



REGULATORY MODERNIZATION IN
ONTARIO'S BEVERAGE ALCOHOL INDUSTRY

Findings Report

March 2014

AGCO

Alcohol and Gaming
Commission of Ontario



Ontario

AGCO Vision

A leader in the alcohol and gaming sectors through effective regulation and services that are fair, responsive and in the broader public interest.

AGCO Mandate

The AGCO regulates the sale, service and consumption of beverage alcohol, and ensures that commercial gaming, charitable gaming and lotteries are conducted in the public interest and in a manner that is socially and financially responsible.

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EXECUTIVE SUMMARY

About this Review

In August 2013, the Alcohol and Gaming Commission of Ontario (AGCO) initiated a review of its approach to the regulation of wine, beer, and spirits manufacturers, manufacturers' representatives, ferment-on-premise operators, and liquor delivery services. This review focuses on the laws, policies and procedures that fall within the existing regulatory mandate of the AGCO, including licensing, manufacturer retail stores, advertising and promotional activities, and product sampling.

Ontario's beverage alcohol industry is in the midst of a period of significant expansion and diversification. At the same time, Ontario continues to have the strongest policies of any province in Canada for reducing the negative health and social costs related to alcohol. This review presents an opportunity to modernize our regulatory approach in a way that supports new investment and innovation, maintains strong protection of the public interest, and responds to shifting economic and social realities.

Over the past several months, the AGCO has led an extensive engagement with industry stakeholders, as well as public health and social responsibility organizations and other government ministries and agencies. Stage One of the consultation period involved thirty-two written submissions in response to an AGCO consultation paper. Stage Two involved nine roundtable sessions and several one-on-one meetings over a two-month period, which were attended by a total of ninety-five participants from the public, private, and non-profit sectors.

This report provides the public and all of the AGCO's stakeholders and partners with a comprehensive overview of the issues and proposals raised during both stages of the consultation period. The AGCO will be reviewing the findings to identify areas where it will move ahead with reforms. A number of stakeholder working groups will be established to consider the public policy and implementation issues involved.

What We Heard - Licensing

Simplification, Rationalization and Risk-Based Licensing

There was strong support among industry representatives for simplification and rationalization of the AGCO's licensing rules and processes, including greater use of technology. The majority of participants called for the creation of a single licensing instrument, involving one application, one fee, and one renewal.

There was also agreement that "risk-based" licensing is an effective and efficient licensing approach, provided that new applicants continue to be subject to a rigorous initial licensing process. Industry participants widely supported the introduction of a simplified renewal process for low-risk licensees.

New License Classifications

The AGCO received specific requests for the creation of new license classifications for Ontario-based

cideries and craft distillers. Representatives from the cider industry noted that the rules for wineries – under which they presently fall – do not capture their unique requirements and do not effectively support the growth of their emerging sector. Craft distillers requested a license that would be exclusive to smaller spirits producers who conduct all distilling activities at their production site and use only locally-produced raw materials.

“Supplementary” Manufacturer’s Licences

In recent years, an increasing number of beverage alcohol manufacturers have looked to expand and diversify their product offerings by entering new areas of manufacturing. For example, some Ontario wineries have started distilling operations and a number of beer manufacturers have begun producing ciders. The AGCO was advised that its licensing rules make it difficult and expensive to obtain a second manufacturer’s licence. It was recommended that the AGCO create a “supplementary” license that would leverage a manufacturer’s existing license and reduce the cost of growing and diversifying its business.

Public Health and Social Responsibility Input on Licensing

Participants from the public health and social responsibility community acknowledged the importance of removing barriers to job creation and economic growth while emphasizing the importance of public safety and the reduction of alcohol-related harms and risks. Risk-based licensing was identified as an effective regulatory tool, but it was stressed that the AGCO must continue monitoring all licensees, including those identified as low-risk.

What We Heard - Manufacturer Retail Stores

On-Site Brewery Retail Stores

The AGCO received a series of recommendations from beer manufacturers aimed at revising the on-site brewery retail store rules in order to encourage new capital investments, job creation and increased tourism opportunities in Ontario’s growing beer manufacturing sector. Proposals include:

- Changing the rules that currently permit only breweries that produce more than 25,000 hL of beer per year to operate a second on-site brewery store;
- Harmonizing on-site production requirements to provide that up to 50 percent of the beer sold at an on-site brewery retail store may be produced at another production site, regardless of the manufacturer’s annual beer production volumes;
- Allowing breweries to sell the beer of other beer manufacturers at their on-site brewery retail stores (i.e. “cross-selling”);
- Amending the rule that all beer sold at an on-site retail store must be “made in Ontario”; in order to allow for the sale of beer that is made by the manufacturer anywhere in Canada.

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On-Site Winery Retail Stores

Discussions with wine manufacturers focused on potential regulatory changes that, according to participants, would create opportunities for new investment and be responsive to the significant growth and development of Ontario's wine industry in recent years. Proposed reforms include:

- Changing the rule requiring that grape wineries located in less-established wine regions (i.e. outside of Niagara, Lake Erie North Shore, and Prince Edward County) must produce 50 percent of their wine from grapes grown in their county, region or district.
- Creating a "level playing field" for all wineries by ending the rule that prohibits wineries that produce "blended" (International-Canadian Blend) wines from operating an on-site winery retail store;
- Permitting wine manufacturers to sell their full product offering – including wines produced at newly-acquired wineries – at each of their on-site winery retail stores.

On-Site Distillery Retail Stores

Discussion among spirits manufacturers centred on policy changes to support the emerging craft distillery sector and foster future growth. There was significant discussion, but limited consensus, on the following potential changes:

- Lowering the "batch still" production threshold of 5,000 litres for a distillery licence to eliminate an entry barrier for new craft distillers;
- Revisiting the requirement that 50 percent of products sold at an on-site distillery retail store must be made at the production site;
- Permitting manufacturers of spirits-based products, that do not distill spirits, to operate on-site distillery retail stores.

"Portable" On-Site Retail Store Authorization

Several consultation participants – particularly from the wine industry and some brewers – proposed the introduction of limited "portability" to on-site retail store authorizations. Specifically, it was suggested that the AGCO should follow other jurisdictions and authorize manufacturers to conduct sales of their own products at farmers' markets, trade shows and local festivals. This recommendation was opposed by a group of participants on the basis of international trade obligations.

Sale of Ancillary Items at On-Site Retail Stores

The AGCO is responsible for determining the types of non-liquor products (i.e. "ancillary items") that may be sold at on-site retail stores. Currently, the approved items are limited to certain types of merchandise, including branded products, liquor-related accessories, and gift certificates.

There was agreement that the list of approved ancillary items should be updated, but little consensus on

how to do so. Proposed solutions include:

- Updating the ancillary items list to support the overall cultural, historical and culinary experience of visitors to Ontario breweries, wineries and distilleries;
- Replacing the list of “approved” ancillary items with a list of “prohibited” ancillary items which focuses on social responsibility and public health issues;
- Curtailing the sale of ancillary items to ensure that on-site stores do not draw customers away from other retailers.

Off-Site Winery Retail Stores – Hours of Sale and Store Relocation

Some Ontario wineries are permitted to operate winery retail stores not located at their production facility. These “off-site” stores have more restrictive hours and holiday closing rules than on-site stores, as well as some additional restrictions on store relocations. It was suggested during the consultations that off-site stores should have the same hours and holiday closing rules as on-site stores and that there should be greater flexibility on relocations in order to accommodate unforeseen planning and construction delays.

Beer Store Relocations

The AGCO authorizes the location and opening of new outlets of The Beer Store. The larger beer manufacturers suggested that the AGCO’s approach in this area should be simplified by moving from the current two-stage approval process to a more streamlined single-stage approval process.

Public Health and Social Responsibility Input on Retail Store Issues

Public health and social responsibility organizations expressed significant concern about the “time, place, and density” of liquor retail outlets in Ontario, particularly those that are not operated by the LCBO. Reference was made to research demonstrating a correlation between the number of outlets and alcohol-related harm. Recommendations include:

- Limiting the expansion of manufacturer retail stores, for example through population-based limits or a moratorium on the opening of new stores;
- Requiring manufacturers to adopt consistent best practices to prevent sales to minors;
- Requiring stores to post signs reminding patrons to call “911” if they see a drunk driver.

What We Heard - Alcohol Advertising and Promotions

Alcohol Advertising Content

There was general agreement among industry representatives that the AGCO should continue to place limits on advertising content. At the same time, there were calls for the AGCO to provide greater clarity in certain areas of the advertising rules and make specific changes to reflect current societal norms.

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Suggestions include:

- Clarifying the rules regarding use of “well-known personalities” in alcohol advertisements;
- Reviewing restrictions on motorized vehicles in motion where it is an ancillary part of the ad;
- Allowing the display of bottles, cans, and glasses of alcohol on corporate vehicles;
- Publishing the AGCO’s advertising-related decisions and interpretations in order to boost transparency and provide greater clarity for licensees.

Manufacturers’ Inducements

The AGCO was candidly advised by industry representatives that manufacturers’ inducements are a common industry practice and perhaps even a basic expectation of many in the hospitality industry. There was agreement on the need for a more defined and certain approach by the AGCO, but no consensus about what that approach should be.

The majority of participants felt that some form of prohibition should remain in place to prevent unfair competition, particularly for smaller or newer entities, but that greater clarity and more aggressive AGCO enforcement is needed. Others suggested eliminating the prohibition on inducements altogether, on the basis that inducement rules are difficult to enforce and are legitimate activities in today’s business environment.

Manufacturers’ Promotional Gifts

There was general support for the current limits on the allowable value of promotional gifts that a manufacturer may provide to customers along with the purchase of a beer, wine or spirit product. That said, several participants identified opportunities for reform. Proposed solutions include:

- Allowing “digital” promotional gifts through websites, Quick Response Codes (QRs), etc;
- Increasing transparency on the method used by the AGCO to calculate the value of promotional gifts.

Pre-Approvals for Advertising by Ferment-on-Premise Operators and Liquor Delivery Services

Currently, the law requires that all advertisements by ferment-on-premise operators and liquor delivery services receive prior approval by the AGCO. These sectors suggested that the pre-approval process was put in place over a decade ago when the sectors were less mature and should now be eliminated.

Public Health and Social Responsibility Input on Alcohol Advertising and Promotions

The AGCO was advised by public health and social responsibility participants that alcohol advertising and promotion has become increasingly sophisticated, technology-driven, and focused on “normalizing” drinking (i.e. connecting it with a positive lifestyle, particularly among youth). Participants pointed to research that shows a causal link between alcohol advertising and alcohol-related harms, including

increased alcohol consumption by youth. Recommendations include:

- Re-establishing rules requiring that the AGCO “pre-approve” all alcohol advertisements by manufacturers;
- Taking more aggressive enforcement action, including increased fines and public reporting of violations;
- Updating the rules to specifically address new, technology-driven risks, such as social media-based marketing by beverage alcohol manufacturers.

What We Heard - Sampling

Consultation participants from the beverage alcohol industry raised concerns that a comprehensive review of the AGCO’s sampling policies has not taken place in a number of years. It was suggested that the rules are out of date, overly prescriptive, and a barrier to innovative promotional opportunities. The AGCO received a number of recommendations aimed at making sampling activities more cost-effective, flexible and modern for business, including:

- Permitting manufacturers to provide digital vouchers – such as through a smartphone – to customers in a socially responsible manner;
- Lowering the manufacturer’s cost of sampling at licensed establishments by no longer requiring the manufacturer to purchase samples at the full menu price;
- Permitting manufacturers’ representatives to serve samples at licensed establishments.

