

GENERAL AGREEMENT ON

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TARIFFS AND TRADE

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Committee on Subsidies and
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COMMUNICATION FROM THE UNITED STATES

The following communication, dated 13 September 1991, has been received by the Director-General from the United States Trade Representative with the request that it be circulated to signatories of the Committee.¹

By letter dated 11 September the Commission of the European Communities asked you to "seek a compromise solution which would allow for meaningful conciliation" of the dispute concerning Airbus production subsidies.

My authorities do not see any purpose to be served by your intercession since the "compromise" proposed by the EC - joint competence of the Subsidies and Aircraft Committees - is not a compromise at all. None of the argument in the EC letter is new. It merely reiterates positions taken by the EC at the time the Subsidies Code Committee conducted conciliation in January 1990, and again when the United States requested a panel on the German exchange rate guarantee scheme on 14 February 1991. What is more, the key EC positions already have been determined to be without basis by the Subsidies Committee in the context of its conduct of conciliation with respect to, and establishment of a dispute panel on, the exchange rate guarantee scheme.

Thus, contrary to the position taken by the EC before the Subsidies Committee (and repeated in paragraph 2 of its letter to you), the Committee agreed with the United States that the Subsidies Code was the proper forum for the US dispute. In addition, the effort by the EC in the Aircraft Committee to secure a ruling that the Code contained a derogation as to subsidies relating to aircraft was unsuccessful.

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¹This communication has also been circulated to signatories of the Committee on Trade in Civil Aircraft as document AIR/W/85.

The EC next says (at the end of paragraph 2 of its letter) that it had "legitimate expectations" of such a derogation. The US is aware of no basis for this contention. There is nothing in either the Subsidies or Aircraft Codes or in the negotiating history of either Agreement to support to EC's contention.

The EC letter also implies (in paragraph 3) that in the exchange rate guarantee dispute it chose to accept jurisdiction of the Subsidies Committee and chose to accept standard terms of reference in the dispute. Both actions were not matters of policy choice; they were fulfilment of the EC's legal obligations under the Subsidies Code. As a legal matter, the issue in the production subsidy dispute is not whether the EC will decide to accept Subsidies Code jurisdiction, but whether it will fulfil its obligation to do so.

Having set the record straight and indicating why the United States cannot be sanguine of success along the lines proposed by the EC in its letter, let me close by assuring you, on behalf of my authorities, that the United States is not now (nor has it ever been) opposed to a good faith negotiation of a mutually agreeable solution to the overall Airbus dispute. However, we cannot forego our legal rights under the Subsidies Code in the absence of such a solution.