

# GENERAL AGREEMENT ON

RESTRICTED

DS4/4

8 November 1989

# TARIFFS AND TRADE

Limited Distribution

Original: English

## EEC - DIRECTIVE ON TRANSFRONTIER TELEVISION

### Response to Request for Consultations under Article XXII:1 by the United States

The following letter, dated 23 October 1989, from the Delegation of the European Communities to the Office of the United States Trade Representative, is circulated at the request of the European Communities.

Your letter of 11 October\* requests GATT consultations on certain matters arising out of the Directive on Transfrontier Television, recently adopted by the EEC Council of Ministers. The European Community agrees to consult with you at the dates that you suggested in the week beginning 27 November. In this connection it is important to note that the directive will substitute for the European Convention on Transfrontier Television as to the relations between the Member States.

In conveying this response to you, I am asked by my authorities to make the following points:

- The European Community does not consider that the matters mentioned in your letter are covered by GATT obligations. Nonetheless, without prejudice to our views, and in the light of the broader scope of Article XXII, we are willing to enter into the consultations you have requested.
- It follows from this that we would expect the consultations, in the first instance, to focus on the question of the applicability of GATT provisions to the Directive. In the light of exchanges of views on that point both sides will be able to consider how to proceed further.

You will, I am sure, draw these points to the attention of your government and of the Congress of the United States.

---

\*DS4/3.

./.

I am instructed also to comment on the misleading statement that you made in the GATT Council of 11 October. You referred to your earlier request for consultations addressed to four Member States, signatories of the European Convention, in terms which imply that they might have refused to consult or that the Commission had refused ("non-EC recipients ... played by the GATT rules", ... "our request was premature"). As you know, this is not correct: the Member States concerned and the Commission had indicated that they were willing to consult - without prejudice to the applicability of GATT provisions - but that they considered preferable to hold such discussions with the Commission.

In this context, we believe that it is perfectly legitimate for a contracting party, when faced with a request for Article XXII consultations about an alleged violation of GATT obligations, to indicate that it considers the subject matter to be outside the scope of the GATT. Nothing in the dispute settlement rules that we all agreed to in Montreal modifies that situation and if our view on GATT applicability is correct, those rules would themselves, presumably, not apply to the present case.

Your request for consultation has been circulated in DS4/1, and I am therefore sending a copy of this reply to Mr. Dunkel with a request that it be circulated also.