Public Health and Social Responsibility Input on Sampling

There was significant concern expressed by the public health and social responsibility community about any measure that would increase sampling opportunities for beer, wine and spirits manufacturers. The general view was that the AGCO should take steps to substantially restrict sampling by:

- Prohibiting free “open samples” in licensed establishments, retail stores, and at promotional events, trade shows, festivals, etc;
- Establishing a maximum sample size and a cap on the number of samples that may be offered to an individual.

What We Heard - Other Issues

Contract Manufacturing

In Ontario today, an increasing number of local beer, wine and spirits brands are introduced to the market by companies that do not own or operate their own “bricks and mortar” manufacturing facility. Instead, these companies – referred to as “contract manufacturers” – use the production site, equipment and, in some circumstances, workforce and expertise of a well-established manufacturer to produce their products.

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There was agreement that the AGCO should develop distinct licensing rules for contract manufacturers, but significant debate about the content of those rules. Some recommended that the AGCO restrict eligibility for manufacturer's licences to those businesses that physically own or operate their own production site. Others called for the creation of a separate licence for contract manufacturers that imposes unique terms and conditions, most notably to provide greater transparency on product labels.

Manufacturers' Representatives

The AGCO received several recommendations from manufacturers' representatives that were directed at finding ways to create greater flexibility and reduce the administrative burden for their businesses, while maintaining regulatory controls centred on public health and social responsibility. Recommended reforms include:

- Amending the 180 litre cap on allowable "product on hand";
- Permitting sales to licensees on extended payment terms;
- Permitting manufacturers' representatives to charge delivery fees to clients.

Liquor Delivery Services

The AGCO's consultations with representatives from the liquor delivery service industry focused on finding ways to improve customer service and simplify regulatory rules, while ensuring liquor delivery services are operated in a safe and socially responsible manner. Suggested rule changes included:

- Allowing delivery to business addresses (i.e. for office parties and other business-related events), as well as licensed establishments;
- Clarifying the rules regarding "advance ordering" and "same-day delivery";
- Allowing liquor delivery services to contract with manufacturers to deliver promotional materials.

Ferment-on-Premise Operators

Consultation participants from the ferment-on-premise industry advised the AGCO that the current regulatory framework imposes a number of unnecessary barriers to business expansion and perpetuates antiquated business practices. While acknowledging the need to maintain a clear delineation between the relative roles of "customer" and "operator", industry representatives suggested that a series of discrete reforms could serve to create new opportunities for their businesses. Recommendations included:

- Permitting operators to move "in process" carboys to another location under the watch of an AGCO inspector;
- Authorizing holders of special occasion permits to serve beer and wine produced at ferment-on-premise facilities;
- Allowing customers to share batches and to assign a designate to complete the production

process under limited circumstances.

Regulatory Modernization in the Beverage Alcohol Sector

Since August 2013, the Alcohol and Gaming Commission of Ontario (AGCO) has been leading a comprehensive review of its approach to the regulation of Ontario's wine, beer, and spirits manufacturers, manufacturers' representatives, ferment-on-premise operators, and liquor delivery services.

This review is grounded in a commitment by the AGCO to be a modern regulator and to engage with stakeholders and partners in the beverage alcohol industry, government, and public health and social responsibility organizations to reduce the administrative burden on business, remove barriers to job creation and economic growth, and help ensure the responsible sale and consumption of beverage alcohol.

Responsibility for the oversight of Ontario's beverage alcohol industry is shared among several government ministries and agencies, including the AGCO. This review is principally focused on those laws, policies and procedures that fall within the existing regulatory mandate of the AGCO, including such responsibilities as: issuing and renewing licences, setting rules for the authorization and operation of manufacturer retail stores, and overseeing advertising, promotional and sampling activities by manufacturers and other licensees.

Protecting the Public Interest

This review has been initiated at an important point in time for Ontario's beverage alcohol sector. The last decade has witnessed a period of significant expansion and diversification in the industry, reflected in particular by a marked increase in the number of wineries and breweries across the province and the opening of new, Ontario-based distilleries for the first time in many years.

At the same time, our province continues to lead the way in establishing effective laws and policies to reduce alcohol-related harm. Last year, the Centre for Addiction and Mental Health released a national study that identified Ontario as having the strongest policies of any province in Canada for reducing the negative health and social costs related to alcohol.

Looking ahead, the AGCO wants to ensure that its regulatory approach remains modern, effective and responsive to evolving economic and social realities. In pursuit of this goal, the AGCO will continually work to maintain safe, livable communities across Ontario and strengthen the province's business environment in support of new investment and innovation, while respecting international trade commitments.

This project presents an opportunity to move forward with a series of balanced reforms that will meet our goal of increasing the competitiveness of Ontario-based enterprise while taking additional steps to reduce alcohol-related harm.

INTRODUCTION

Working with You

Over the past several months, the AGCO has worked with you, our stakeholders and partners, through an intensive period of collaboration in order to discuss current issues and trends in the beverage alcohol sector and explore potential solutions and reforms to existing laws, policies and procedures that fall within AGCO's mandate.

This project's consultation period comprised two distinct stages:

- **Stage 1 – Written Submissions:** : In August 2013, the AGCO released a Consultation Paper that was posted on the AGCO's public website and directly distributed to fifty-three industry representatives, government ministries and agencies, and public health and social responsibility organizations, among others. Thirty-two written submissions were received in response to the Consultation Paper, each containing valuable insights, information and recommendations for reform.
- **Stage 2 – Roundtable Sessions:** Over the course of seven weeks in November and December 2013, the AGCO hosted a series of nine roundtable sessions with various stakeholder groups in order to further explore key challenges and to consider potential solutions:
 - » Roundtable #1: Ferment-on-Premise Operators (November 4, 2013)
 - » Roundtable #2: Cider Manufacturers (November 12, 2013)
 - » Roundtable #3: Sprints Manufacturers (November 22, 2013)
 - » Roundtable #4: Beer Manufacturers (November 25, 2013)
 - » Roundtable #5: Wine Manufacturers (November 27, 2013)
 - » Roundtable #6: Manufacturers Representatives (November 29, 2013)
 - » Roundtable #7: Social Responsibility/Public Health Agencies (December 9, 2013)
 - » Roundtable #8: Government Ministries and Agencies (December 17, 2013)
 - » Roundtable #9: Liquor Delivery Services (December 19, 2013)

Attendance at each roundtable session ranged from five to thirty participants, with ninety-five individuals participating in total. Several roundtable sessions were facilitated by Sam Goodwin of Goodwin Consulting Services Inc. The AGCO also held one-on-one meetings in January 2014 with those stakeholders who did not participate in the roundtable sessions. In total, more than twenty-five hours of face-to-face consultations occurred.

(A complete list of organizations that prepared written submissions and/or participated in roundtable sessions is provided at the conclusion of this report.)

About This Report

This Findings Report has been prepared in order to provide the public and all of the AGCO's stakeholders

and partners with a comprehensive overview of the issues and solutions raised during both stages of the consultation period.

The ideas and proposals identified in this report will inform the AGCO as it moves forward with specific reforms. As described further at the conclusion of this report, the AGCO will continue to engage with stakeholders and partners as this initiative proceeds.

While this report seeks to identify areas of consensus and disagreement among consultation participants, it does not attribute comments or viewpoints to specific individuals or organizations. In addition, the consultation findings set out in this report do not necessarily represent the views of the AGCO or the Government of Ontario.

Please note that although the consultation period is officially closed with the release of this Findings Report, the AGCO always welcomes input and feedback. Comments can be submitted by email at consultation@agco.ca.

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Rationalization and Simplification of Manufacturer's Licences

The Issues

Ontario-based manufacturers of wine, beer and spirits are required to obtain a "manufacturer's licence" from the AGCO in order to begin selling their products to the Liquor Control Board of Ontario (LCBO) for sale or distribution to the public. Once a manufacturer's licence is obtained, a manufacturer becomes eligible to apply for a number of additional licences and authorizations to run different parts of its business, including an on-site retail store authorization, liquor sales licence ("tied houses"), and limited liquor sales licence ("by the glass" service).

Currently, each licence and authorization issued by the AGCO to a manufacturer has different rules, forms, fees, renewal periods and requirements. These administrative responsibilities can be a source of considerable expense and operational hardship for both manufacturers and the AGCO. It means that scarce time, expertise and resources of business and government may be spent on an approvals system that can be overly complex and duplicative.

What We Heard

There was widespread consensus among consultation participants that steps should be taken by the AGCO to simplify and rationalize administrative processes and procedures regarding manufacturer's licences and related authorizations.

One industry representative indicated that the current approach to licensing is "well intentioned", but has become "a complicated and frustrating web". The same representative questioned the requirement for multiple licences and authorizations when the regulated activities are all a part of the same business model.

Proposed solutions include:

- **Consolidate licences and authorizations.** The majority of manufacturers recommended that all current licences and authorizations should be consolidated into a single instrument (including a single application form, fee, renewal period, etc.). Others suggested that the manufacturer's licence should remain separate and that licences and authorizations should therefore be consolidated into two instruments: a "manufacturer's licence" that relates solely to production issues and a "hospitality licence" that incorporates the retail store authorization, liquor sales licence ("tied house"), and limited liquor sales licence ("by the glass").
- **Synchronize and extend renewal periods.** There was strong support for the AGCO moving to synchronize renewal periods, so that licence and authorization renewals come due at the same time and can be obtained through a single process. In addition, there were calls for an extension of current renewal periods. For example, some wine manufacturers asked for the term of a wine manufacturer's licence to increase from 2 to 3 (or 4) years, while a number of beer manufacturers requested a term longer than the current 1 year period.

- **Increase automation of licence administration.** There were several calls for the AGCO to make greater use of technology in order to simplify the process of applying for, renewing, and paying for various licences and authorizations. Specifically, it was recommended that the AGCO: (i) introduce an online application, renewal and payment process; (ii) provide email notifications to licensees in advance of licence and/or authorization expiry; and (iii) provide secure online access to a licensee's profile.

Risk-Based Licensing

The Issues

Every business that applies to the AGCO for a manufacturer's licence (or renewal of a manufacturer's licence) undergoes the same licensing process, regardless of the applicant's "risk profile." Specifically, each applicant is required to submit the same amount of background information, undergo the same eligibility assessment process and dedicate the same amount of time and resources to become licensed.

This approach differs from the risk-based licensing regime that currently applies to liquor sales licensees (i.e. bars, clubs, restaurants, etc.). Under this regime, the AGCO assesses licence applications and renewals by principally considering the potential risk posed by an applicant to the public interest. Higher-risk applicants, such as those with poor compliance histories, are subjected to more intensive licensing reviews. Lower-risk applicants, on the other hand, generally experience an expedited and less onerous process.

To date, the AGCO's risk-based licensing approach has reduced the administrative burden on low-risk applicants, while encouraging a sharper focus on social responsibility and public safety issues. It has allowed both the AGCO and licensees to better allocate resources where they are judged to have the greatest impact.

What We Heard

There was considerable agreement among wine, beer and spirits producers that the licensing process for manufacturers should incorporate risk-management tools. One industry representative indicated that a risk-based model "would be much more efficient" and "would encourage good business practices by all licensees".

Manufacturers agreed that current requirements for licence renewals are burdensome, at least for those licensees that have a strong history of compliance. It was suggested that licensees should not always be required to complete lengthy forms and provide extensive corporate and personal information as part of a renewal application, particularly when the required information has not changed from the previous application or renewal.

Proposed solutions include:

- **Introduce a risk-based process for manufacturer's licence applications.** While participants recognized that the AGCO is restricted in its ability to introduce risk-based licensing under the

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current statutory framework, there was agreement that the AGCO should, wherever possible, adopt a risk-based approach to the issuing of manufacturer's licences. Several stakeholders stressed, however, that the AGCO must ensure that beverage alcohol manufacturers with no prior history in the industry undergo a rigorous initial licensing process, with a particular focus on the applicant's corporate, financial and legal history.

