

GENERAL AGREEMENT ON

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TARIFFS AND TRADE

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Committee on Subsidies and
Countervailing Measures

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COMMUNICATION FROM THE EUROPEAN COMMUNITIES

The following letter, dated 11 September 1991, has been received by the Chairman from the Permanent Representative of the European Communities with the request that it be circulated to signatories.

Please find attached a copy of a letter I have addressed today to the Director-General, Mr. A. Dunkel, regarding the recent request by the United States for conciliation regarding alleged subsidies for Airbus Industrie.

Subsidies Code: US request for conciliation concerning alleged Airbus subsidies

1. Over these last few years there has been rising tension between the United States and the European Community with respect to trade in civil aircraft. This is not the place to enter into the substance of this dispute, but I do wish to draw your attention to certain procedural aspects which may have a very negative impact on the GATT system of dispute settlement and, by extension, for the GATT system as a whole at this particularly sensitive juncture.

There are two specific civil aircraft issues which are currently subject to GATT dispute settlement, i.e. the German exchange rate system (currently before a Subsidy Code Panel) and alleged Airbus subsidies. Most recently, the United States have requested that conciliation be undertaken by the Subsidy Committee with respect to this latter issue.

This exclusive focus by the United States on the Subsidy Code creates, in the Community's view, a serious problem of choice of forum. We know that you are acutely aware of the dangers inherent in such a situation, as you pointed out in your report to the GATT Council in July.

2. Briefly stated, the Community considers that the resolution of any dispute concerning subsidies in the civil aircraft sector must be addressed not only under the provisions of the Subsidy Code, but also under the parallel provisions on subsidies of the Civil Aircraft Code (which contains disciplines which qualify and add to those contained in the Subsidy Code). If a complaint on subsidies was examined only under the Subsidy Code this would deprive the Community of its rights (and, incidentally, also ignore its obligations) under the Aircraft Code.

This is clearly unacceptable to the Community and is contrary to the legitimate expectations held by the Community when it signed both Agreements as part of the Tokyo Round package in 1979, when a specific international régime was set up for trade in civil aircraft, including special disciplines on government subsidies. The exclusive United States focus on the Subsidy Agreement will, if accepted, create a situation tantamount to one in which the Aircraft Code had never been signed. This would therefore severely upset the balance of interests basic to the Tokyo Round package.

3. This important procedural disagreement came to a head earlier this year with a United States request to establish a panel to examine the German exchange rate system. In a spirit of compromise, the Community did not oppose the establishment of a panel under the auspices of the Subsidy Code, while emphasizing that this was in the expectation that the terms of reference of the panel would be based not only on the provisions contained in the Subsidy Code but also on those of the Civil Aircraft Code. Nevertheless, in the absence of an agreement between the parties on the terms of reference, it was decided by the Subsidy Committee to adopt the standard terms of reference based only on the Subsidy Code. Despite the extreme concern which this decision created within the Community, it was decided that it would nevertheless participate fully and constructively in the work of the panel established to examine the German exchange rate system. There can, however, be no question of the Community accepting a repetition of such a procedure with respect to the second complaint brought forward by the United States this year, i.e. the one concerning alleged Airbus subsidies.
4. The United States has presented a request for conciliation to the Chairperson of the Subsidy Committee with respect to alleged government subsidies for Airbus. The Community considers that it is of the greatest importance at this stage to create the conditions necessary for a settlement of this dispute between the United States and the Community. The Community has reiterated its invitation to the United States to resume bilateral negotiations on this matter in parallel with the launch of multilateral negotiations within the GATT Civil Aircraft Code (in respect of which a formal proposal was made to the Committee in March of this year). In this spirit, the Community accepts the principle of conciliation.

5. The Community clearly cannot accept, however, that conciliation take place on the exclusive basis of the Subsidy Code since this would prejudge the question of the legal basis of a possible panel. If conciliation were to fail, and if this were to lead to the establishment of a panel, the Community would have no choice but to oppose the establishment of such a panel on the exclusive basis of the Subsidy Code. Since our legitimate expectations voiced in a similar context with respect to the German exchange rate system were not heeded and since we do not wish to delay matters by lengthy exchanges of notes, we have thought it useful, in order to reach a speedy procedural compromise, to approach you in view of your overall responsibility for the functioning of the GATT system. More specifically, we suggest that you, in consultation with the Chairpersons of the relevant Committees and with the interested parties, seek a compromise solution which would allow for meaningful conciliation. In view of the importance attached to this matter by the United States, and since we do not wish to delay, we would like to ask you to consider this request as a matter of urgency.