic sphere and limit the rights of some market players.

The current practices of the National Federation of Restaurateurs

RichBrew Inc. has affirmed that the National Federation of Restaurateurs, which is a government-sponsored association, has instructed its members not to serve beer with typical Newland dishes. The point that RichBrew Inc. brought to debate is that, since the federation is government-sponsored, it is possible to say that Newland is promoting trade restrictions in a certain way.

This argument is unsustainable for the simple fact that the National Federation of Restaurateurs isn't part of the public administration of Newland. Even though the State sponsors the federation, it can't be responsible for what a private association decides to do. It doesn't make sense to accuse Newland of imposing trade restrictions when, in the case of the National Federation of Restaurateurs, it isn't capable of deciding anything at all.

The Armed Forces Reform Act

As it is widely known, the rise of the demand for beer in Newland is a recent event. When the Armed Forces Reform Act was passed, in 1996, beer consumption wasn't significant, since Newland has always been a wine-drinking country. So, in this case, the production of wine was larger and, therefore, its prices were lower in comparison to beer.

The inclusion of wine in the meals offered in army mess halls was a measure to reduce costs of the public administration, not a restriction to trade. After all, the importation of beer wasn't a relevant issue by then. Therefore, the argument brought by RichBrew Inc. isn't able to prove that Newland is trying to create obstacles to the importation of beer.

The likeness of the products

The Ministry of Commerce of Newland, regarding the likeness of the products and considering the assessment of Canada and the European Community, considers like products to have similar properties, nature, quality and uses. There is a clear difference between Wine and Beer, with the only relevant similarity being the presence of alcohol.

Wine and Beer have different chemical compositions, since wine is brewed from grapes, and beer comes from barley. Also the nature of the products is very different considering the different alcohol amounts in each one and their different uses, which depend on the habits of the local population.

Moreover, the Ministry states that beer and wine are not direct substitutes, according to the arguments presented before and also due to the lack of evidence that beer share their markets. There is no evidence that beer would fulfill Newland's demand in an event of Wine shortage. Having that said, the ministry comes to the conclusion that the products are unrelated, and, therefore, the tax policy of Newland regarding alcoholic beverages fulfills GATT - Article III.

Regarding non-alcoholic beer, the Ministry considers it and regular beer to be related but not like products, since the first doesn't have any alcohol in its composition. Having that said, they are considered to be direct substitutes, because of the staggering chemical similarities

between them, the only difference being alcohol, which keeps them from being like products. There is widespread evidence that non-alcoholic beer is consumed as an alternative to regular beer worldwide in situations in which the consumer cannot or doesn't want to drink alcohol. This is the reason why the VAT tariffs for beer and non-alcoholic beer are the same. Even though, Newland relieves non-alcoholic beer from the excise taxes that regular beer is charged. That is due to the lack of alcohol and the lack of the health risks caused by it, which is a legal exception according to article XX(b) of GATT.

The excessive taxation of beer

One of the precedents of the WTO in the matter of discriminatory taxation as a trade barrier was the case of the alcoholic beverages in Japan. According to the Appellate Body, Japan was imposing a barrier to trade when it taxed some alcoholic beverages that were mostly imported while the “sochu”, a traditional alcoholic beverage from Japan, has a considerably lower tax burden.

In the mentioned case, the difference was certainly excessive, as the brandy, a beverage that was mostly imported, was taxed almost nine times more than the “sochu”. In the present case, the facts are that there is practically no difference between the taxation of the wine and the beer, since the former is taxed N\$ 5 ppl and the latter N\$ 6 ppl. Therefore, there is no of deviance from what is established at GATT article III. Such a small difference in taxation is justified by fiscal policy decisions and internal tax law.

The charge on aluminium cans

Newland Customs Service imposes a charge of N\$0,5 per litre on alcoholic beverages that are bottled in aluminium cans after importation, due to environmental reasons. This charge can be justified when we look to the production chain of aluminium. Besides the fact that glass bottles can not only be recycled but also reusable, the way that aluminium is extracted can be a

threat for the environment, resulting from its mining, refining and consequent aspects such as destroyed forests, contaminated water and infertile valleys.

In article XX of GATT there are specific exceptions cases that justify restrictions and discrimination on international trade. Regarding aluminium case, we can relate two of those exceptions:

(b) necessary to protect human, animal or plant life or health;

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

To understand the matters with environment, we should take a look at the aluminium production chain. It begins with the extraction of bauxite, which is typically extracted in open mines, requiring the complete removal of vegetation and topsoil. It takes four to five tons of bauxite to produce two tons of alumina, which in turn can be refined to produce one ton of primary aluminium. Besides that, the production of aluminium is the most energy-consuming industrial process in the world.

In the mining process, large quantities of rock waste need to be discarded. Even if the topsoil is restored after mining, it loses its ability to retain water, making it unsuitable for crops. Open mines mining has effects on local fauna and flora, besides favoring soil erosion. Furthermore, the bauxite mining is a significant cause of tropical forest destruction. Other impacts include air pollution from the refining of alumina, where gases, caustic aerosols and other corrosive dust, are released into the atmosphere.

Due to all that argument, we agree that is reasonable to impose a charge alcohol beverages bottled in aluminium cans.

The wine benefits for health

Newland give special treatment for wine (including lower taxes) because of the health benefits derived from moderate consumption. Studies from some universities, like UNIFESP and the Cardiology Institute of Rio Grande do Sul, can prove these benefits. In UNIFESP study called *“Resveratrol plays important role in protective mechanisms in renal disease”* the authors prove that substance which is found in grapes and red wine can ameliorate a lot of types renal injuries, prevent the increase of vasoconstrictors, and have antiviral, anti-inflammatory and anticancer effects.

Furthermore the research of Cardiology Institute of Rio Grande do Sul called *“Effect of red wine associated with physical exercise in the cardiovascular system of spontaneously hipertensive rats”* prove that in hypertensive rats who made moderate consumption of red wine and did physical exercise had a protector effect in systolic blood pressure (SBP) and high density lipoprotein (HDL). This means the wine associated whit physical exercise is good for the heart.

In 2015 the University of Texas Southwestern Medical Centre, made a research for BBC Future comparing beer and wine to discover how they act in human organism. The author asked a group of 15 men to consume these two drinks in different days so it’s able to compare. Were made a few questions like which gets you drunk quickly, which gives you the biggest punch, which gives you the worst hangover, and which is better (or worse) for my health. As the conclusion the author said the wine is better to health and human life than beer.

With these three research it’s possible to see the health benefits from red wine, and why the country of Newland gives a special treatment to this drink.

Conclusion

With all the arguments aroused in mind, we can say with conviction that Newland hasn’t practiced any trade barrier and that the position defended by RichBrew Inc. is unsustainable. The inexistence of these alleged barriers is confirmed by the fact that all the measures Newland has imposed upon the importation of beer are justified by the legal order of the WTO and the relevance of these measures to the achievement of national goals in the economic and social domain.