- **Simplify the licence renewal process for low-risk licensees.** It was recommended by industry stakeholders that the AGCO should simplify the licence renewal process for licensees that have proven to be low-risk. Specifically, it was suggested that low-risk licensees should no longer be required to prepare and submit the detailed Application Form and Personal History Report for owners, officers and directors, major shareholders, and partners in order to obtain a renewal. Instead, participants advised that a written assurance should be sufficient in circumstances where there has been no change in the licensee's business or record of compliance.

New Licence Classifications

The Issues

The AGCO issues a separate licence for beverage alcohol manufacturers depending on whether the business is engaged in the production of wine, beer or spirits. Each licence type carries a distinct set of rules and legal responsibilities regarding such matters as operation of on-site retail stores, "by the glass" service, and licence renewal periods.

For example, the AGCO establishes minimum production requirements that must be met by a manufacturer in order to be authorized to establish an on-site retail store. These minimum production requirements differ depending on whether the manufacturer is a producer of wine, beer or spirits.

Unlike some other jurisdictions, Ontario's approach to licensing of beverage alcohol manufacturers does not differentiate between large and small manufacturers. In particular, the AGCO does not issue a unique licence for "craft" or "cottage" manufacturers.

Further, Ontario does not have a distinct manufacturer's licence for types of beverage alcohol other than wine, beer and spirits. Most notably, cider is considered to be "wine" under Ontario law, meaning Ontario-based cideries are licensed as wine manufacturers and subject to the same rules as grape and other fruit wineries in the province.

What We Heard

There was general consensus among industry representatives that the existing classification of manufacturer's licences remains appropriate, emphasizing that there are sufficient distinctions between the production of wine, beer and spirits to warrant the continuation of distinct licensing regimes. As one representative stated: "While each industry is part of a broader beverage alcohol sector, they are very unique in many respects and this uniqueness is reflected in the different regulatory approaches that have

been adopted for each industry over time, including the on-site retail store policies”.

There were two separate requests made for the creation of additional licence classifications:

- **Create a separate “cidery” licence.** In recent years, a number of new Ontario-based cideries have opened in different parts of the province. The AGCO held a dedicated roundtable session with cidery owners, during which participants highlighted the fact that their growing industry is making an increasingly significant contribution to Ontario’s agricultural, tourism and manufacturing sectors. Given this growth in the domestic cider industry, representatives from the sector expressed concern that Ontario law does not distinguish “cider” from “wine” and, consequently, that the AGCO does not issue a distinct manufacturing licence for cideries. It was therefore requested that the AGCO consider establishing a separate cidery licence and, where appropriate, setting regulatory rules that are tailored to the cider industry.
- **Create a separate “craft distillers” licence.** Similarly, a number of new Ontario-based craft distilleries have opened over the last several years in different parts of the province. In order to encourage the growth of an Ontario-based craft distilling industry and better support the unique business model of craft distillers, representatives from the industry recommended that the AGCO establish a distinct licence for craft distillers that is focused on smaller spirits producers which, for example, conduct all distilling activities at their Ontario production site and exclusively use locally-produced raw materials.

“Supplementary” Manufacturer’s Licences

The Issues

As beverage alcohol manufacturers increasingly consider new and innovative opportunities to meet shifting consumer interests and demands, a number of businesses are looking to expand and diversify their product offerings. For example, in recent years, a number of beer manufacturers have begun producing cider products and some Ontario wineries have commenced distilling operations.

In order to enter these new lines of business, a manufacturer with an existing licence (e.g. a beer manufacturer’s licence) is often required to apply to the AGCO to obtain an additional licence (e.g. a wine manufacturer’s licence). Currently, the existing licensee is required to undergo the full licensing process in order to obtain this second manufacturer’s licence, including payment of the full licensing fee.

What We Heard

Numerous participants recommended that the AGCO reform its policies to make it easier and less expensive for breweries, wineries and distilleries to obtain a “supplementary” manufacturer’s licence. Several representatives suggested that the current requirement to undertake the full licensing process and pay the full licensing fee for a second time serves as an impediment for manufacturers attempting to diversify and expand their operations.

Public Health and Social Responsibility Considerations

During the consultation period, the AGCO received submissions from a number of public health and social responsibility organizations from across the province. In addition, a roundtable session was held with nearly a dozen organizations in order to focus on the issues from a public health and social responsibility perspective.

A common theme throughout the discussion was that alcohol is “no ordinary commodity” and, as a result, must continue to be subject to substantial regulatory oversight by the AGCO and other government agencies.

Several consultation participants highlighted the need for the AGCO to continue treating public safety and the reduction of alcohol-related harms and risks as its top priority. One representative, for example, wrote: “I applaud you for the attempts you are making to remove barriers to job creation and economic growth by making potential changes in policy and practice. However, I ask that in the process of making these changes, you consider how alcohol availability and consumption negatively impacts community safety and health.”

While the principal areas of focus for public health and social responsibility organizations were manufacturer retail stores, alcohol advertising and sampling, several insights were provided to the AGCO with respect to potential improvements in the area of licensing.

Most notably, there was considerable support for introducing risk-based licensing principles to the review of licence applications and renewals for manufacturers, manufacturers’ representatives, liquor delivery services, and ferment-on-premise operators. It was suggested by one participant that risk-based regulation “can be an effective way to improve both system efficiency and the identification and management of risk”.

Another organization cautioned, however, that any move to introduce risk-based licensing should not result in the AGCO “ignoring” those licensees that are deemed to be lower-risk. Instead, it was suggested that all licensees should regularly be evaluated against identified risk factors.

On-Site Brewery Retail Stores

The Issues

When an Ontario-based brewery obtains its manufacturer's licence from the AGCO, it becomes eligible to apply for an authorization to operate a brewery retail store at its production site. On-site brewery retail stores have historically been intended to create an opportunity for a local brewery to showcase its products to tourists and visitors to its production site and to serve customers in its community.

Since 2001, the AGCO has been responsible for setting the rules that govern the eligibility and operation of on-site brewery retail stores. Among other matters, these rules restrict a beer manufacturer to selling only its own products at its on-site brewery retail store. Further, any products sold at an on-site brewery retail store must be made in Ontario using the full brewing process, including mashing, lautering, boiling, hop separation, fermentation and packaging.

Beer manufacturers are also subject to eligibility requirements that vary depending on the size of the business, as follows:

- If an Ontario-based beer manufacturer produces less than 25,000 hectolitres of beer per year, it is eligible for one on-site brewery retail store and all of the beer sold at the store must be made at the production site where the store is located.
- If an Ontario-based beer manufacturer produces more than 25,000 hectolitres of beer per year, it is eligible for two on-site brewery retail stores and 50 percent of the beer sold at each store must be made at the production site where the store is located.

What We Heard

The AGCO received a series of recommendations from beer manufacturers aimed at revising the on-site brewery retail store rules.

During the consultation period, a number of manufacturers expressed the view that the current rules are unnecessarily restrictive and serve to impede new investment and growth. Noting that on-site retail stores "provide an ideal way to showcase the increasingly diverse range of small batch offerings"; one representative from a newly-established Ontario brewery suggested that current rules "limit growth and hiring opportunities for small breweries by setting unreasonable production thresholds".

Proposals include:

- **Eliminate or lower the 25,000 hectolitre production threshold.** Several participants suggested that the AGCO should take steps to amend the rule that permits only large manufacturers (i.e. those producing more than 25,000 hectolitres per year) to operate two on-site brewery retail stores. Some recommended that the production threshold be eliminated; others recommended that the threshold be lowered to a more reasonable level. It was also proposed that all beer manufacturers be permitted to operate up to three on-site brewery retail stores.

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- **Harmonize on-site production requirements.** There were calls from a number of small beer manufacturers to amend the on-site brewery retail store rules to provide that up to 50 percent of the beer sold at an on-site brewery retail store may be produced at another production site that is operated by the manufacturer, regardless of their annual beer production volumes. One small brewery owner suggested that this change would help to “remove significant barriers to growth and job creation for small microbreweries looking to expand into mid-size microbreweries.”
- **Permit “cross-selling” of beer produced by other manufacturers.** A number of participants also called for the AGCO to amend the rule providing that on-site brewery retail stores can only sell the manufacturer’s own products. More specifically, it was recommended that “cross-selling” be permitted, so that manufacturers can sell other manufacturers’ products at their on-site brewery retail store. This recommendation was opposed by a group of participants on the basis international trade obligations.
- **Permit the sale of beer products that are “made in Canada”.** The AGCO received a proposal to change the rule which provides that a beer manufacturer may only sell products at its on-site brewery retail store which have been made in Ontario. It was suggested that on-site brewery retail stores should be permitted to sell a manufacturer’s beer which have been produced anywhere in Canada. According to one representative, such a change “would enable brewers who have breweries located in other provinces and who currently ship beer brewed in these breweries to their Ontario brewery under the LCBO’s interplant shipments policy, to sell that beer in their on-site store”

Representatives from some beer manufacturers raised concerns about “expanding the selling rights” of breweries at on-site brewery retail stores. It was suggested that such measures risked the creation of loopholes that “would be exploited to drive unplanned change to Ontario’s regulated retail system” and could contravene international trade obligations.

On-Site Winery Retail Stores

The Issues

A licensed wine manufacturer in Ontario is eligible to apply to the AGCO for an authorization to establish an on-site retail store at its production facility. Given the location of most of the province’s wineries in prime tourist destinations, on-site winery retail stores provide an important opportunity for Ontario-based wineries to profile their wines to visitors from around the world.

The AGCO is mandated to set the rules governing eligibility and the operation of on-site winery retail stores. These rules are principally aimed at ensuring on-site winery retail stores are established and operated in a manner that is consistent with provincial policy objectives and legal obligations.

For example, licensed grape wine manufacturers may only operate one on-site winery retail store and, as a condition of operating the store, may only manufacture wine containing grapes grown in Ontario. In addition, on-site winery retail stores must be located on a parcel of land with at least five acres of planted

fruit and all wine sold in the store must be produced by the manufacturer.

The AGCO also administers specific rules for grape wineries that are located in less-established wine regions in Ontario. Most notably, grape wine manufacturers located outside of Ontario's three Designated Viticultural Areas (i.e. Niagara Peninsula, Lake Erie North Shore, and Prince Edward County) must produce at least 50 percent of their wine from grapes grown within their county, region or district.

What We Heard

There was significant consensus among wine industry representatives that the AGCO should move to update its on-site winery retail store policies in order, as one stakeholder suggested, to "facilitate the creation and expansion of economic growth in the industry". A common theme heard throughout the consultation period was that the existing rules are, in some circumstances, no longer current and may serve to restrict Ontario-based wineries as they look for opportunities to responsibly grow their business.

Proposed solutions include:

- **Provide greater flexibility for wineries in less-established wine regions.** The majority of consultation participants agreed that the AGCO should take steps to change the rule that requires grape wineries located outside of a Designated Viticultural Area to produce 50 percent of their wine from grapes grown in their county, region or district. One industry representative suggested that the policy "unfairly harms" the operations of any winery outside of the Niagara Peninsula, Lake Erie North Shore, and Prince Edward County, while another stated that it "creates inconsistency dependent on the location of the winery and serves to impede growth of the Ontario grape industry and of small Ontario wineries".
- **Permit cross-selling of products produced by "related" manufacturers.** The AGCO was told that Ontario's regulatory environment creates a number of constraints and disincentives for wineries that are looking to purchase other wineries in order to grow their business. In particular, a number of manufacturers pointed out that the current rules make it impossible for a winery to market and sell its full product offering at a newly-acquired winery. It was therefore recommended that the AGCO take steps to permit wineries "to market products from one site to the next if they acquire another winery and all of its licences."
- **Permit wineries that produce "blended" wine to obtain an on-site winery retail store.** There was agreement among the majority of representatives from the wine industry that the AGCO should eliminate the long-standing policy that prohibits a wine manufacturer from operating an on-site winery retail store if any part of its total wine production includes "blended" wine (i.e. International Canadian Blends). The principal concern among industry representatives is that the current rule is inequitable because wineries licensed prior to the signing of the North American Free Trade Agreement in 1993 are exempt from the rule. Participants agreed that the proposed change would help "create a level playing field" for all wineries in the province, particularly from a risk management standpoint.

