5 February 1988

PANEL ON IMPORT, DISTRIBUTION AND SALE OF ALCOHOLIC DRINKS BY CANADIAN PROVINCIAL MARKETING AGENCIES

Report of the Panel adopted on 22 March 1988
(L/6304 - 35S/37)

1. Introduction

1.1 In June 1984 the European Communities requested the Government of Canada to consult under Article XXIII:1. The consultation did not lead to a solution and the European Communities requested a GATT Panel under Article XXIII:2 to examine the matter (Doc. L/5777, 12 February 1985).

1.2 On 12 March 1985 the Council agreed to establish a Panel and authorized its Chairman to draw up terms of reference and to designate the Members and the Chairman of the Panel in consultation with the parties concerned (C/M/186, item 3). The United States, Spain, New Zealand and Australia reserved their right to make a submission to the Panel. Jamaica and Trinidad and Tobago requested to be included in consultations on the Panel's terms of reference and composition.

1.3 The following terms of reference were announced by the Chairman of the Council on 12 February 1986 (C/M/195,

> matter referred to the CONTRACTING PARTIES by the European Communities in document L/5777, that is, whether certain practices of provincial agencies which market alcoholic beverages (i.e. Liquor Boards) are in accordance with the provisions of the General Agreement, and whether Canada has carried out its obligations under the General Agreement; and to make such findings as will assist the CONTRACTING PARTIES in making recommendations or rulings as provided for in paragraph 2 of Article XXIII.
>
> In carrying out its examination the Panel would take into account, inter alia, the provincial statement of intentions concluded in the context of the Tokyo Round of multilateral trade negotiations with respect to sales of alcoholic beverages by provincial marketing agencies in Canada."

1.4 The composition of the Panel was announced on 12 December 1986 (C/143):

Chairman:	H.E. Mr. E.F. Haran
Members:	Mr. E. Contestabile
	Mr. J. Viganó

1.5 The Panel held its meetings on 18 December 1986, 25 and 26 March 1987, 2 May, 7 and 8 July, 21, 22 and 23 July and 8, 9, 10 and 14 October 1987. The delegations of Australia and the United States were heard by the Panel on 26 March 1987.

1.6 In the course of its work, the Panel consulted with the delegations of Canada and the European [illegible]es. [illegible]guments and relevant information submitted by both parties, replies to questions put by the Pane[illegible] well as all relevant GATT documentation served as a basis for the examination of the matter. [illegible]ing the proceedings, the Panel provided the two parties adequate opportunity to develop a mutu[illegible]s[illegible]ct[illegible]olution in [illegible]matter[illegible]re it.

The

2.

2.6 While the situation varies somewhat from province-to-province, generally any supplier of beer, wine or spirits, domestic or imported, wishing to sell the product in a province must first

TABLE 1

Mark-ups applying the certain types of spirits - 1985

	WHISKY (STANDARD)		COGNAC BRANDY		OTHER SPIRITS		LIQUORS	
	D	I	D	I	D	I	D	I
ONTARIO	109	122	58	120	115	124	115	127
BRITISH COLUMBIA	115	120	115	120	115	120	115	120
QUEBEC	113 *	123 *	115 **	118 **	113 *	123 *	113 +	
123+			100	100				
ALBERTA	116	117	110	111	116	117	107	109
NEW BRUNSWICK	127	132	127	132	127	132	127	132
MANITOBA	133	138	133	138	133	138	133	138
NOVA SCOTIA	120	120	120	137	122	139	120	137
SASKATCHEWAN	131	138	133	138	133	138	133	138

D = Domestic I = Imported

* Ad valorem mark-up applied only to the portion of cost price (duty paid) over $65.00 per case.

** Quebec cognac: Ad valorem mark-up applied only to the portion of cost price (duty paid) between $65.00 and $90.00 per case. For any surplus portion of the cost price (above $90.00 per case) the mark-up is 100 % for both domestic and imported cognac.

\+ Ad valorem mark-up applied only to the portion of cost price (duty paid) over $55.00 per case.

