

GENERAL AGREEMENT ON

RESTRICTED

SCM/122

28 August 1991

TARIFFS AND TRADE

Special Distribution

Committee on Subsidies and
Countervailing Measures

Original: English

UNITED STATES REQUEST FOR CONCILIATION WITH THE EEC UNDER ARTICLES 13 AND 17 OF THE AGREEMENT

The following communication, dated 21 August 1991, has been received by the Chairman of the Committee from the United States Trade Representative.

My authorities have instructed me to refer to the Committee for conciliation pursuant to Articles 13 and 17 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the "Subsidies Code"), a dispute between the United States and the European Communities (the "EC"). My Government remains deeply concerned that certain activities of the EC and/or individual member States - in particular, France, Germany, Spain and the United Kingdom - undertaken individually or jointly, in support of the participation of their respective member companies in the Airbus consortium are inconsistent with the obligations of the EC and the member States under the Subsidies Code.

On 31 May 1991, the United States requested consultations with the EC under Article 12 of the Subsidies Code. (Copy of the request and follow-up correspondence are enclosed.) In response to the US request, the United States and the EC held consultations on 1-2 August 1991.

The United States has reason to believe that substantial supports, including, inter alia, production and launch aid have been provided to Airbus member companies. For example, recent studies indicate that disbursements and commitments provided by three member State governments for five Airbus programmes launched to date - Airbus A300, A310, A320, A330 and A340 - exceed the equivalent of US\$13.5 billion, unadjusted for inflation. Including the finance cost of the sums provided to Airbus would cause the total subsidy amount to double. Moreover, the limited information available indicates that only a small proportion of the funds advanced have been repaid. Indeed, moratoria on repayment or effective forgiveness of "loans" have been provided by the governments of member States involved.

Further, my Government has strong reason to believe that these subsidies are "causing or threatening to cause injury" to the US industry, "causing or threatening to cause serious prejudice" to US interests, and/or "nullifying or impairing benefits accruing" to the United States under the General Agreement. For example, the subsidies have enabled Airbus (by its own account) to more than double its share of the world market for large commercial aircraft in only three years: from 16 per cent in 1988 to 35 per cent in 1990 (based on the number of aircraft sold). Source: Airbus Insider, January 1991. Massive subsidies have, thus, resulted in demonstrable adverse effects: inter alia, surging exports of Airbus aircraft to the United States and third country markets; surging sales within Europe, which have displaced US exports to EC member States; and, price suppression, which diminishes the US industry's return on investment and its capability for reinvestment in new products.

Moreover, the work of this Committee continues to be severely hampered by the continuing failure of the EC to provide information on the nature and extent of subsidies given, in violation of its obligations under Article 7 of the Subsidies Code. In particular, the EC has failed to respond to repeated requests for such information that have been provided by my Government. We take this opportunity to: (1) reiterate our outstanding written requests under Article 7, paragraph 1 of the Code and our interest in a prompt provision of full information to the Committee on the nature and extent of these measures; and (2) formally draw this matter to the attention of the Committee under Article 7, paragraph 2.

In sum, my Government has reason to believe that the subsidies noted above have been provided in a manner inconsistent with the EC's obligations under, inter alia, Articles 8 and 11 of the Subsidies Code and, therefore, requests that the Committee undertake conciliation under Article 17 of the Code. Particularly in view of the lack of information that has been made available to the United States, we noted that this request is without prejudice to our ability to assert US rights under any other article of the Code.

ANNEX 1

(Distributed as SCM/114 on 6 June 1991.)

31 May 1991

H.E. Mr. Tran Van-Thinh
Ambassador
Delegation of the Commission
of the European Communities
Rue de Vermont 37-39
1202 Geneva

Dear Mr. Ambassador,

My authorities have instructed me to request consultations with the European Communities (the "EC") under Article 12, paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the "Subsidies Agreement"). My Government is deeply concerned that certain activities of the EC and/or individual member States - in particular, France, Germany, Spain and the United Kingdom - undertaken individually or jointly, in support of the participation of their respective member companies in the Airbus consortium are inconsistent with the EC's obligations under the Subsidies Agreement.

The United States has reason to believe that substantial production supports as well as substantial launch aid have been provided to Airbus member companies. For example, launch aid commitments by member State governments for the five Airbus programmes launched to date - Airbus A300, A310, A320, A330 and A340 - exceed the equivalent of US\$13.5 billion, unadjusted for inflation, a sum that accounts for considerably more than 75 per cent of the estimated development cost of those aircraft. Including the finance cost of the sums provided to Airbus would cause the total subsidy amount to double, even if finance cost were calculated at only the cost of money to governments. Moreover, the limited information available indicates that only a small proportion of the funds advanced have been repaid. Indeed, moratoria on repayment or effective forgiveness of "loans" has been provided by the governments of member States involved.

