GENERAL AGREEMENT ON
TARIFFS AND TRADE

COUNCIL
9 February 1993

UNITED STATES - MEASURES AFFECTING ALCOHOLIC AND MALT BEVERAGES

Follow-up on the Panel report

Communication from the United States

The following communication, dated 28 January 1993, has been received from the Office of the United States Trade Representative in Geneva with the request that it be circulated to contracting parties.

Pursuant to paragraph 1.3 of the 1989 Improvements to the GATT Dispute Settlement Rules and Procedures (BISD 36S/61), the United States advises contracting parties of the status of implementation of the recommendations of the report of the Panel in "United States - Measures Affecting Alcoholic and Malt Beverages."

When the Panel Report was adopted in June 1992, the United States entered formal reservations regarding two portions of the Report (see C/M/257 at 6). These reservations pertained to the Panel's analysis of the applicability of Article XXIV:12 of the General Agreement to this case and whether the "grandfather clause" in the Protocol of Provisional Application (PPA) covered, in general, prior state legislation as well as federal legislation and, in particular, the specific state alcoholic beverage regulations at issue. The United States did not accept the reasoning or conclusions contained in those portions of the Report, or the recommendations based on those conclusions.

Since adoption of the Report, the United States has worked diligently to comply with the remaining Panel recommendations. On one level, the Panel's recommendations were unprecedented in scope, covering, in addition to measures of the federal government, the individual practices of over 30 states and Puerto Rico, each with its own government. For this reason, implementation has proved to be a time-consuming and arduous process. On another level, as the United States has noted previously, although the practices involved are large in number, the trade distorting effects of most practices, if any, are minimal.

Officials of the Office of the US Trade Representative (USTR) have consulted extensively with other federal authorities and with state governments in an effort to develop and implement appropriate changes to bring the relevant practices into conformity with the GATT. Consultations have also been held with Canadian officials with regard to the Panel Report.
The federal practices addressed by the Panel Report concerned modestly reduced excise taxes for certain small US beer and wine producers. In addition to considerable efforts within the Executive Branch to develop solutions on this issue, USTR has consulted with Congressional officials in an effort to formulate actions that would implement the Panel's recommendations while at the same time avoiding or minimizing dislocation to the affected small producers. The United States will continue its efforts to reach a solution acceptable to the various interests concerned.

With regard to state measures, USTR has kept frequent and close contact with state officials. It has informed state governments of the details of the Panel Report and has solicited their efforts to develop ways to bring their regulatory and tax practices into conformity with the GATT, in a manner that will continue to satisfy legitimate state goals such as promoting temperance and collecting revenue.

Among the steps taken are the following:

- In February 1992 USTR mailed copies of the final Panel Report to the states as soon as it was available and alerted states that USTR would be in further contact with them concerning the state measures cited in the Report.

- In March USTR sent another letter informing the states of GATT procedures and asking them to indicate when and how they could bring their practices into conformity with the GATT obligations of the United States.

- In May USTR informed the states of the expectation that the Panel Report would be adopted at the June GATT Council meeting, provided suggestions on how the states could bring their practices into conformity with GATT obligations, and urged them to report on the status of their actions.

- On June 19 USTR informed the states that the GATT Council had adopted the panel report and provided them with copies of the U.S. statement, including the reservations to certain portions of the Panel Report. (Because most state legislatures are in session only for the first several months of the year, as of June it was too late for most states to address the Panel's recommendations in 1992.)

- In December USTR advised states of the consultations held with Canadian representatives and requested further updates on state activities to implement the Panel's recommendations.

The states have informed USTR of their activities, requested assistance in seeking solutions, and requested assessments of their proposed solutions. USTR is working closely with the states to provide the needed assistance.
For most states involved, legislative action appears to be necessary to accomplish the needed changes. One state has passed legislation eliminating differences in excise tax rates cited in the Panel Report. About one-fourth of the involved states have informed USTR that legislation has been submitted to their legislatures, that legislation is being drafted, or that they anticipate few or no problems in obtaining legislative approval for the needed changes. About half of the states concerned report that they are reviewing with interested executive agencies and affected private interests the best solutions to the problems in their respective states and the best method for obtaining their approval. A few states report that they expect significant opposition to the most obvious approaches and are seeking more creative solutions. A couple of states have raised questions with respect to the factual accuracy of the panel report.

USTR is working closely with each of the states to address their particular problems and to share with them approaches being used in other states. No two states are alike.

For virtually all of these states this is the first time that their regulatory and/or taxation activities have been the subject of recommendations of a GATT dispute settlement panel. The first step has been to provide essential information regarding GATT obligations and procedures. USTR has made significant progress on that front and is now well into the second step of devising GATT acceptable solutions. The United States will keep the contracting parties informed of its continuing efforts in this regard.