Source: EC's calculations based on the statistics supplied by Canada.

TABLE 2

Mark-ups applying to beer and table wines - 1985

	BEER			WINES		
	LOCAL	D	I	LOCAL	D	I
ONTARIO (-1986)	**	21.2	80	58 1	105 66	123 66)
BRITISH COLUMBIA	**	*	83	50	110	110
QUEBEC	N/A	N/A	124	94***	118***	125***
ALBERTA	**	49	57	77	77	83
NEW BRUNSWICK	59	65	86	93	117	122
MANITOBA	76	75	75	65	75	80
NOVA SCOTIA	**	66.6	81	86	111	121
SASKATCHEWAN	**	54	60	N/A	84	89

D = Domestic I = Imported

* British Columbia beer: 43 % mark-up if 1.2-4.0 % alcohol/volume;
50 % mark-up if 4.1-5.7 % alcohol/volume;
54 % mark-up if 5.8-8.5 % alcohol/volume.

** No distinction between Local and Domestic Beer.

*** Quebec wine: Ad valorem mark-up applied only to the portion of the cost price (duty paid) between $20.00 and $40.00 per case. For any surplus portion of the cost price (above $40.00 per case), the mark-up is identical for all categories of wine.

Source: EC's calculations based on the statistic supplied by Canada

3. MAIN ARGUMENTS

(a) General

3.1 The European Communities argued that application of the discriminatory mark-ups and other forms of restriction and discrimination by the provincial marketing agencies of alcoholic drinks in Canada were inconsistent with Canada's obligations under the General Agreement and nullified or impaired the advantages accruing to the Community under the General Agreement especially since the duties on products in question were bound in Canada's tariff schedule. The European Communities considered that it was within the competence of the Federal Government of Canada, acting in accordance with the relevant provisions of the Canadian constitution, to remove the inconsistency of provincial and federal measures affecting the importation of alcoholic beverages with Canada's GATT commitments. The European Communities argued that Canada had not taken the measures, reasonably at its disposal and within its power, to ensure observance of its GATT obligations by its provincial governments. It also considered that, where the differential in the mark-up was lower than the bound rate, the Federal Government of Canada could have reduced the customs duty rates to offset the mark-up differentials. The European Communities thus requested the Panel to find that:

(i) the imposition of higher mark-ups on imported alcoholic beverages than on domestic products by the provincial marketing agencies was inconsistent with Canada's obligations under Articles II or III of the General Agreement;

(ii) the application of discriminatory measures concerning listing/delisting procedures and availability of points of sale to imported alcoholic beverages

and that Canada's trading partners had been cognizant of the fact that

Importation of Intoxicating Liquors Act, there was no discrimination between suppliers. Canada said that it did not recall ever indicating to the European Communities that all pre-1947 mark-up records were not available, and noted that while some might be difficult or even impossible to obtain, many others were available.

3.7 In the European Communities' view, Canadian liquor boards were monopolies of importations of the kind referred to in Article II:4. The Communities noted that given the provision of Article II:4 the liquor boards were not free to operate so as to afford protection in excess of the amount of protection provided in the Canadian tariff schedule. Under Article II:4 a tariff concession comprised a concession on the monopoly protection level and the application by liquor boards, of higher mark-ups on

i.e. known to all contracting parties, and must

claiming to be free from its normal obligations. In the Communities' view, it followed from Article II:4 and its interpretative note ("… as otherwise specifically agreed …"; in the French version "… sauf convention expresse entre les parties contractantes …") that only an agreement of a contractual nature which specifically excluded the monopoly margins from the obligations resulting otherwise from a tariff concession was acceptable. Such an agreement would determine a different monopoly protection level from the one which was otherwise legally permitted under Article II. It would therefore necessarily affect the GATT rights, not only of the parties which negotiated the agreement, but the rights of all contracting parties since the obligations under Article II:4 had to be applied erga omnes and in accordance with the MFN principle. In the EC's view efforts to resolve disagreements about the application of GATT would be made more difficult if, when unilateral promises to correct violations were made, it was always necessary for those receiving them to react formally by stating that the promises were not accepted and that no rights were being waived.