On-Site Distillery Retail Stores

The Issues

Licensed manufacturers of distilled spirits are eligible to apply to the AGCO for an authorization to operate an on-site retail store at their production site. Particularly for newly-established Ontario-based distillers, an on-site distillery retail store can serve as an important venue to sell and market products to tourists and local consumers.

In order to qualify for an on-site distillery retail store, a licensed distillery must meet a number of production thresholds that can be challenging to reach. Most notably, under current rules, a licensed manufacturer of distilled spirits may only operate an on-site distillery retail store if it has (i) a “batch still” capacity of 5000 litres; or (ii) a “continuous still” capacity of 150 litres per hour of absolute alcohol. In addition, at least 50 percent of the volume of spirits sold in the distillery retail store must be made from start to finish at the production site.

These production thresholds have historically been intended to encourage the establishment of large-scale distillery operations in Ontario with sizeable local production volumes.

What We Heard

During consultations with businesses and associations representing Ontario’s spirits industry, the AGCO received a number of insights and recommendations that reflected two consistent themes.

The first theme was presented by a group of spirits manufacturers which advocated for a regulatory approach that achieves greater harmonization of regulatory rules between manufacturers of beer, wine and spirits. It was suggested by one individual, for example, that there is a need to “create a level playing field” among beer, wine and spirits producers so that Ontario can become “a more profitable market for spirits”.

The second theme emerged from another group of distillers which expressed the view that the current approach to the regulation of spirits manufacturers should be better tailored to today’s business model for distillers and, more specifically, craft distillers in Ontario. For example, one distiller called on the AGCO to consider certain reforms that will “encourage prospective distilling entrepreneurs to enter the space”.

Proposed solutions include:

- **Lower the “batch still capacity” threshold.** There was general consensus among industry representatives that the AGCO should amend its policies to lower the “batch still” capacity threshold below the current standard of 5000 litres. A number of newly-established craft distillers indicated that the purchase of a 5000 litre batch still constitutes an enormous capital investment for most aspiring craft distillers and has served to dissuade many from entering the

business. Participants agreed that the threshold should not be eliminated entirely, suggesting that a minimum investment in a distilling operation should continue to be required. There was no consensus, however, on what the revised threshold should be.

- **Amend the minimum on-site production requirements.** Most consultation participants from the spirits industry supported making changes to the rule requiring that 50 percent of all spirits products sold in an on-site distillery retail store must be made at the manufacturer’s production site. There was substantial disagreement, however, on what the new threshold should be. Some spirits producers recommended that the AGCO should harmonize on-site production rules for beer, wine and spirits producers and that the on-site production requirement should rest somewhere between 25 percent and 50 percent. A number of other distillers, on the other hand, called for the on-site production requirement to be increased beyond 50 percent to “a much higher threshold” on the basis that on-site distillery retail stores should be mandated to “sell what the distillery itself distilled”.
- **Permit producers of spirits-based products, that do not distill spirits, to operate on-site distillery retail stores.** The AGCO received a recommendation to amend the on-site distillery retail store rules in order to permit Ontario-based producers of blended spirits-based products to operate a store at their production site. Currently, an Ontario-based spirits producer is eligible to operate an on-site distillery retail store only if it (i) owns and operates a still at the production site where the store is located; and (ii) sells spirits products at its on-site retail store which have been distilled at the production site where the store is located. Producers of blended spirits-based products typically do not qualify for an on-site retail store because they do not engage in distillation, but rather engage in the blending of juices with purchased distillate. During the spirits industry roundtable session, several participants opposed this recommendation, suggesting that eligibility should continue to be restricted to those manufacturers that undertake the process of producing spirits from start to finish.

“Portable” On-Site Retail Store Authorizations

The Issues

When an Ontario-based winery, brewery or distillery obtains an authorization to operate an on-site retail store, the authorization restricts the manufacturer to operating a store at its production site for the sale of its own products. Beyond this, beverage alcohol manufacturers in Ontario are generally not eligible to operate their own stores or conduct their own sales of sealed alcohol in any other retail environment.

Some jurisdictions in North America have taken steps in recent years to provide a limited number of additional retail and promotional opportunities for local manufacturers, particularly in the area of alcohol sales at local farmers’ markets, festivals and trade shows. For example, major wine-producing regions in North America, such as California and Washington, authorize local wineries to sell bottles of wine at farmers’ markets, while some other jurisdictions also permit the sale of locally-produced beer and/or spirits at farmers’ markets. There are also a number of jurisdictions that authorize domestic beverage alcohol manufacturers to conduct sales of their own products at local festivals and trade shows.

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Recently, Ontario announced that it was launching a pilot program to allow occasional extensions of on-site winery retail store authorizations for the purpose of conducting sales of Ontario Vintners Quality Alliance (VQA) wines at local farmers' markets.

What We Heard

The AGCO received a number of requests during the consultation period to introduce an element of "portability" to on-site retail store authorizations. In particular, it was recommended by representatives of the wine industry and a number of smaller brewers that the AGCO should authorize manufacturers to conduct sales of their own products at farmers' markets, trade shows, and local festivals. It was suggested by some participants that such authorizations should be issued by the AGCO as "portable" extensions of existing on-site retail store authorizations.

Several industry representatives emphasized that permitting these sales opportunities would not only increase customer convenience, but also provide additional venues for local producers to market and promote their products. One wine industry stakeholder suggested, for example, that permitting sales of bottles of wine at consumer wine shows would serve as "positive exposure" and be "a boost in sales particularly for smaller and less known wineries in the province".

Sale of "Ancillary Items" at On-Site Retail Stores

The Issues

The AGCO is responsible for determining the types of non-liquor merchandise (commonly referred to as "ancillary items") that may be sold by manufacturers at their on-site retail stores. The regulation of the sale of ancillary items at on-site retail stores has historically been aimed at providing Ontario-based manufacturers with an opportunity to promote their products to tourists and visitors, while ensuring that the sale of wine, beer or spirits products remains the principal focus of the stores.

Currently, manufacturers that operate on-site retail stores must adhere to a fixed list of approved ancillary items. The list includes, among a limited number of other items, branded merchandise (such as clothing, carrier bags, and umbrellas displaying the corporate logo/name), liquor-related accessories (such as glassware, bottle openers, and ice buckets), and gift certificates.

While piecemeal changes have been made to the list of approved ancillary items over the years, a comprehensive review of the list has not taken place since responsibility was transferred to the AGCO from the LCBO over a decade ago.

What We Heard

The AGCO was advised by the majority of representatives from the wine, beer and spirits industry

that the current list of approved ancillary items is out-dated and unnecessarily limits the ability of manufacturers to sell non-liquor merchandise that would otherwise support the overall cultural, historical and culinary experience of tourists and visitors.

For example, it was pointed out on several occasions that the current rules do not permit manufacturers to sell locally-produced foods, even if the products are associated with the manufacturer's wine, beer or spirits products. One craft distiller suggested that he would "like to be able to sell baked goods by our miller that uses the same grains from the same harvest as our distillation". Similarly, a number of beer manufacturers indicated that they would like to sell local artisanal food products, such as cheeses and preserves, and beer-related food products, such as beer nuts and sauces made from beer.

There was widespread agreement that the AGCO should update the list of approved ancillary items, but no consensus on what specific changes should be made. Some participants advised that there should be no restriction on the sale of non-liquor products at on-site retail stores, suggesting that manufacturers "should be allowed to be creative and responsive to consumer demand, by being allowed to sell any products they would like to." Others contended that the current list of "approved" ancillary items should be replaced by a list of "prohibited" ancillary items that focuses on social responsibility and public health issues. Finally, several stakeholders proposed that the AGCO merely "modernize" and "refine" the existing list of approved ancillary items to better support local culture and tourism.

The AGCO also heard from a number of stakeholders who recommended that the sale of ancillary items at on-site retail stores should be significantly curtailed. One representative suggested that on-site retail stores should be limited to selling branded manufacturers' merchandise in order to ensure that they "do not stray from their primary focus – beverage alcohol sales." Another industry association proposed that on-site retail stores should be prohibited from selling anything other than beverage alcohol to ensure they do not unfairly draw customers away from convenience stores and other retail outlets.

Off-Site Winery Retail Stores - Hours of Sale and Relocation of Stores

The Issues

Several of Ontario's wine manufacturers are permitted to sell their wines at a fixed number of off-site winery retail stores, which are located across the province. As the name suggests, an off-site winery retail store is not required to be located at the production site of the winery which holds the retail store authorization.

Since 2001, the AGCO has been responsible for regulating off-site winery retail stores in a number of areas, including hours of sale and rules governing the physical relocation of stores. Given their unique character in Ontario's alcohol retail environment, off-site winery retail stores are subject to rules that

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sometimes differ from those that apply to on-site winery retail stores.

For example, the rules governing hours of sale and holiday closings for off-site winery retail store hours are more limited and closely mirror the hours of sale and holiday closings by The Beer Store and LCBO outlets. In addition, off-site winery retail stores are subject to strict requirements regarding the timing of store relocations.

What We Heard

The AGCO received two requests from representatives of wine manufacturers that operate off-site winery retail stores, which are aimed at providing greater flexibility relating to hours of sale, holiday closings and store relocations.

Proposed solutions include:

- **Harmonize the rules governing hours of sale and holiday closings for off-site and on-site winery retail stores.** Off-site winery retail store representatives recommended that, like on-site winery retail stores, they be permitted to stay open until 11 p.m. on Sundays. Currently, off-site winery retail stores must close at 6 p.m. on Sundays. In addition, off-site winery retail store representatives suggested that, like on-site winery retail stores, they should be permitted to open on all public holidays.
- **Increase the maximum allowable timeframe for store relocations.** Off-site winery retail store representatives also recommended that the AGCO increase the current six-month timeframe within which an off-site winery retail store that is relocating must be open and operational. It was suggested that the current timeframe is not reasonable, particularly when the business is confronted with planning and construction delays that are beyond its control.

The Beer Store – Sale of “Ancillary Items” and Relocation of Stores

The Issues

Brewers Retail Inc. is authorized under Ontario law to operate retail stores (i.e. outlets of “The Beer Store”) across the province for the purpose of selling beer directly to consumers and licensed establishments. The AGCO is mandated to provide regulatory oversight of stores operated by Brewers Retail Inc. in the following four areas:

1. Directing the hours of operation of outlets of The Beer Store.
2. Setting the rules for the offering of product samples to patrons of The Beer Store.
3. Authorizing the opening of new outlets of The Beer Store and approving a new outlet’s location.
4. Authorizing the relocation of existing outlets of The Beer Store and approving the new location of a relocated outlet.

In addition, the AGCO is responsible for determining the types of non-beer merchandise (i.e. “ancillary items”) that may be sold at outlets of The Beer Store. Currently, each store is required to comply with a fixed list of approved ancillary items, which include beer-related glassware, various types of clothing, coolers, and draught supplies, among other items.