In addition, it is our strong belief that these subsidies are causing injury to the US industry, nullification or impairment of benefits accruing to the United States under the General Agreement, and/or serious prejudice to US interests. For example, the ultimate effect of these subsidies has been to enable Airbus to increase sharply its share of the world market for large commercial aircraft (from 17.5 per cent in 1985 to 28.7 per cent in 1990, based on deliveries), increase exports to the United States thereby injuring the US industry, and displace US exports to the EC and third

country markets. In addition, the provision of subsidies has allowed Airbus Industrie to suppress prices, thereby diminishing the US industry's return on investment and its capability for reinvestment in new products.

Moreover, my Government believes that the continuing failure of the EC to provide information on the nature and extent of subsidies given and the failure to respond in particular to repeated requests for such information provided by my Government is inconsistent with the EC's obligations under Article 7 of the Subsidies Agreement. We take this opportunity to reiterate our outstanding written requests under Article 7, paragraph 1, of the Agreement for the prompt provision of full information on the nature and extent of these measures.

In sum, my Government has reason to believe that the subsidies noted above have been provided in a manner inconsistent with the EC's obligations under, inter alia, Articles 8 and 11 of the Subsidies Agreement and, therefore, requests consultations under Article 12:3 of the Agreement. Particularly in view of the lack of information that has been made available to the United States, we note that this request is without prejudice to US rights under Article 12:1 of the Agreement.

Sincerely,

Rufus H. Yerxa (Signed)

ANNEX 2

(Distributed as SCM/120 on 26 July 1991)

2 July 1991

H.E. Mr. Tran Van-Thinh
Ambassador
Delegation of the Commission
of the European Communities
Rue de Vermont 37-39
1202 Geneva

Dear Mr. Ambassador,

This is further to my letter of 31 May 1991, requesting consultations on behalf of my Government with the EC under Article 12 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the "Subsidies Agreement"). As described in my earlier letter, the subject of the requested consultations concerns the consistency of various actions of certain member States in support of the participation of their respective member companies in the Airbus consortium.

Since we have not to date received a reply from your authorities to our earlier letter, I would like to take this opportunity to propose that the consultations take place during the week of 22 July, but in any case before 31 July. Were consultations to occur within that time-frame, it would be consistent with the provisions of Article 12:5 of the Subsidies Agreement, which require that a requested Signatory "shall enter into such consultations as quickly as possible." We would, of course, be pleased to consider any other dates within that period that you might suggest.

I would also once again call to your authorities' attention outstanding US requests for information related to the subject of the requested consultation. These requests have been made pursuant to Article 7 of the Subsidies Agreement. A response from your Government to these requests - as required in Article 7:2 - particularly were it in advance of the date set for consultations, would, in our view, contribute to our Governments' ability to reach a mutually satisfactory resolution of our concerns.

I look forward to your early reaction to this message.

Sincerely,

Rufus H. Yerxa (Signed)

ANNEX 3

19 July 1991

Dear Mr. Ambassador,

My authorities have instructed me to reply to your letter of 31 May 1991, in which the Government of the United States requests consultations with the European Community on a matter concerning trade in civil aircraft, and the activities of the European Community and of some of its member States in support of the four partner companies in the European consortium Airbus in particular.

The Community accepts the principle of consultations. Given the nature of the product concerned (aircraft), the Community is, however, of the view that these consultations can only take place under the provisions of Article 8 of the Agreement on Trade in Civil Aircraft (the "Aircraft Agreement"), which is the only multilateral instrument which can fully preserve the procedural and substantive rights and obligations of both the United States and the European Community.

The European Community is ready to enter immediately into bilateral consultations with the United States on the basis of the Aircraft Agreement, with a view to reaching a mutually acceptable solution to this matter, upon receipt of such a request by the United States.

Yours,

Trần Van-Thinh (Signed)

H.E. Rufus Yerxa
Ambassador
United States Trade Representative
Avenue de la Paix 1-3
1202 Geneva

ANNEX 4

25 July 1991

H.E. Tran Van-Think
Ambassador
Delegation of the Commission
of the European Communities
Rue de Vermont 37-39
1202 Geneva

Dear Mr. Ambassador,

Thank you for your letter of 19 July 1991, responding to ours of 31 May, in which we requested consultations under the Subsidies Agreement relating to various activities of the European Community and certain member States in support of the four partner companies in the Airbus consortium. We appreciate the Communities' acceptance of "the principle of consultations" on this important matter. To be clear, however, our request was under Article 12 of the Subsidies Agreement, rather than under the Aircraft Agreement, to which you refer in your recent letter.

Nonetheless, in the interest of reaching a mutually acceptable solution to the substantive matter of subsidies raised in our letter, we are willing to hold consultations provided that they occur immediately, as your letter suggests. We propose meeting on 1 August and/or 2 in Geneva. Our agreeing to hold such consultations is without prejudice to our respective legal positions, or to our right to request conciliation under the Subsidies Agreement at any time after 31 July.

Sincerely,

Rufus H. Yerxa (Signed)