3.17 The European Communities, recalled that the letter by the Canadian Government dated 5 April 1979, by which the Statement was transmitted underlined that the Statement was necessarily non-contractual in nature, that it represented a positive undertaking to follow certain policies and practices and that it was considered to be a valuable contribution to a settlement between Canada and the Community in

3.19 Canada argued that the description of the Provincial Statement of Intentions as "non-contractual" was related to the constitutional inability of Canadian provinces to enter into formal treaty obligations with foreign powers and meant that the Statement was not intended to constitute a legally binding treaty in its own right. It had, in other words, no legal status apart from the GATT but it did have a legal effect within the framework of the GATT. In Canada's view there was nothing in the

mark-ups. In the EC's view, Canada had not presented evidence which

the differential mark-ups in each of the provinces generally reflected transportation, distribution and other expenses incident to the purchase as well as a reasonable margin of profit which according to Article 31:4 of the Havana Charter should be excluded from calculation of the amount of protection permitted under Article II:4. In Canada's view, the drafting history of Article II:4 implied that a reasonable margin of profit was initially meant to be a margin in the case of an export monopoly which "should not be so excessive as to restrict the volume of trade in the product concerned" (Report of the First Session of the Preparatory Committee of the United Nations Conference on Trade and Employment - October 1946, page 17). Canada argued that at a later stage of the drafting history of Article II:4, it was made clear that the phrase "reasonable margin of profit" applied to import monopolies as well. Canada showed that its total imports of alcoholic beverages registered significant increases in value signifying that only "reasonable margins of profit" were applied.

3.28 Canada also noted that Ad Article II:4 referred to Article 31 of the Havana Charter as a whole, including the fiscal purposes set out in Article 31:6. It acknowledged that in certain instances differential mark-ups reflected revenue maximization objectives, and that these were particularly important in

(c) Article III

3.31 The

and 3.41-3.42) that it clearly was not the intention of the drafters to introduce, with respect to activities carried out by state trading enterprises, the principle of national treatment with respect to Article XVII. Secondly, Canada referred to the Panel report relating to Canada's administration of its Foreign Investment Review Act and concluded that the provincial marketing agencies might legitimately provide more favourable treatment to domestic products than that accorded to imported products because the provincial marketing agencies were not required to observe the principle of national treatment in respect to their mark-up listing or distribution practices (see para 3.43). Notwithstanding this position Canada also argued that differential internal charges resulting from different commercial costs associated with imported products were permitted under Article III.

3.35 Canada also said that by accepting the Statement of Intentions, in particular its mark-up provision for spirits, the EC had recognized that there were different costs associated with imported products. It noted that the Interpretative Note to Article XVII:4 defined the term "import mark-up" as exclusive of what is generally described as 'commercial considerations' in Article XVII:1(b). Moreover, since in the view of Canada the Statement of Intentions constituted an agreement of the type envisaged under Article II:4, differential mark-ups could not be, ipso facto, inconsistent with Article III.

3.36 It was furthermore the view of Canada that Article III was not relevant to this case, given the provisions of Article XVII (see paras 3.47-3.49). Neither did Canada accept the argument that many commercial practices referred to by the EC were truly regulatory "requirements" as contemplated by Article III. Canada said that the two reports quoted by the EC did not reflect the position of the provincial governments concerned. In Canada's view, the texts quoted by the Communities were also taken out of context and were somewhat misleading.