What We Heard

During the consultation period, a group of Ontario’s beer manufacturers made two discrete recommendations for the AGCO to modernize and simplify its approach to the oversight of outlets of The Beer Store:

- **Rationalize the process for approving new and relocated outlets of The Beer Store.**

Currently, the AGCO administers a “two-step” approvals process for new and relocated outlets of The Beer Store, as follows:

Step 1: Brewers Retail Inc. must submit an application form and supplementary information in order to obtain a “conditional approval” from the AGCO to proceed with a new or relocated outlet.

Step 2: Once the new or relocated outlet is ready for opening, an AGCO inspector must visit the location in order to issue a “final approval” that permits the outlet to open for business.

It was suggested that the AGCO should move “to a more streamlined single stage approval process” on the basis that the final approval step is not necessary and can cause considerable operational hardship. One participant suggested that the current two-step process places Brewers Retail Inc. in the difficult position “where it has fully committed to a lease and major capital expenditures without knowing whether it has the necessary regulatory approvals to open”.

- **Update the list of approved ancillary items.** The list of approved ancillary items for outlets of The Beer Store has not been revised in nearly two decades. The AGCO was told that it should consider “reviewing the current list of ancillary items approved for sale through The Beer Store with the objective of ensuring that [items are] relevant and appropriate for today’s business climate”. It was suggested that the sale of ancillary items “can be done in a manner that ensures a competitive balance with retailers of non-alcoholic products”.

This recommendation was firmly opposed by some stakeholders. For example, the AGCO received a request from one industry association that the AGCO take steps to prohibit the sale of any ancillary items at The Beer Store. It was suggested that sale of non-beer merchandise by The Beer Store is done “at the expense of small businesses” and, as a result, outlets should be restricted to the sale of beer only.

Public Health and Social Responsibility Considerations

Throughout the consultation period, public health and social responsibility organizations stressed that there is a need to take additional steps to tighten controls on the “time, place and density” of liquor retail outlets in Ontario, particularly those that are not operated by the LCBO.

A prominent public health organization, for example, suggested that “policies and regulations that control the number of alcohol retail outlets are very important”, citing evidence showing that restrictions in retail outlet densities, hours and days of sale can help to limit alcohol-related harms. Another organization referenced research showing that neighbourhoods with a higher concentration of alcohol outlets are found to have higher rates of alcohol-related violence, injuries and car accidents.

The AGCO consequently received a series of recommendations aimed at limiting the availability of alcohol through additional retail outlets in Ontario. There were also a number of proposals put forward that, if moved on, would establish new measures to prevent the sale of alcohol to minors at manufacturer retail stores.

Key solutions recommended to the AGCO include:

- **Limit the expansion of manufacturer retail stores.** Ontario law does not currently place limits on the total number of liquor retail outlets that may be in operation at any one time across the province (or, for that matter, on a regional or neighborhood-by-neighborhood basis). During the consultation period, a number of social responsibility and public health organizations advised that studies show a direct correlation between increases in the number of alcohol retail outlets and alcohol-related harm. Several consultation participants therefore recommended that steps be taken to limit the number of additional manufacturer retail stores that can be authorized by the AGCO. Some organizations recommended that an absolute moratorium on new manufacturer retail stores be established, while others called for the setting of population-based limits on the number of stores in different parts of the province.
- **Establish additional rules to prevent the sale of alcohol to minors at manufacturer retail stores.** Several consultation participants from the public health and social responsibility community raised concerns that manufacturer retail stores in Ontario are not currently required to implement a number of specific measures aimed at preventing minors from accessing alcohol. In particular, it was recommended that the AGCO move forward to require that all sales staff at manufacturer retail stores complete a responsible service training course (e.g. Smart Serve). Other proposals included mandating operators of manufacturer retail stores to require potential underage patrons to produce two pieces

of identification (instead of one, as currently required) and to track and publicly report each store's identification "check and refusal" rates. Finally, it was proposed that the AGCO adopt a program – similar to one currently in place in British Columbia - which uses minors as "underage agents" to ensure manufacturer retail stores are complying with their "check and refusal" obligations.

- **Require manufacturer retail stores to post signs reminding patrons to call "911" if they see a drunk driver.** The AGCO was advised that liquor retail stores are an important environment for promoting public safety messages. One social responsibility organization suggested that manufacturer retail stores should be mandated to post signs that remind patrons to call "911" if they see a drunk driver on the road, citing studies which show that drunk driving-related "911" calls and arrests have increased significantly in jurisdictions where similar programs have been delivered.

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Alcohol Advertising Content

The Issues

In Ontario, the advertising practices of beverage alcohol manufacturers are limited by rules and regulations that aim to prevent harmful exposure – particularly by young and vulnerable Ontarians – to undesirable practices and content.

The AGCO serves as the lead provincial agency responsible for regulating alcohol advertising in Ontario. It establishes guidelines that include restrictions on subject matter and objects that may appear in alcohol advertisements, whether in print, radio, television, internet or other media.

For example, manufacturers are strictly prohibited from advertising in a way that appeals to minors or associates consumption of alcohol with driving a vehicle. Further, alcohol advertisements may not depict irresponsible use of liquor or the illegal sale, purchase or consumption of liquor.

Several years ago, the legal requirement for manufacturers to obtain prior approval for alcohol advertisements from the AGCO was removed. Since then, manufacturers have been required to ensure that their advertisements comply with applicable rules and regulations and the AGCO may initiate disciplinary proceedings if they fail to do so.

What We Heard

There was general consensus among industry representatives that the AGCO should continue to place clear limits on alcohol advertising content. As one group of industry participants indicated: “Beverage alcohol advertisers must be extremely mindful of the tone of their ads and the potential audiences. We take our social responsibility in this category extremely seriously. We believe the current AGCO policies are well thought out and worthwhile in ensuring Ontario sustains its generally quite positive culture around beverage alcohol”.

The AGCO was advised by a number of manufacturers that Ontario should not return to the previous approach of requiring manufacturers to obtain prior approval for the launch of each advertisement. That said, several participants identified a need for the AGCO to provide greater clarity in its Liquor Advertising Guidelines in order to reduce uncertainty for business. In addition, the AGCO received several proposals aimed at lifting specific restrictions on allowable advertising content to reflect societal norms.

Proposed solutions include:

- **Clarify the rules regarding use of “well-known personalities” in alcohol advertisements.** Currently, a beverage alcohol manufacturer is not permitted to use a “well-known personality” in its advertisement if the individual “may reasonably be expected to appeal, either directly or indirectly, to persons under the legal drinking age”. This restriction applies to the use of historical,

political, religious, cultural, and sports figures, as well as celebrities.

Representatives from the beer, wine and spirits industries suggested that the current rules are too ambiguous and subjective in nature and, as one representative suggested, “effectively operate to prohibit the use of any celebrity in a liquor advertisement”. It was therefore recommended that the AGCO review its rules regarding the use of “well-known personalities” in order to develop a more objective standard “so that it is clear to all manufacturers when a given celebrity can or cannot be used in an advertisement.”

- **Review restrictions regarding the use of “motorized vehicles in motion”.** The Liquor Advertising Guidelines establish strict rules aimed at preventing the association of liquor consumption with driving a motorized vehicle. For example, alcohol advertisements are generally prohibited from showing any vehicles in motion (except for public transportation) if the advertisement depicts liquor consumption.

While consultation participants endorsed the need for stringent rules in this area, it was suggested by one industry association that the AGCO should consider changing two specific rules considered to be overly restrictive. First, it was recommended that the AGCO should permit the use of moving vehicles where the vehicle is “an ancillary part of the advertisement” and the advertisement does not suggest or imply that any individual who has been shown with liquor will be operating a motor vehicle. Second, the AGCO received a proposal to change the rule that prohibits the display of bottles, cans or glasses of alcohol on corporate vehicles. It was suggested that such images “in no way imply or condone the consumption of liquor before or while driving.”

- **Publicly post advertising-related decisions and interpretations.** The AGCO was also advised by several consultation participants that it should begin publishing its decisions and interpretations relating to the Liquor Advertising Guidelines in order to boost transparency to the public and add greater clarity for manufacturers as they develop advertising proposals. One industry association stated: “As AGCO rulings under the guidelines represent an important body of knowledge on how the AGCO applies the guidelines, they effectively represent an integral part of the guidelines themselves. Having industry-wide transparency to these rulings and interpretations would, in our view, improve overall enforcement of the guidelines.”

Manufacturers’ Inducements

The Issues

Since the repeal of Prohibition in Canada in the 1920s and 1930s, most Canadian provinces – along with the majority of U.S. states – have established and maintained laws that impose substantial restrictions on the commercial interactions and associations that can lawfully take place between a manufacturer of beverage alcohol and a licensed establishment.

While the historical roots of “tied house” and “anti-inducement” laws vary from jurisdiction to jurisdiction, a common and long-standing public policy rationale behind the regulation of business practices between manufacturers and licensed establishments is the deterrence of anti-competitive conduct that can serve

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to stifle competition in the marketplace and limit consumer choice.

In Ontario, the Liquor Licence Act prohibits manufacturers of beer, wine and spirits - and their agents - from offering or giving an inducement to a licensed establishment for the purpose of increasing the sale or distribution of a brand of liquor.

For example, a manufacturer is generally not permitted to give cash payments, free liquor, product rebates, payment terms (i.e. sales on credit), or gifts to the employees or owner of a licensed establishment as part of an arrangement aimed at increasing the sale of the manufacturer's product, such as through an "exclusivity agreement." Further, a manufacturer may not offer to pay for, or provide, certain items that are essential to the operation of a licensed establishment, such as furniture, renovations to the premises, and staff uniforms.

Over the past several years, a number of Canadian jurisdictions, including Alberta and British Columbia, have reviewed their regulatory approach to manufacturers' inducements. These reviews have, in part, questioned whether anti-inducement laws remain valid in today's economic and regulatory environment, particularly considering the increased federal role in the regulation of competition in the private marketplace.

What We Heard

On several occasions over the course of the consultation period, the AGCO was candidly advised by industry representatives that inducements between beverage alcohol manufacturers and licensed establishments are a common industry practice. A number of individuals observed that, in their view, a financial or material benefit "is expected" by many in the hospitality industry as a normal part of doing business.

It was suggested that an inducement most commonly takes the form of an "exclusivity agreement," whereby a manufacturer, or manufacturer's agent, will provide a financial or material benefit (such as a cash payment or free kegs or bottles of liquor) in return for a commitment that the licensed establishment will offer the manufacturer's products exclusively or semi-exclusively.

Consultation participants from the beer, wine and spirits industry, as well as manufacturers' representatives, provided a range of recommendations on the steps that the AGCO might take to modernize Ontario's approach to the regulation of inducements. There was general consensus that the AGCO should take a more certain and well-defined approach to the issue, but little agreement on what the precise approach should be.

Some individuals took the view that Ontario law should be changed in order to end the long-standing prohibition on inducements. One representative pointed to "the obvious challenges in enforcing this policy" as the basis for eliminating existing anti-inducement laws. Others suggested that inducement-style agreements should be viewed as legitimate business arrangements, provided that manufacturers

are required to fully disclose the terms of such agreements, as is required in Alberta.

The majority view, however, was that Ontario should maintain its prohibition against manufacturers' inducements and that the AGCO should adopt a more aggressive enforcement approach against the practice. Particularly among small and mid-size manufacturers, there was considerable concern that inducement activities between suppliers and licensed establishments serve to unfairly restrict access to the market, which disproportionately harms newly-established, low-volume manufacturers.

It was specifically recommended that the AGCO should create greater clarity and specificity in its policies relating to inducements in order to provide manufacturers and licensees with added certainty and guidance on what is and is not permissible. In addition, it was suggested that the AGCO should make it easier for stakeholders and the public to lodge complaints about alleged inducement activities. Finally, several participants took the view that the AGCO should dedicate additional resources to allow for proactive anti-inducement investigations and enforcement activities.

