

GENERAL AGREEMENT ON

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CANADA - IMPORT, DISTRIBUTION AND
SALE OF CERTAIN ALCOHOLIC DRINKS BY
PROVINCIAL MARKETING AGENCIES

Follow-up on the Panel Report

Communication from the United States

The following communication, dated 14 August 1992, has been received from the Office of the United States Trade Representative in Geneva with the request that it be circulated to the contracting parties.

In October 1991, in response to a complaint brought by the United States, a GATT panel ruled that Canada's provincial practices regarding the distribution, pricing and sale of imported beer were inconsistent with the provisions of the General Agreement. Many of the practices at issue were the same ones addressed by a 1988 GATT panel resulting from a similar complaint from the EC.

Subsequent to the adoption of the October 1991 panel report, the United States entered into negotiations with Canada in an attempt to reach an agreement regarding these Canadian practices. An "Agreement in Principle" was reached on April 25, 1992, which provided a framework for further negotiations toward a final agreement. Immediately after the Agreement in Principle was reached, however, Ontario announced additional measures that aggravated the effects of the discriminatory trade practices that the October GATT panel had found to be contrary to the principles of the General Agreement. While the United States continued to pursue a negotiated resolution of the case, Ontario steadfastly refused to bring its pricing and distribution practices with regard to imported beer into conformity with GATT. All of the other provinces, with the exception of Quebec in regard to one particular practice, presented proposals that would essentially meet the findings of the October 1991 panel report.

As the United States was not able to secure from Canada a commitment to bring Ontario's discriminatory practices into conformity with GATT, the United States Trade Representative announced on July 24, 1992, that action was being taken against Canadian beer imported from Ontario. There had been more than ample time for Canada to bring its provincial liquor board

practices into GATT conformity before the United States took this action. Ontario, however, announced further measures exacerbating the degree of discrimination against imported beer, while stating that these measures were fully GATT consistent. The measures Ontario has taken since the Agreement in Principle was reached on April 25 served only one purpose: to price popular brands of imported U.S. beer out of the market altogether.

In a span of just three months, Ontario began implementing new practices which increased the price of popular brands of U.S. beer in Ontario by close to \$5.00 per case, putting the price above that of premium Canadian beer for the first time, and eliminating the ability of U.S. brewers to compete on the basis of price. Practices with these results surely cannot be considered consistent with the findings of the October 1991 GATT panel.

Canada is now suggesting that Ontario's practices should be put back to a GATT panel on an expedited basis. While the United States appreciates Canada's offer as a means to resolve this issue, the suggestion, in the face of two previous GATT panels which ruled against Canada and have yet to be fully implemented, would only serve to further delay a resolution of the issue. The United States sees no merit in putting issues which have already been adjudicated twice in the GATT dispute settlement process (and found inconsistent with the GATT) back to the GATT for re-examination.

There has come a point where Canada must either live up to its GATT obligations by faithfully implementing the results of the two previous GATT panels or face the consequences. The action taken by the United States on July 24 was both reasonable and measured, in that it recognized those provinces that have begun to bring their practices into GATT conformity, and was directed against only that province which has refused to bring itself into conformity with the GATT.

Canada responded to the U.S. action on July 24 by announcing a counter retaliation against U.S. imports into Ontario of beer brewed by the two U.S. companies that brought the original complaint in this case - the G. Heileman Brewing Company and the Stroh Brewery Company. Such an action is clearly contrary to the principles of the GATT. As the United States said in its subsequent statement on July 24, "Canada's move to single out two U.S. beer companies is unwarranted, unjustified, and obviously vindictive. The Ontario authorities appear determined to punish Heileman and Stroh for standing up for their legal rights to compete on a non-discriminatory basis".

The United States believes that the only way to successfully put this matter behind us is through further bilateral negotiations. Canada (and Ontario) know what must be done. Canada knows that the United States has already demonstrated earlier in the negotiations significant flexibility and a willingness to engage in reasonable compromise in the spirit of reaching a negotiated settlement. The United States reiterates its willingness to resume negotiations at any time.