(d) Article XVII:1

3.37 The European Communities asserted that Article XVII:1 contained a national treatment obligation. First, in the EC's view, sub-paragraph (a) of Article XVII:1 referred to the general principles of non-discriminatory treatment in the plural which appeared to cover national treatment. Second, sub-paragraph (b) required state-trading enterprises to have due regard to the other provisions of the Agreement, thereby referring also to Article III, and to act solely in accordance with commercial considerations. This suggested in the EC's imported products less favourably than XVII:2 contained an exemption from Paragraph 1 for impo ts of pro uct for consumption in governmental u

marketing boards which did purchase and sell were governed by Article XVII and did not need to be in accordance with other provisions of GATT. Third, Canada recalled that the Family Allowance panel report (BISD 1S/60, paragraph 4) noted:

> "As regards the exception contained in paragraph 2 of Article XVII, it would appear that it referred only to the principle set forth in paragraph 1 of the Article, i.e. the obligation to make purchases in accordance with commercial considerations and did not extend to matters dealt with in Article III".

3.39 Canada also said that it could not agree that the wording of Article III:8 paralleled that of XVII:2 and said that, at the Geneva Conference (E/PC/T/A/PV-37; 12 August 1947) one delegate, discussing the differences in wording of the two articles had indicated that the wording "should not necessarily correspond because the nature of the subject was different". Canada also recalled the basis of the language which now formed Article XVII:2 as first suggested by one delegation at the London Conference (E/PC/T/CII 52, page 1) and concluded that this language was not introduced to provide for the concept of national treatment. Canada argued that a Geneva Conference reference (from E/PC/T/A/PV37 12 August 1947) also confirmed this. At the Conference one delegate had said "In the case of Article 15, we find it a question of national treatment and here in the case of state trading such as is envisaged in this Article [read XVII] there is no question of national treatment". Canada also referred to a statement by another delegate to the Geneva Conference who had argued that state-trading enterprises should be subject to the same standard of conduct to which private enterprises adhered (E/PC/T/A/PV37 - 12 August 1947). This was, in Canada's view, noteworthy because private enterprises had no national treatment

3.41 Canada argued that the Geneva language, with minor editorial changes, was the language incorporated into the Havana Charter and the original text of the General Agreement. The title of Article XVII of the GATT had been modified to read "Non-discriminatory Treatment on the part of the

3.46 Canada held that it had met its obligations under Article XVII:4 as it had been providing information to the CONTRACTING PARTIES since 1977 concerning provincial liquor boards practices, including information pertaining to the determination of provincial mark-ups. Contracting Parties were advised in Canada'

treatment requirement of paragraph 4, applied to all laws, regulations and requirements governing the commercial activities of governmental agencies outside the scope of paragraph 8(a). The Communities also argued that the Interpretative Note to Articles XI, XII, XIII, XIV and XVIII implied that Article XVII was not a lex specialis exempting state-trading from all other provisions of the General Agreement. In the EC's view, both the London Report and the Panel Report on the Notification of State-Trading Enterprises (BISD 9S/180) confirmed that the other provisions of GATT might apply to the activities of marketing boards and did not say that these provisions were not applicable in the context of marketing boards which purchase and sell. In the view of the Community, Article XVII being of a

(h) Article XXIV:12

3.52 The European Communities maintained that Article XXIV:12 could not be interpreted as limiting the applicability of other provisions of the GATT but only as qualifying the obligation of Federal States to secure the implementation of these provisions. The Communities argued that the "limited applicability" approach would upset the balance of rights and obligations between unitary and federal states and would open the door to wide and uncontrollable: possibilities to escape from many of the most fundamental GATT obligations. The Communities argued that the provisions should be interpreted in the light of the fundamental principle of international law embodied in Article 27 of the Vienna Convention, namely "that a party may not invoke the provisions of its internal laws as justification for its failure to perform a treaty".

3.53 Canada objected to the EC suggestion that federal state clauses should be given a restrictive interpretation in order to avoid "imbalances" in the rights and obligations created by the treaty. Canada also noted that it was not attempting to rely on the provisions of its internal law as a "justification" for "failure to perform a treaty", in contravention of Article 27 of the Vienna Convention. On the contrary in Canada's

Article XXIV:12 applied. In Canada's opinion, the foregoing analysis was equally valid whether one accepted Canada's view that Article XXIV:12 went to applicability or whether one accepted the opposite view urged by the EC. Canada said that the interpretation of Article XXIV:12 found in the Gold Coins report - a report which had no status in GATT and with which Canada and Brazil could not agree - ought to be ignored by this Panel.