Manufacturers' Promotional Gifts

The Issues

From time to time, beverage alcohol manufacturers offer "gifts" to customers along with the purchase of a beer, wine or spirit product, whether at a licensed establishment or in a retail environment. For example, a beer manufacturer may offer a branded beer glass along with the purchase of a pitcher of beer in a licensed restaurant or a spirits manufacturer may offer a single serving, or "miniature," as an on-pack promotion in a store setting.

The AGCO's Liquor Advertising Guidelines establish parameters for manufacturers' promotional activities in order to ensure that they are conducted in the public interest. Most notably, the rules set limits on the value of a promotional gift that a manufacturer may offer along with the purchase of alcohol so as to minimize the extent to which promotional gifts encourage excessive consumption. The current limits provide that such a gift can be valued at no more than 20 percent of the price of the beverage alcohol it is included with, up to a maximum of \$5.00.

What We Heard

The majority of consultation participants from the beer, wine and spirits industry expressed their support for the current limits on the allowable value of promotional gifts. One industry association, for example, stated that the current rules "reflect good public policy." It was also suggested, however, that the AGCO should consider moving to clarify and update the rules regarding manufacturers' promotional gifts.

Proposed solutions include:

- **Modernize the rules to permit "digital" promotional gifts.** The rules currently require that

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any “benefit” that is provided to a customer as part of a promotional gift must be “provided at the time of purchase”. Some consultation participants raised the concern that this rule serves to prohibit the practice of offering promotional gifts through digital media. The AGCO was advised that manufacturers are looking to offer promotional gifts in more innovative ways, such as having customers scan a Quick Response Code (i.e. QR Code) off of a bottle or case in order to be directed to a website where the gift can be ordered or obtained. It was therefore recommended that the AGCO should change the Liquor Advertising Guidelines to, for example, permit a promotional gift to be provided at a time after the purchase is made.

- **Clarify the rules regarding the assessment of the value of a promotional gift.** The AGCO was also advised that there is an opportunity to be more transparent about how it calculates the value of a promotional gift in order to determine whether it exceeds the limit. While the current rules stipulate that a promotional gift’s value is assessed by its “ordinary retail value” instead of “the manufacturer’s cost”, it was recommended that the AGCO should publicly explain the process that is followed in order, as one participant stated, to “ensure a level playing field.”

Pre-Approvals for Ferment-on-Premise Operators and Liquor Delivery Services

The Issues

Unlike beverage alcohol manufacturers, operators of ferment-on-premise facilities and liquor delivery services in Ontario are, in most circumstances, not permitted to display an advertisement until it has been reviewed and approved by the AGCO. Currently, the AGCO maintains separate Liquor Advertising Guidelines for ferment-on-premise operators and liquor delivery services which set out the detailed procedures that must be followed to obtain approval of a proposed advertisement.

In determining whether to approve an advertisement, the AGCO applies the same rules and principles as it does for advertisements produced by manufacturers.

What We Heard

The AGCO received requests from both ferment-on-premise operators and liquor delivery services to eliminate the requirement that their advertisements must, in most circumstances, be reviewed and approved by the AGCO.

One representative pointed out that when manufacturers of beer, wine and spirits were exempted from the pre-approval requirement over a decade ago, it was not extended to ferment-on-premise operators and liquor delivery services at the time because “this category of licence was sufficiently new that its promotional material required close monitoring.” The same individual suggested that the industry has now had “sufficient experience” that the exemption from pre-approval should now be granted to both ferment-on-premise operators and liquor delivery services.

Public Health and Social Responsibility Considerations

It was the view of the majority of consultation participants from the public health and social responsibility community that alcohol advertising activities in Ontario are becoming increasingly sophisticated, technology-driven and focused on “normalizing” drinking, particularly among youth. This trend was a cause of concern for a number of organizations, many of which cited research showing a causal link between alcohol advertising and alcohol-related harms.

One public health organization, for example, wrote the following: “Research suggests that exposure of young people to alcohol marketing speeds up the onset of drinking and increases the amount consumed by those drinking. Alcohol industry marketing and promotion practices, including use of social media, only serve to normalize consumption of alcohol and connect it with positive lifestyle images”

In order to address these concerns, the AGCO was advised that it should adopt a more aggressive enforcement approach and modify its advertising rules to address new risks, most notably social media-based advertising.

Key solutions recommended to the AGCO include:

- **Increase oversight and enforcement of alcohol advertising practices.** Several public health organizations advocated for the AGCO to adopt a more aggressive approach to the oversight and enforcement of alcohol advertising practices in Ontario. One consultation participant, for example, called on the AGCO to “develop a clear mechanism to report infractions and appropriately penalize offenders.” It was specifically recommended that Ontario law be changed to re-establish rules requiring that the AGCO “pre-approve” all alcohol advertisements by manufacturers and, further, that the law maintain existing pre-approval requirements for liquor delivery services and ferment-on-premise operators. It was also proposed that the AGCO establish a clear system for the public to register alcohol advertising-related complaints with the AGCO and for all violations of the AGCO’s advertising rules to be public posted. Finally, there were requests to amend legislation to increase fines for alcohol advertising offences.
- **Establish rules for alcohol advertising activities on social media.** The AGCO was advised that alcohol advertising activities are increasingly taking place online and without sufficient regulatory controls in place to protect youth. One representative stated that online advertising has “greatly expanded the breadth and sophistication of alcohol marketing strategies.” The principal concern among roundtable attendees was the deployment of social media marketing strategies by beverage alcohol companies that attempt to directly contact customers via social media websites, such as Facebook and Twitter. It was suggested that many companies do not put in place sufficient controls to ensure their advertisements do not reach minors, such as through age restrictions. It was therefore recommended that the AGCO amend its Advertising Guidelines to expressly address advertising activities conducted on the internet and, in particular, social media.

SAMPLING

Sampling Rules for Manufacturers

The Issues

In Ontario, manufacturers of beer, wine and spirits are permitted to offer samples of their product to individuals in order to promote their brands in a socially responsible manner. For example, manufacturers may offer samples of their products to customers in liquor retail stores (including the LCBO, The Beer Store, and manufacturer retail stores) and at industry promotional events, such as trade shows or festivals. They may also arrange to offer samples of their products to patrons of licensed establishments, such as bars and restaurants. Finally, manufacturers are permitted to directly provide “closed” samples (i.e. sealed cans or bottles) to individuals, subject to certain conditions.

The AGCO is mandated to provide regulatory oversight of the sampling practices of manufacturers in all venues, except those that take place in LCBO outlets. Most notably, the AGCO establishes Sampling Guidelines which direct the sampling practices of manufacturers in several areas, including responsible service, allowable sampling fees, and record-keeping.

What We Heard

Generally, consultation participants from the beverage alcohol industry raised concerns that an overarching review of the AGCO’s sampling policies has not taken place in a number of years. As a result, the AGCO was advised that the rules, in some circumstances, function as a barrier to pursuing new and innovative promotional opportunities. One representative wrote: “The existing sampling guidelines require a full-scale, comprehensive review to provide greater clarity and better targeting of the risks associated with sampling activities. There are a number of overly prescriptive and inconsistent rules in the Sampling Guidelines that should be reviewed”.

In addition, the AGCO received a number of recommendations for reform to its sampling policies that are aimed at making sampling activities more cost-effective, flexible and modern for businesses.

Proposed solutions include:

- **Permit Digital Vouchers.** The AGCO’s sampling rules permit manufacturers to provide vouchers and coupons to individuals that can, for example, be redeemed by the holder for a free six-pack of beer at a liquor retail store. In an effort to ensure vouchers and coupons are distributed in a socially responsible manner, the rules also stipulate that vouchers and coupons must be provided to the recipient in person and not through mailings or “any other indirect method”.

During the consultation period, concerns were raised that the general prohibition on offering vouchers and coupons through an “indirect method” prevents manufacturers from using a digital medium, such as a smartphone, even if the recipient is present when the coupon or voucher is transmitted. It was therefore recommended that the AGCO amend the Sampling Guidelines to clarify that vouchers and coupons may be delivered through a digital medium provided that the

recipient is physically present at the time of transmission.

- **Lower the Cost of Sampling at Licensed Establishments for Manufacturers.** Currently, the Sampling Guidelines mandate that a manufacturer may only offer a sample to a patron in a licensed establishment by purchasing individual servings of its products from the establishment. Further, the rules stipulate that the manufacturer must purchase the individual serving “at the full menu price.” There was widespread consensus among manufacturers that the Sampling Guidelines should be changed to permit manufacturers to pay a lower cost for sample purchases at bars, restaurants and other licensed establishments. Some participants, for example, proposed that the rules should allow for manufacturers to purchase samples “at cost,” while ensuring that the price complies with minimum pricing laws.
- **Permit Sampling by Manufacturers’ Representatives at Licensed Establishments.** The AGCO also requires that a sample of beer, wine or spirits must be served to a patron of a licensed establishment by an employee of the establishment. While a representative of the manufacturer must also be present when the patron receives the sample, the representative is not permitted to physically serve it.

The AGCO was advised that the current rules are overly rigid and impose unnecessary costs for manufacturers and licensed establishments who are engaged in sampling-related promotional activities. It was recommended that the AGCO should allow Smart Serve-certified manufacturers’ representatives to serve samples to patrons in licensed establishments.

Restriction on Sampling by Ferment-on-Premise Operators

The Issues

Unlike beverage alcohol manufacturers, licensed operators of ferment-on-premise facilities in Ontario are not permitted to provide samples of liquor to prospective or existing customers. The only exception to this rule is that a customer is entitled to sample beer or wine that has been produced by the customer once the fermentation, carbonation or filtration process has been completed.

The principal public policy rationale behind this rule is that ferment-on-premise operators are not directly engaged in manufacturing of beer or wine, but rather provide equipment, ingredients and a facility where customers can make their own beer or wine for personal use. As a result, it has historically been the view that since ferment-on-premise operators do not have their own product to sell, they similarly do not have their own product to promote through public sampling.

What We Heard

Representatives from the ferment-on-premise industry advised the AGCO that they are placed at a competitive disadvantage due to the current prohibition against the sampling of beer and wine by prospective patrons. As one consultation participant stated, “The consumer is able to sample beverage alcohol at a winery or brewery, and at Liquor Control Board stores, and we believe that the FOP industry

SAMPLING

should have the same opportunity to promote itself”

It was recommended that the applicable regulation should be amended to provide ferment-on-premise operators with a limited opportunity to engage in sampling activities. Specifically, it was proposed that ferment-on-premise operators should be eligible to obtain both “Industry Promotional Event” and “No-Sale” Special Occasion Permits, so that they can conduct sampling at trade shows and other promotional events.

Public Health and Social Responsibility Considerations

Public health and social responsibility organizations raised significant concern about, as one representative noted, an increased “liberalization” of alcohol sampling rules in Ontario over the past number of years. It was suggested in one written submission that alcohol sampling, by its very nature, serves to “encourage immoderate consumption” and “eliminate protective values of minimum pricing”.

While some individuals proposed that alcohol sampling by wine, beer and spirits manufacturers be prohibited outright, the dominant view among public health and social responsibility organizations was that the AGCO should take steps to heavily restrict sampling by licensed manufacturers, particularly the practice of offering free “open samples” of alcohol in a retail setting and at industry promotional events (i.e. festivals, trade shows, etc.).

