

GENERAL AGREEMENT ON

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EUROPEAN ECONOMIC COMMUNITY - PAYMENTS AND SUBSIDIES PAID
TO PROCESSORS AND PRODUCERS OF OILSEEDS AND RELATED
ANIMAL-FEED PROTEINS

Communication from the United States

The following communication, dated 25 January 1990, has been received from the United States Trade Representative, with the request that it be circulated to contracting parties in connection with the Council meeting of 25 January 1990.

Comments by the United States
on paragraphs 131-154 of the Report of the Panel

"European Economic Community - Payments and Subsidies Paid to
Processors and Producers of Oilseeds and Related Animal-Feed Proteins"

At the GATT Council meeting on 25 January 1990, the representative of the European Communities referred to a document (L/6636), circulated just before the start of the Council meeting, which contains the comments of the European Communities on certain findings in the Report of the Panel on Measures by the European Communities to Assist Production of Oilseeds and Related Animal-Feed Proteins (L/6627). At the meeting certain other delegations made oral statements of national position regarding the same findings in the report.

The US representative to the Council indicated that the United States would submit in writing its reactions to the written comments of the European Community delegation and the oral comments of the other delegations. The United States is submitting these comments so that the record of the 25 January 1990 meeting of the Council will show clearly that the United States did not share the Communities' interpretation of the cited findings in the oilseeds Panel report.

Applicability of Article III to subsidies

The United States considers that the criticism of paragraph 137 of the Panel report is unfounded. The legal principle articulated by the Panel on this point is clear: if, as in the oilseeds case, benefits paid by the Community can at least in part be retained by processors, those benefits are not subsidies provided "exclusively" to producers and, under those

circumstances, the subsidies are not permitted under Article III.8(b). The Panel's careful analysis of the facts is recorded in paragraphs 136 to 141 of its report. The United States believes that the delegations criticizing paragraph 136 have taken out of context only one element of that analysis, one the Panel "noted" in passing, and have portrayed it as the basis of the Panel's finding on this issue. An objective analysis of paragraphs 136 to 141 shows otherwise.

Applicability of Article XXIII:1(b) to subsidies that are consistent with Article XVI

Likewise, the allegation that in paragraph 152 the Panel singles out a category of subsidies is a distorted portrayal of the Panel's finding. In this, as in all other aspects of its findings, the Panel carefully limited its attention to the particular case in dispute. The Panel did not conclude that all production subsidies by their nature undermine tariff concessions. Rather, the Panel concluded that in this case the introduction of the production subsidy schemes by the European Community subsequent to the granting of the tariff concession to the United States undercut the value of that tariff concession. This conclusion does not "prejudge" the overall negotiation on subsidies; it is merely the application of clear GATT law to the facts of this case.

Application of Article XXIV:6

The European Community criticism of paragraphs 145 and 146 is not new. The European Community argued to the Panel that it withdrew its existing tariff schedule as a result of each enlargement. However, the Panel rejected the EC's argument that, as a result, every existing tariff concession was extinguished and only those that were affirmatively renegotiated survived. As the Panel found, that argument simply does not make sense and is not supported by fact. We share that view and are confident that other contracting parties do as well. (In this regard we note that no other delegation at the 25 January meeting of the Council supported the EC argument on this point.)

Similarly, the European Community argued that because there may have existed some subsidy programs in some member States in 1962 when the concessions were granted the United States, the United States might reasonably have expected these to continue. Again, this argument was made and rejected by the Panel.

Supposed reliance on presumption rather than fact

The United States believes there is no basis for castigating the Panel for supposedly relying on presumptions rather than establishing the effects of the subsidy schemes. Let us direct the attention of Contracting Parties to the Section 337 Panel Report (L/6439). In that dispute, at the urging of the European Community, the Panel found a violation of GATT based on the potential that the US statute could apply in a manner that discriminated

against imported products. Here, the Panel similarly concluded, based on consistent precedent, that the issue was whether the EC subsidy schemes had the potential to effect the conditions of competition. The standard appropriate for the European Community as complainant also should be the standard for the European Community as respondent, particularly where it is a standard frequently expressed in the past.