3.56 The European Communities argued that if Canada's arguments were accepted no redress would be available in cases where observance of GATT provisions by local governments could not be assured, except perhaps where a tariff concession had been impaired.

3.57 Canada noted that nothing precluded a contracting party from seeking redress through Article XXIII if it believed that a benefit accruing to it directly or indirectly under GATT was being nullified or impaired by, inter alia, an action inconsistent with another Contracting Party's GATT obligations or " the existence of any other situation" (i.e. non-violation nullification or impairment).

3.58 Canada considered that given the lack of GATT jurisprudence referring to Article XXIV:12 it was necessary to analyse the drafting history to determine the basis on which contracting parties made their decision on accession to the General Agreement. Canada recalled that the question of local and regional governments arose very soon after the start of the first preparatory meeting of the UN Conference on Trade and Employment in London in October 1946 where one delegate, in particular, noted that "in several countries it would be constitutionally impossible to control the actions of states and other lower taxing authorities" "44.96 473.52 Tm/F8 11 Tf(t/pa1/T/C.II/W.2;5.36 Tm/F8 11 Tf(Canadr) TjET

3.62 The European Communities argued that the provincial measures in question and in particular the imposition of discriminatory mark-ups were ultra vires and that the Federal Government had the power to rectify this situation. First, it quoted a Canadian legal authority who, on the basis of two decisions of the Supreme Court of Canada (Murphy v. C.P.R. (1958), S.C.R. 626, Caloil v. A.G. for Canada (1971) S.C.R. 353), came to the conclusion that the Federal Parliamentral

be seen as a basis for any form of comprehensive regulation of retailing policy, either generally or in connection with a particular economic sector. Canada noted that a series of more recent supreme court decisions seemed to reverse the trend towards an expansion of federal "Trade and Commerce" power and effectively to re-establish the traditional limitation of federal authority to transboundary transactions.

3.66 Canada said that the courts had from time to time referred to a nebulous concept know as a "general" Trade and Commerce power. This concept had never been given practical effect and had remained essentially a dead letter. In Canada's view, this aspect of the "Trade and Commerce" power did not extend to the detailed regulation of local commerce. On numerous occasions, the Courts had stressed that the "Trade and Commerce" power in its general sense could not serve as a basis for the control of a "particular business or trade" - i.e., a specific economic sector. Canada said that in a series of early cases arising out of "temperance" and "prohibition" legislation, the Courts had recognized that the Federal Parliament (along with the provinces) could deal with liquor control as a matter of public order and morality. However, this extraordinary power gave the Federal Government absolutely no authority over the purely commercial aspects of retail marketing. In Canada's opinion, the Courts

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they only related to a standstill undertaking and since other practices, such as discriminatory mark-ups on imported beer, were not covered. The implementation of the Statement would not therefore satisfy fully the obligations under Article

to convince the provinces to observe the provisions of the General Agreement with respect to their provincial liquor board policies and practices. It also suggested that the following general guidelines were of assistance in applying this standard:

> (a) Reasonable measures implied efforts made by a contracting party in good faith and with diligence with a view to ensuring observance of the GATT; (b) what was "reasonable" must vary with the factual circumstance of each case; (c) foremost among these circumstances was the general character of the federation in question, and in particular the measure of autonomy enjoyed in law and in practice by the regional and local governments within the federation and the constitutional practices it adopted in co-ordinating its internal affairs; (d) for these reasons, "reasonable measures" were steps that were consistent with the normal political functioning of a federation, and exclude measures that would be considered exceptional or extraordinary within that context; (e) the nature and effect of the non-observance on the balance of rights and obligations under the General Agreement must be considered.