Key solutions recommended to the AGCO include:

- **Prohibit free “open samples” of alcohol.** Under the AGCO’s sampling rules, it is permissible for manufacturers to provide free “open samples” of their brands of liquor in a number of different venues, including licensed establishments, manufacturer retail stores, outlets of The Beer Store, and at industry promotional events. While the manufacturer is permitted to charge a fee for a sample on a cost recovery basis, it may also offer the sample free of charge.

Several consultation participants from the public health and social responsibility community expressed the view that the offering of free samples of alcohol at licensed establishments, retail stores and promotional events is inconsistent with ongoing efforts to prevent high-risk drinking and drunk driving. It was therefore recommended that the Sampling Guidelines be amended to prohibit the offering of free samples of liquor by manufacturers in any circumstance and impose a minimum fee for samples.

- **Establish a maximum sample size and a cap on the number of samples that can**

be offered to a patron. The AGCO's sampling rules do not prescribe a maximum size of sample that a manufacturer can offer in a licensed establishment, manufacturer retail store, outlet of The Beer Store, and at industry promotional events. In addition, there is no prescribed limit on the number of open samples that can be offered to a patron within a particular timeframe. Instead, those offering samples of alcohol to patrons are required to comply with Ontario's laws governing responsible liquor service, including the prohibition on serving alcohol to minors and intoxicated persons.

Several consultation participants expressed concern that the absence of limits on the number and size of samples that can be offered to a patron encourages immoderate consumption and poses a risk to public safety. It was requested that the AGCO amend its rules to establish "a standard definition of portion size" and limit patrons to no more than one sample.

OTHER FINDINGS APPLICABLE TO WINE, BEER AND SPIRITS MANUFACTURERS

Contract Manufacturing

The Issues

In Ontario today, an increasing number of local beer, wine and spirits brands are introduced to the market by companies that do not own or operate their own “bricks and mortar” manufacturing facility. Instead, these businesses use the production site, equipment and, in some circumstances, workforce and expertise of a well-established manufacturer to produce their beer, wine or spirits products on their behalf.

Often referred to as “custom crushing” or “virtual winemaking” in the wine industry or simply “contract brewing” in the beer industry, there is a wide range of business structures that fall within the category of contract manufacturing,

Some businesses, for example, own one or more brands of liquor, but contract out all aspects of product development, manufacturing and distribution to an established manufacturer on a long-term basis. These “private label” owners typically structure their businesses to avoid the high costs of building and operating their own production facility and employing their own workforce, so that they can focus their resources on sales and marketing activities.

On the other hand, there are a number of contract manufacturers that are directly involved in the development, production and/or distribution of their products. Often, these start-up businesses are headed by aspiring brewers, winemakers or distillers who are looking to establish their brand before making a long-term investment to build, equip and staff their own production site. These entrepreneurs will typically use their own ingredients, employees and expertise to directly undertake the production process, but will use leased equipment and production premises to do so.

Currently, Ontario law does not generally distinguish between “manufacturers” and “contract manufacturers”; nor does the AGCO establish separate regulatory rules for manufacturers that contract out some or all of their production activities. Most notably, the AGCO does not currently impose distinct licensing requirements for contract manufacturers and does not establish unique regulatory rules or conditions to govern their operations.

What We Heard

The subject of contract manufacturing was discussed at length at several of the roundtable sessions. Many of the consultation participants displayed a high level of passion in relation to this particular issue, which was a clear reflection of their dedication to the brewing, winemaking and distilling trades.

Among some industry representatives – particularly beer manufacturers - there was a measure of concern about the relative proliferation of businesses that portray themselves as operating breweries,

OTHER FINDINGS APPLICABLE TO WINE, BEER AND SPIRITS MANUFACTURERS

wineries or distilleries on their labels and in their marketing activities, despite the fact that they have not invested in their own production equipment and facility and, often, have little to no direct involvement in the development and manufacturing of their products.

The pivotal issue among these individuals was the “intention” of the contract manufacturer. There was general acceptance of arrangements where an aspiring brewer, winemaker or distiller contracts with a “host” manufacturer to build a customer base and raise capital for the purpose of ultimately purchasing his or her own equipment and production site. There was considerable concern, however, directed at “private label” owners that have no intention of investing in their own workforce, equipment or facility and do not directly engage in the development or manufacturing of their products.

Others expressed general support for the presence of contract manufacturing in Ontario’s beverage alcohol industry. The wine industry, in particular, expressed little concern about contract manufacturing in their sector, indicating that “custom crushing” and “virtual winemaking” have become a generally accepted practice. Representatives of manufacturers’ agents and importers, as well as some spirits manufacturers, also indicated their support for “private label” owners and other contract manufacturing arrangements on the basis that, as one industry association suggested, they “enhance product selection in the marketplace”.

Proposed solutions include:

- **Establish distinct licensing rules for contract manufacturers.** Despite the range of views on contract manufacturing in Ontario, consultation participants generally agreed that the AGCO should consider modifying its licensing approach to establish distinct rules for businesses that do not own or operate their own manufacturing facilities.

Several participants recommended that the AGCO should establish clear rules that restrict manufacturer’s licences to those that physically own and operate their own production sites. The principal rationale behind this proposal is that contract manufacturers typically do not have enough local investment and assets to, as one industry association suggested, provide regulators with comfort “that enforcement actions in response to violations would be effectively dealt with”.

Another group of participants called on the AGCO to establish a separate licence for contract manufacturers that imposes distinct terms and conditions on these businesses. There were few specifics provided on the types of terms and conditions that the AGCO would potentially establish for contract manufacturers, although it was suggested by several participants that contract manufacturers should be required to provide greater transparency to customers, most notably by printing both the location and identity of their “host” manufacturer on product labels.

Attendance Limits at “Tied Houses”

The Issues

As discussed in previous sections of this report, the laws of Ontario impose substantial restrictions on the commercial interactions and associations that can lawfully take place between a manufacturer of beverage alcohol and a licensed establishment. Most notably, there is a general prohibition against beverage alcohol manufacturers owning and operating their own bars, restaurants or other licensed establishments.

There is one exception to this rule. A licensed manufacturer of beer, wine or spirits in Ontario may be authorized by the AGCO to own and operate a licensed establishment that is located at its brewery, winery or distillery, commonly referred to as a “tied house.” Reflecting the limited nature of a “tied house” authorization, a manufacturer may operate no more than one tied house in the province and the facility may have a maximum indoor capacity of no more than 500 people and a maximum outdoor capacity of no more than 1000 people.

What We Heard

The AGCO was advised by several manufacturers that currently operate tied houses that the existing capacity limits constitute an arbitrary and unnecessary barrier to their business. During the roundtable session with the wine industry, several winery owners indicated that the current limit on outdoor capacity has restricted their ability to hold large outdoor concerts and festivals. Additionally, the AGCO was told by some brewery owners that the indoor capacity limits have made it less desirable for beer manufacturers to invest in the development of a bar or restaurant at their production facility. It was therefore recommended that the relevant regulations under the Liquor Licence Act should be amended to either increase tied house capacity limits or abolish them altogether.

Proposals for Greater Business Flexibility and Reduced Administrative Burden

The Issues

In Ontario, it is common for beverage alcohol manufacturers located outside of Ontario to contract the services of an agent or representative to canvass sales, conduct promotional activities, take orders, and deliver orders on their behalf. In addition, a number of Ontario-based breweries, wineries and distilleries engage the services of manufacturers' representatives to conduct their sales and promotional activities.

The AGCO serves as the principal regulatory agency responsible for the licensing of manufacturers' representatives and the delivery of ongoing oversight to ensure manufacturers' representatives conduct their business activities with honesty, integrity and in the public interest.

Manufacturers' representatives are subject to a number of prescriptive regulations that are aimed at, among other matters, reducing the risk of the illegal import and sale of alcohol in Ontario. For example, a licensed manufacturers' representative is not permitted to keep more than 180 litres of liquor at a time and is required to comply with extensive record-keeping and invoicing requirements.

What We Heard

During the consultation period, the AGCO received several recommendations from manufacturers' representatives that were directed at finding ways to create greater flexibility and reduce the administrative burden for their businesses. Consultation participants acknowledged that Ontario's regulatory controls on manufacturers' representatives must place a high priority on public safety and social responsibility, but suggested that opportunities exist to uphold these priorities while modifying some of the "onerous" rules that specifically apply to manufacturers' representatives.

Proposed solutions include:

- **Amend the 180 litre cap on allowable "product on hand"**: Currently, an Ontario business engaged as a licensed representative for one or more beverage alcohol manufacturers is permitted to keep no more than 180 litres of product – or the equivalent of approximately 20 cases of wine or spirits - at any one time across the entire business. During the roundtable session, a number of manufacturers' representatives indicated that this limit is extremely low in today's environment.

The AGCO was advised that because manufacturers' representatives often fill orders that are greater than 20 cases, they must either take multiple trips to the LCBO warehouse, or be in a technical breach of the regulations. Further, if a manufacturers' representative has any "uncommitted" product on hand (i.e. product used for the purposes of sampling or market research), they are even more restricted in the amount of "committed" product they can have in their possession.

MANUFACTURERS' REPRESENTATIVES

It was therefore recommended that the regulations should be amended to “differentiate between committed and uncommitted products for the purpose of liquor possession limits.” Specifically, it was suggested that the 180 litre limit should apply only to “uncommitted” product. As a result, manufacturers’ representatives would be authorized to have an unlimited amount of “committed” products on hand at any one time, while still having to adhere to strict record-keeping and invoicing requirements for those products.

- **Permit sales to licensees on extended payment terms.** As discussed earlier in the report, manufacturers of beverage alcohol and their agents are prohibited from offering financial or material inducements to a licensed establishment in order to increase the sale of a brand of liquor. For many years, it has been the AGCO’s position that, due to the province’s strict rules against inducements, it is not permitted for a manufacturers’ representative to extend payment terms for liquor delivered to bars, restaurants or other licensed establishments.

Several roundtable session attendees recommended that the AGCO should reconsider its interpretation of the province’s anti-inducement laws in order to “recognize payment terms as a standard business-to-business administrative procedure.” One individual suggested that arranging sales on extended payment terms is “a realistic necessity of modern business that helps facilitate regular business and long-term agreements, such as through the use of ongoing electronic money transfers.” The AGCO received a similar request from representatives of Ontario’s wine industry.

- **Permit delivery fees.** In addition to canvassing and taking orders on behalf of foreign and domestic beverage alcohol manufacturers, a manufacturers’ representative is authorized to deliver their clients’ product to individuals and licensed establishments who ordered it. Unlike a licensed liquor delivery service, however, a manufacturers’ representative is not permitted to directly charge a fee to the purchaser. This rule principally flows from the fact that a manufacturers’ representative’s “scope of service” has historically been restricted to providing services on behalf of a manufacturer, not as an agent of a purchaser.

It was proposed by manufacturers’ representatives that the law should be changed to expressly permit licensed manufacturers’ representatives to charge delivery fees. Consultation participants highlighted the fact that manufacturers’ representatives are now often required to make visits to multiple LCBO outlets in order to fill a single order, which poses a costly logistical challenge for their businesses. They indicated that authority to charge a delivery fee directly to the purchaser of their clients’ product would provide greater flexibility to recover their costs.

- **Modernize invoicing rules.** Manufacturers’ representatives are required to adhere to strict record-keeping requirements in Ontario, which include ensuring that a copy of a detailed purchase order is attached to “any liquor” that is being kept for delivery. Ontario law sets out a lengthy list of information that must be contained on each purchase order. Given this requirement, the AGCO was advised that, in many circumstances, manufacturers’ representatives are required to attach vast amounts of paper to each case of liquor that is being delivered.

