The Embassy of Brazil in Canberra presents its compliments to the Treasury and has the honour to submit a requisition for revision of relevant legal provisions, mainly the Customs Act 1901, in order to allow the importation of cachaça into the Australian territory, in accordance with the reasons set forth as follows:

The Embassy of Brazil in Canberra has been receiving complaints from Brazilian exporters and Australian importers who have been lately unable to import cachaça (sugar cane liquor produced exclusively in Brazil) into Australia. The beverage has been considered by the local customs authority as a type of rum and its delivery from Customs has been denied due to requirements applicable to rum in the Australian customs legislation. For this reason, the Embassy hereby respectfully requests the revision of the relevant legal provisions, mainly of Customs Act 1901, in order to allow for the distinction between the two beverages and, as a consequence, for the importation of cachaça with its original characteristics into Australian territory.

Cachaça is often mistaken for rum, due to the fact that both (as well as many other beverages) are produced by distilling products of sugar cane. Despite this common origin, they have clearly distinct attributes due to differences in the production process (such as the original sugar cane product, aging or not, time and conditions of aging, storage conditions, alcohol content), which give them different organoleptic properties concerning color, taste and smell. Cachaça and rum are clearly distinct products, not only from a technical and physical point of view, but also from the point of view of customers, who are differently stimulated in their senses by the two beverages.

Cachaça is classified in the Harmonized System under subheading 2208.40 (Rum and other spirits obtained by distilling fermented sugar cane products). This subheading, which previously read “Rum and tafia” only, was redefined in 2007, as a result of an initiative from Brazil in the World Customs Organization to demonstrate that beverages other than rum may be obtained from sugar cane with different production methods and sensory characteristics. The Explanatory Notes of the Harmonized System confirm that heading 2208 encompasses spirits made from sugar cane other than rum:

*(3)   Spirits obtained exclusively by distilling fermented products of the sugar cane (sugar-cane juice, sugar-cane syrup, sugar-cane molasses), e.g., rum, tafia, cachaça.*

In Australia, the Customs Act 1901 defines rum in its Section 105A(2) as ***“***a spirit obtained by the distillation of a fermented liquor derived from the products of sugar cane, being distillation carried out in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to rum”. However, beverages that fall under this classification must be aged for at least two years, according to Section 105A(1) of the same Act: “Brandy, whisky or rum imported into Australia must not be delivered from the control of the Customs unless a Collector is satisfied that it has been matured by storage in wood for at least 2 years.”

However, this definition of rum and the aging requirement have been in fact applied by Australian customs to all beverages distilled from sugar cane, regardless of their actual nature.

Brazilian law defines both beverages in the following way, according to Decree No. 6.871/2009 (technical regulations of Law 8.918/1994, Brazilian Beverages Law):

*Art. 53.* ***Cachaça is the typical and exclusive denomination of the sugar cane spirit produced in Brazil****, with* ***thirty-eight to forty-eight percent alcohol by volume*** *at twenty degrees Celsius, obtained through* ***distillation of fermented sugar cane juice****, with peculiar sensory characteristics, which can be added of six grams per liter of sugar.*

*§ 1  Cachaça containing sugar in amounts larger than six grams per liter and smaller than thirty grams per liter will be denominated sweetened cachaça* (cachaça adoçada)*.*

*§ 2  Aged cachaça* (Cachaça envelhecida) *will be the denomination given to the beverage containing* ***at least fifty per cent sugar cane spirit which has been aged for no less than a year****, which can be added of caramel for purposes of color correction.*

*Art. 54.  Rum, rhum or ron is the beverage with* ***thirty-five to fifty-four percent alcohol by volume*** *at twenty degrees Celsius, obtained through* ***distillation of sugar cane molasses or from the mixture of the spirits distilled from sugar cane juice and molasses****,* ***totally or partially aged in oak or similar wooden barrels****, while maintining its peculiar sensory characteristics.*

*§ 1 The product can be added of sugar up to six grams per liter.*

*§ 2 The use of caramel for color correction and activated charcoal for discoloration is allowed.*

*§ 3 Congener coefficient shall not be lower than forty milligrams nor higher than five hundred milligrams per hundred milliliters of anhydrous alcohol.*

*§ 4 Rum will be denominated:*

*I –* rum leve *or light rum, when the congener coefficient of the spirit is lower than two hundred milligrams per hundred milliliters in anhydrous alcohol;*

*II –* rum pesado *or heavy rum, when the congener coefficient of the beverage is between two hundred and five hundred milligrams per hundred milliliters in anhydrous alcohol, obtained exclusively from molasses; and*

*III –* rum envelhecido (*aged rum*) *or* rum velho *(old rum), when the beverage has been* ***totally aged for at least two years.***

These provisions explain which beverages produced in Brazil can bear the name “cachaça”. The definition of rum in Brazilian law is quite similar to the Australian one in its essential elements, especially when it comes to aging as a basic characteristic of the beverage (see Excise Act 1901, Section 77FI). The beverage produced in Brazil as “rum envelhecido” or “rum velho” would be recognized in Australia as such and would meet the requirements under Australian law to enter the country.

The production process of cachaça, however, is essentially different from that of rum, since they start from different substances (fermented sugar cane juice for the former and molasses or a mixture of molasses and juice for the latter). Moreover, cachaça does not need to be aged, and even *cachaça envelhecida* undergoes a different aging process compared to rum, as Brazilian law requires rum to be aged for at least two years and *cachaça envelhecida* for at least one, while not defining the quality of wood used in the barrels where *cachaça envelhecida* is aged.

Cachaça and rum are different beverages, with different sensory characteristics and production processes, and for this reason they should not be subject to the same technical requirements. Requiring maturation for a beverage that by nature does not need to be aged distorts the characteristics of the product, injures consumers and improperly burdens producers, making cachaça exports to Australia impossible.

Cachaça is exported by Brazil in its original form to the whole world. More than 10 million liters were exported to more than fifty countries in 2014, and more than 90% of this amount is not aged. Therefore, Australian legislation requirements concerning mandatory maturation do not seem reasonable as far as cachaça is concerned and would be deemed as a non-tariff restriction to cachaça imports, a restriction which is prohibited under Article XI of the GATT.

For these reasons, the Embassy of Brazil kindly requests the revision of the relevant legal provisions in order to allow for the recognition of the difference between cachaça and rum and, consequently, the elimination of the maturation requirements for cachaça under the Customs Act 1901, in order to allow for the regular importation of cachaça into Australia.

The Embassy of Brazil in Canberra avails itself of this opportunity to renew to the Treasury the assurances of its highest consideration.

Canberra, 28 May 2015.