3.70 In Canada's view, "reasonable measures" in this case meant ensuring that the provinces lived up to

was cast in stone, but on this point at least the EC theory of the scope of federal legislative power was extremely dubious. In Canada's view, if there was a constitutional question related to the provincial legislation on liquor boards it was not one that appeared on the face of the legislation but only in its detailed implementation in practice.

3.74 Canada said that, in a nutshell, there were two ways in which constitutional cases came before

3.77 Canada said that total sales of wine in Canada had shown a steady increase since the early 1970's. In its view, a detailed comparison of differences of annual sales of various types of wine, by

considered the listings requirements to be a breach of Article III:4. Australia also said that through higher mark-ups, Australian products received less favourable treatment than those provided for in the schedule and Australia considered the mark-ups to breach Article II:4. In Australia's view, Canada had obligations under Article XXIV to use "reasonable measures" to secure from the provincial marketing agents an open import regime in Canada for wines, spirits and other alcoholic beverages particularly as the measures were applied by all the Canadian provinces and therefore, had the characteristics of a national policy. Australia recalled the following particular instances where the Canadian Government had not taken reasonable measures to ameliorate provincial practices despite representations from Australia:

- The fact that a brand would only be listed for sale if the liquor boards were convinced that it would achieve the required sales volume. This practice discriminated against new or lesser known products.

- In some provinces, government policy required that an inordinately large amount of shelf space be allocated to the local product. Imported wines with a retail price below a certain level were not accepted in British Colombia or Alberta, which, with a cost conscious public, lead to a significant discrimination.

- Imported wines had higher mark-ups than Canadian wines.

- Direct retailing of wine was allowed outside the monopoly stores in two instances but in neither of these instances was imported wine allowed to be sold.

3.82 Despite numerous bilateral representations to the Canadian Government the Australian Government did not consider that the Canadian Government had fully utilized all reasonable measures available to it within its constitutional system. At the same time, Australia considered that the introduction of federal legislation which might have an overriding effect on the political balance of a federation, by impinging on constitutional arrangements and the division of powers between the national and provincial governments, as not being 'reasonable measures'.

3.83 Australia said that at the time of the Canada/Australia Tokyo Round settlement, it had pointed out that the provincial Statement of Intentions would not resolve the Australian wine industry's problems with the Canadian provincial marketing agencies and therefore Australia was not prepared to offer further payment for the inclusion of the statement in a settlement. Australia recalled that the Canadian Government had acknowledged that the statement would not resolve all difficulties experienced by Australia but had seen the statement as 'giving suppliers a foot in the door'. The Canadian Government had indicated its hope that, if the statement were to form part of an Australia/Canada bilateral settlement, Australia could indicate that it welcomed the statement as a positive step which had been 'taken into account' in arriving at the overall settlement. It was argued that this would give the Canadian Government a little more leverage over the provincial governments. In Australia's view the Canadian Government had not sought payment for the inclusion of the statement in the bilateral settlement. The Canadian Statement of Intentions had been passed to the Australian Government under a cover note which included a reference to the preparedness of the Canadian Government to use 'its good offices' to take up Australian concerns with the provincial agencies. The Canadian Government had argued this would help reassure Australia that the Canadian Federal Government would adopt an active (rather than a liaison) role in intervening with the provincial agencies on behalf of foreign governments. Accordingly, it was Australia's understanding that the Canadian Government had not put the statement forward as an intention of the provincial liquor boards alone. Rather it would appear that the intent of the Canadian Government had been to undertake a greater degree of obligation under Article XXIV(12) in regard to this matter than would otherwise have been the case. Australia argued that this view was supported by the Canadian Government's action in extracting promises collectively from the provinces

and linking these promises through itself in an

3.93 With regard to the number of listings granted to US wine products, the United States noted that provincial products might be automatically listed but that imports were not and that listing policies prevented

with the provisions of the General Agreement" and "whether Canada has carried out its obligations under the General Agreement". It decided to deal with the first question before examining the second.

Practices of Provincial Liquor Boards

4.2 The Panel recalled that the practices complained of related to mark-up practices, including restaurant discounts on domestic alcoholic beverages; and restrictions on points of sale and listing/delisting procedures.