It was suggested that the current purchase order requirements impose an unnecessary

MANUFACTURERS' REPRESENTATIVES

administrative burden on manufacturers' representatives. It was therefore proposed that relevant regulations should be changed to eliminate the requirement that purchase orders be attached to all cases of liquor. Instead, participants recommended that manufacturers' representatives should only be required to possess "summary paperwork" at all times, which should contain all information necessary to achieve regulatory objectives, including the prevention of the illegal import and sale of beverage alcohol.

LIQUOR DELIVERY SERVICES

Proposals to Improve Customer Service and Simplify Regulatory Rules

The Issues

In many municipalities across Ontario, consumers have the option of ordering and receiving at-home delivery of beverage alcohol products from a licensed liquor delivery service. While the overwhelming majority of liquor delivery services are small businesses with relatively few employees, some larger companies – most notably in the grocery business – have begun offering liquor delivery as part of a broader at-home delivery service.

The AGCO is responsible for licensing and providing ongoing regulatory oversight of liquor delivery services in Ontario. Principally owing to the heightened public safety concerns tied to the delivery of liquor outside of a traditional retail environment, liquor delivery services are required to adhere to a number of prescriptive laws and regulations.

For example, liquor delivery services are subject to extensive record-keeping requirements. They are required to create - and keep for at least one year – a detailed purchase order and signed receipt for every liquor order that is received and delivery that is made.

In addition, liquor delivery services are subject to strict rules regarding their methods of delivery. It is mandatory that liquor be delivered to a customer on the day of its purchase and no later than one hour after the closing of the store from which it was purchased. Further, liquor may only be delivered to a customer at a residence (not a business or a public place) by an individual that has completed a server training course.

What We Heard

The AGCO held a roundtable session with several owners of liquor delivery services from across Ontario. It was emphasized by participants throughout the consultation that they were committed to operating their businesses in a safe and socially responsible fashion, noting that a number of liquor delivery services partner with social responsibility organizations.

Several representatives from the liquor delivery service industry raised concerns that a number of rules and restrictions in Ontario law serve to limit their business opportunities and reduce customer choice. As a result, a number of suggestions were put forward that were generally aimed at improving customer service and simplifying regulatory rules.

Proposed solutions include:

- **Permit liquor delivery services to deliver to businesses.** Since 2001, Ontario law has restricted liquor delivery services to delivering beverage alcohol products to “residential

addresses". It was suggested by several consultation participants that they would like to be able to deliver to businesses, including licensed establishments. One representative indicated that he receives requests on a regular basis to deliver beverage alcohol for office parties and other business-related events, but is not permitted to pursue these business opportunities. Another individual noted that liquor delivery services were once authorized to deliver to bars and restaurants and that the elimination of this customer base has had a negative impact on the industry. It was therefore suggested that the relevant regulation should be amended to permit liquor delivery services to offer their services to business customers.

- **Clarify the rules regarding "advance ordering" and "same-day delivery".** The AGCO was advised that there is confusion among a number of liquor delivery services in relation to the rule that requires liquor to be delivered on the same day it is purchased. Specifically, it was suggested that some businesses have started taking orders – typically online – up to several days in advance of the delivery date, but not purchasing the order until the actual date of delivery. One participant indicated that a number of well-established liquor delivery services have been under the impression that they are only authorized to receive and fulfill orders on the same day. It was consequently recommended that the AGCO should take steps to clarify whether advance ordering of liquor delivery is authorized under Ontario law.
- **Allow liquor delivery services to distribute manufacturers' promotional materials.** The Liquor Licence Act expressly prohibits liquor delivery services from entering an agreement with a manufacturer to "promote the sale or delivery of liquor of any manufacturer". Liquor delivery services expressed concern during the roundtable session that this rule functions as an across-the-board prohibition on any manufacturer-specific promotional activities by liquor delivery services. It was suggested that this "anti-inducement" rule is stricter than the rule that applies to licensed establishments which are provided with a limited ability to accept promotional items that "raise the profile of the manufacturer or manufacturer's product with the consumer". Liquor delivery service representatives requested that they be provided with a similar right to distribute manufacturers' promotional materials.

FERMENT-ON-PREMISE OPERATORS

Proposal to Create New Business Opportunities through Less Prescriptive Rules

The Issues

In Ontario, a ferment-on-premise business may operate for the specific purpose of providing space, equipment, ingredients and advice to customers so that they can produce their own wine or beer. Once they have completed the production of their wine or beer, customers are permitted to take it away for personal consumption.

Ontario-based ferment-on-premise operators are required to become licensed with the AGCO and to comply with numerous regulations, which are primarily focused on limiting the extent to which a ferment-on-premise operator can participate in the production of a customer's beer or wine. This regulatory focus derives from that fact that ferment-on-premise operators are not licensed – or otherwise governed - as manufacturers of beverage alcohol, but rather as businesses that facilitate the production of beverage alcohol by individual customers.

What We Heard

During the roundtable session with a group of representatives from the ferment-on-premise industry, the AGCO was advised that ferment-on-premise operators are striving to create a “craft wine-making experience” for their customers in order to break the stereotype of ferment-on-premise operations as “cheap wine producers”.

The AGCO was advised that the restrictive nature of the current regulatory framework imposes barriers to business operations and perpetuates antiquated business practices. Roundtable participants acknowledged the ongoing need for regulation to ensure that the relative roles of “customer” and “operator” are known and, as such, did not advocate for an erosion of the customer's involvement in the production process. Instead, it was suggested that the current regulatory framework imposes a series of operational limitations that have resulted in inefficiencies, lost business opportunities, and challenges in attracting and retaining customers.

Proposed solutions include:

- **Permit the relocation of “wine-in-process”.** Under Ontario law, ferment-on-premise licensees and their employees cannot permit the removal of carboys (i.e. containers) being used in the making of beer or wine from the licensed premises. Ferment-on-premise operators indicated that this rule can cause significant operational hardship, particularly when ferment-on-premise operators move physical locations. One stakeholder indicated that he was aware of a situation where in-process wine was required to be disposed of when a ferment-on-premise location was forced to move due to a fire in an adjoining building. It was therefore recommended that the law be amended to permit in-use carboys to be moved in the presence of an AGCO inspector.

- **Authorize holders of special occasion permits to serve beer and wine produced at ferment-on-premise facilities.** Currently, homemade wine, including wine produced at ferment-on-premise facilities, cannot be served at special events (i.e. weddings) under Special Occasion Permits. The public policy rationale for this restriction has historically been consumer protection and public safety. One exception to this rule is the service of homemade wine at religious-based special occasions. Roundtable participants advocated for the ability to serve homemade wine at Special Occasion Permit events generally.
- **Amend partitioning rules for “other in-store services”.** Some ferment-on-premise operations are co-located with other businesses. For example, the AGCO was told during the roundtable session with ferment-on-premise operators that some of their facilities include a filtered water business or a coffee shop. Under the current regulatory framework, a floor-to-ceiling wall is required to separate other in-store services from the ferment-on-premise operation. Roundtable participants indicated that this rule causes unnecessary costs to be incurred and requested that some lesser form of partition be permitted to separate the two businesses.
- **Permit sharing of batches.** Ontario law currently restricts ferment-on-premise operators’ ability to facilitate the sharing of batches of wine or beer between customers. Because the minimum batch size for a number of the products are large (i.e. 30 bottles of wine), this rule can serve to limit their ability to attract new and casual customers to ferment-on-premise locations. Several roundtable participants therefore requested the ability to keep lists of customers that are interested in sharing batches so that they can facilitate this option.
- **Permit customer designates.** Ferment-on-premise operators and their employees are forbidden from permitting anyone other than a customer to make beer or wine on the licensed premises. Stakeholders have indicated that there are operational implications with the current regulation. For instance, situations have arisen where a person has started a batch of wine at an ferment-on-premise location and become injured in such a way that they cannot attend the location to undertake a step of the process. The current regulation does not permit that person to send a designate, such as their spouse, in their place. Stakeholders requested that ferment-on-premise operators, their staff and agents be permitted to allow a customer to have a designate undertake portions of the wine and/or beer making process as required.

MOVING FORWARD

With the consultation period now complete, the AGCO's *Regulatory Modernization in the Beverage Alcohol Sector* project will proceed to its next stage. In the weeks ahead, the AGCO will closely review the insights and recommendations that have been provided by consultation participants and set out in this Findings Report. Thereafter, the AGCO will identify a number of areas where it is prepared to move ahead with reforms to its policies and procedures.

The AGCO is committed to collaborating with its partners and stakeholders as this project continues. In this respect, the AGCO intends to strike a series of working groups that will be tasked with deliberating and carefully considering the public policy and implementation details of specific reforms which are identified to move forward.

Throughout the consultation period, a range of recommendations were received that fall outside of the existing mandate of the AGCO, typically because the policy area is assigned to another government ministry or agency. These included issues relating to minimum and uniform pricing of alcohol, warehousing and delivery, the administration of audits (except for wineries), and taxation. These insights and recommendations were carefully noted and conveyed to officials in the relevant ministries and agencies.

The AGCO would once again like to extend its sincere appreciation to the many stakeholders and partners that have committed their time, effort and energy to this project to date. We have achieved great progress so far and look forward to continuing our work together.

List of Consultation Participants

- 66 Gilead Distillery
- Alcohol Management in Municipalities Working Group
- Andrew Peller Limited
- Arrive Alive
- B&D Deliveries
- Bacardi Canada Inc.
- Beam Canada Inc.
- Bellwoods Brewery
- Black Fly Beverage Company
- Brown Forman Canada
- Cameron's Brewing Company
- Canada's National Brewers
- Canadian Craft Wine Association
- Cave Springs Cellars
- Centre for Addiction and Mental Health
- Chateau des Charmes
- Churchill Cellars
- Constellation Brands
- Cooper's Hawk Vineyards
- Corby Spirit and Wine Limited
- County Cider Company
- Coyotes Run Winery
- Cruz Deliveries
- Diageo Canada Inc.
- Dial-a-Bottle Hamilton
- Dial-a-Bottle Oakville
- Dillon's Small Batch Distillers
- Drinks Ontario
- Durham Regional Health Department
- Flying Monkeys Craft Brewery
- George II Farms Ltd.
- Global Vintners
- Good Cheer Deliveries
- Grape Growers of Ontario
- Grocery Gateway
- Indie Ale House
- KJ Watson Ltd.
- Labatt Breweries of Canada
- Liquor Control Board of Ontario
- Mac's Convenience Stores Inc.
- Mill Street Brewery
- Ministry of Agriculture and Food
- Ministry of Community Safety and Correctional Services
- Ministry of Consumer Services
- Ministry of Economic Development and Trade
- Ministry of Finance
- Ministry of Health and Long-Term Care
- Ministry of the Attorney General
- Ministry of Tourism, Culture and Sport
- Molson Coors Brewing Company
- Mothers Against Drunk Drivers
- Muskoka Brewery
- Ontario Convenience Store Association
- Ontario Craft Brewers Association
- Ontario Craft Cider Association
- Ontario Public Health Association
- Ontario Restaurant Hotel and Motel Association
- Ottawa Distillery Co.
- Peter Mielzynski Agencies (PMA) Canada, Ltd.
- Pommies Dry Cider
- Puddicombe Cider
- RJ Spagnols
- Rotman School of Management, University of Toronto
- Simcoe-Muskoka Health Unit
- Sleeman Brewing & Malting Co. Ltd
- Smart Serve Ontario
- Spirit Tree Cidery
- Spirits Canada
- Steam Whistle Brewing
- Still Waters Distillery
- Suncor Energy Inc.
- The Cork and Vine
- The Cottage Winery
- The Vine Estate Wines
- The Wine Butler
- Thornbury Cidery, Provincial Beverages
- Toronto Distillery Company
- Vineland Estates Winery
- Vintners Quality Alliance Ontario
- Wine Council of Ontario
- Winery and Grower Alliance of Ontario