



August 23, 2019

Senator Patrick Stefano  
Room 187  
Capitol Building  
501 North Third Street  
Harrisburg, PA 17120

Representative Jeffrey Pyle  
Room 216  
Ryan Office Building  
451 North Third Street  
Harrisburg, PA 17120

**RE: PLCB Flexible Pricing Authority**

Dear Senator Stefano and Representative Pyle,

We are writing on behalf of the members of the Distilled Spirits Council of the United States and the American Distilled Spirits Association regarding recent concerns by international spirits organizations that the PLCB's flexible pricing scheme is in violation of WTO international trade law.

The 2016 passage of Pennsylvania's landmark liquor modernization legislation, Act 39, resulted in many consumer-friendly changes to the Commonwealth's alcohol marketplace. Since its passage, however, we have repeatedly raised concerns about the PLCB's implementation of Act 39's flexible pricing provision and the serious negative impact it is having on consumers and spirits sales.

While the legislature passed Act 39 with good intentions, surely it did not intend for the PLCB to use flexible pricing to indiscriminately raise prices on consumers or to remove transparency and accountability from the government agency.

Prior to the PLCB's flexible pricing authority, the PLCB was required to price products by a strict proportional pricing formula, which treated all spirits suppliers equally. Retail prices were determined by a set mark-up formula that included a known logistics, transportation and marketing fee, a known mark-up of 31 percent, and an 18 percent tax rate. Whenever a wine or spirits supplier offered a discounted price, the PLCB was required to pass that discount to Pennsylvania consumers. By eliminating this strict pricing formula, Pennsylvania consumers no longer have such protection.

Neither constrained by competition nor market discipline, the PLCB is using its unfettered market power to the detriment of consumers and suppliers.

While the PLCB claims it has been transparent in its approach and is committed to “productive and collaborative negotiations with suppliers,” our companies do not feel that the process has been transparent or collaborative.

Under the “flexible pricing” scheme, the PLBC negotiates the cost and markup on every item, keeping the details of the negotiations shrouded in secrecy. The PLCB routinely increases its 31 percent markup, confiscating any consumer saving and increasing the PLCB’s profit margin. The PLBC provides no schedule or justification for the categories or brands it targets for price changes and gives little lead time to suppliers to respond to the notice of price changes.

Wine and spirits suppliers are left with little room to negotiate. They can accept the arbitrary price increase, which results in higher prices for consumers and lost sales, or remove their product from the Pennsylvania marketplace. Either way consumers lose.

Pennsylvanians are now witnessing firsthand the shortcomings of flexible pricing. Since 2016, the last year before variable pricing was implemented, through 2018 the average mark-up over FOB for spirits increased from 59.7 percent to 65.1 percent - a nine percent increase.

During a recent hearing on the issue, the PLCB’s director of marketing and merchandising told legislators that in 2018 supplier prices increased on 455 items and decreased on 307. Yet, the agency increased retail prices on 570 items and decreased them on 167. This demonstrates that the PLCB is not passing savings on to Pennsylvania consumers.

In light of new serious claims by international spirits trade associations that the flexible pricing model is in violation of international trade law, in addition to the numerous negative real-world results of this monopolistic pricing model, we urge you to end the PLCB’s flexible pricing authority.

On behalf of the distilled spirits industry, we stand ready to work with the legislature to support PA HB1512, legislation introduced by Representative Jesse Topper that would repeal flexible pricing and reinstate the proportional pricing formula. It’s time to bring transparency back to the process and restore the savings to Pennsylvania consumers.

Sincerely,



Chris R. Swonger  
President and CEO  
Distilled Spirits Council of the United States



Matt Dogali  
President & CEO  
American Distilled Spirits Association