- Mark-Ups

4.3 Since Canada's Schedule of Concessions includes tariff bindings on all imported alcoholic beverages, the Panel first examined the European Communities' contention that the mark-up practices were not in conformity with Article II of the General Agreement.

4.4 The Panel recalled that Canada and the European Communities agreed on the fact that Canada had, through the Importation

to

4.8 The Panel therefore concluded that the Provincial Statement of Intentions and the related exchange of letters could not be held to constitute an agreement in terms of Article II:4 and did not, therefore, modify Canada's obligations arising from the inclusion of alcoholic beverages in its GATT Schedule.

4.9 The Panel then proceeded to examine whether the mark-ups imposed on imported alcoholic beverages plus the import duties, which were collected at the bound rate, afforded protection on the average in excess of the amount of protection provided for in Canada's Schedule contrary to Article II:4, as claimed by the European Communities. The Panel noted that according to the Interpretative Note to Article II:4 the paragraph was to be applied "in the light of the provisions of Article 31 of the Havana Charter." The text of Article 31, including its interpretative note, is contained in Annex II.

4.10 The Panel noted that Article II:4, applied in the light of Article 31:4, prohibited the charging of prices by the provincial liquor boards for imported alcoholic beverages which (regard being had to average landed costs and selling prices over recent periods) exceeded the landed costs; plus customs duties collected at the rates bound under Article II; plus transportation, distribution and other expenses incident to the purchase, sale or further processing; plus a reasonable

4.17 The Panel also noted Canada's argument that the drafting history implied that a reasonable margin of profit was a margin which "should not be so excessive as to restrict the volume of trade in the product concerned", and that since the volume of imports from the European Communities of the products in question had not declined, the margin of profit was a reasonable one. The Panel noted that the fact that these imports had not declined did not say anything about what they would have been in the absence of a policy of monopolistic profit maximization by the provincial liquor boards.

4.18 The Panel examined Canada

Article XI because they were not associated with the "importation"

legislation. The Panel noted that the CONTRACTING PARTIES had decided in August 1949 that this paragraph only referred to legislation of a mandatory character (BISD II/62) and that this decision had been confirmed on many subsequent occasions, most recently in 1984 (BISD 31S/88). The Panel concluded that the Importation of Intoxicating Liquors Act did not make mandatory restrictions on points of sale and discriminatory listing requirements.

4.29 The Panel wished to stress that nothing in its conclusions on restrictions on points of sale and discriminatory listing requirements affected the right of Canada to use import monopolies for purposes foreseen in the General Agreement, such as the protection of health of its

V. CONCLUSIONS

4.36 In the light of the findings set out above, the Panel recommends that the CONTRACTING PARTIES request Canada:

(a) to take such reasonable measures as may be available to it to ensure observance of the provisions of Articles II and XI of the General Agreement by the provincial liquor boards in Canada;

(b) to report to the CONTRACTING PARTIES on the action taken before the end of 1988, to permit the CONTRACTING 8 11 Tf(G) TjETBT42s66…08 Tm/F8 11 Tf(CONT388,) TjETBT1 0 0

ANNEX I

CANADIAN DELEGATION

CONFIDENTIAL MARK-UP

17-19 Ch du Champ d' Anier

Provincial Statement of Intentions
with Respect to Sales of Alcoholic Beverages
by Provincial Marketing Agencies in Canada

1. Information on the policies and practices of provincial marketing agencies for all alcoholic beverages will be made available on request to foreign suppliers and governments. Any enquiries from foreign governments will receive a response within a reasonable period of time; the Government of Canada agrees to be the channel of communication with foreign governments for such purposes.

2. In each branch store of the provincial marketing agencies, a catalogue of all the products offered for sale by the agency will be available, in order that customers may be aware of what products are available in addition to those carried in the particular branch.

3. Any differential in mark-up between domestic and imported distilled spirits will reflect normal commercial considerations, including higher costs of handling and marketing which are not include

COMMISSION
DES
COMMUNAUTES EUROPEENES

Délégation permanente
auprès des organisations internationales
à Genève

Genève, April 5, 1979

Dear Rodney,

I have the honour to acknowledge receipt of your letter of April 5 concerning Provincial Statement of intentions with respect to sales of alcoholic beverages by Provincial marketing Agencies in Canada.

Yours sincerely,

P. Luyten
Head of the Permanent Delegation

H.E. Mr. Rodney de C. Grey
Ambassador
Head of the Canadian Delegation to the
Multilateral Trade Negotiations

17-19, chemin du Champ d'Anier
1209 Geneva

COMMISSION
OF THE
EUROPEAN COMMUNITIES

Brussels 29 June 1979

DIRECTORATE-GENERAL FOR
AGRICULTURE

The Director General

Dear Mr. Ambassador,

I refer to your letter of 5 April enclosing a statement of intention which the Canadian Provincial Liquor Boards are prepared to give concerning the treatment of imported alcoholic beverages.

The Community have, as you will readily appreciate, been examining very closely the terms of this statement of intention given. This examination had led to some disquiet concerning the terms of the statement of intentions about the mark-up. The Community does, of course, appreciate that an undertaking to eliminate discriminatory practices in this area cannot easily be given in simple and precise terms, but we are nevertheless apprehensive lest the term "normal commercial considerations" should be interpreted by the Boards in such a way as to enable them effectively to continue discrimination against imported spirits. You will be aware that the Provincial Liquor Boards have in the past justified their discriminatory practices with reference to "commercial

the

ANNEX II

Article 31 of the Havana Charter

Expansion of Trade

1. If a Member establishes, maintains or authorizes, formally or in effect, a monopoly of the importation or exportation of any product, the Member shall, upon the request of any other Member or Members having a substantial interest in trade with it in the product concerned, negotiate with such other Member or Members in the manner provided for under Article 17 in respect of tariffs, and subject to all the provisions of this Charter with respect to such tariff negotiations, with the object of achieving:

(a) in the case of an export monopoly, arrangements designed to limit or reduce any protection that might be afforded through the operation of the monopoly to domestic users of the monopolized product, or designed to assure exports of the monopolized product in adequate quantities at reasonable prices;

(b) in the case of an import monopoly, arrangements designed to limit or reduce any protection that might be afforded through the operation of the monopoly to domestic producers of the monopolized product, or designed to relax any limitation on imports which is comparable with a limitation made subject to negotiation under other provisions of this Chapter.

2. In order to satisfy the requirements of paragraph 1(b), the Member establishing, maintaining or authorizing a monopoly shall negotiate:

(a) for the establishment of the maximum import duty that may be applied in respect of the product concerned; or

(b) for any other mutually satisfactory arrangement consistent with the provisions of this Charter, if it is evident to the negotiating parties that to negotiate a maximum import duty under sub-paragraph (a) of this paragraph is impracticable or would be ineffective for the achievement of the objectives of paragraph 1; any Member entering into negotiations under this sub-paragraph shall afford to other interested Members an opportunity for consultation.

3. In any case in which a maximum import duty is not negotiated under paragraph 2(a), the Member establishing, maintaining or authorizing the import monopoly shall make public, or notify the Organization of, the maximum import duty which it will apply in respect of the product concerned.

4. The import duty negotiated under paragraph 2, or made public or notified to the Organization under paragraph 3, shall represent the maximum margin by which the price charged by the import monopoly for the imported product (exclusive of internal taxes conforming to the provisions of Article 18, transportation, distribution and other expenses incident to the purchase, sale or further processing, and a reasonable margin of profit) may exceed the landed cost; Provided that regard may be had to average landed costs and selling prices over recent periods; and Provided further that, where the product concerned is a primary commodity which is the subject of a domestic price stabilization arrangement, provision may be made for adjustment to take account of wide fluctuations or variations in world prices, subject where a maximum duty has been negotiated to agreement between the countries parties to the negotiations.

5.