

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Committee on Subsidies and  
Countervailing Measures

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REQUEST FOR CONCILIATION  
UNDER ARTICLE 13:1 OF THE AGREEMENT

Communication from the United States

The following communication, dated 1 March 1982, has been received by the Chairman from the United States Trade Representative.

With reference to the communication of the European Economic Community concerning EEC export subsidies on pasta products, my authorities have asked me to communicate the following points to you.

First, the EEC, as stated in their communication to you, has refused our December 2 request for consultations under Article 12 concerning our complaint that the EEC provides export subsidies on pasta contrary to Article 9. We find no basis whatsoever in the code for refusing such a request for consultations. Article 12:5 provides that upon request for consultations a signatory shall enter into such consultations as quickly as possible. Article 13:1 provides that a signatory may request conciliation thirty days after the date of a request for consultations under Article 12.1, if no mutually acceptable solution has been reached.

We have previously refrained from exercising our rights to request conciliation as from January 2, because we thought consultations under Article 12.1 could help to clarify the issues and might lead to a satisfactory solution on the pasta issue of concern to us. I would note, however, that we received no reply whatsoever from

the Community until January 25, some fifty four days after our request. Noting that the code envisages the possibility of completion of bilateral consultations in thirty days, the procedure of the code cannot work if a party does not even reply to a request for consultation for nearly two months. When this is the case, and the reply to the request for consultations is negative, the code procedures are not just impaired by delays but made impossible.

The Community has explained its refusal to consult on two grounds. They disagree with the interpretation of the code and they state that acceptance of our request "might well have proved prejudicial to the case and might have been wrongly interpreted as a recognition that there were valid grounds for such a consultation." We see no basis for either of these explanations in the code or in the practice of the GATT. Indeed, if these were justifications for refusals to consult, there would seldom be consultations under the GATT or any of the MTN agreements. It is normal that there be differences over the interpretations or application of particular provisions. Further, it is obvious that acceptance of a request for consultations does not in any sense constitute or imply recognition of the validity of any complaint or allegation.

In principle, we see considerable risks to the integrity of the dispute settlement procedures in the Community's request that the Committee discuss the scope of the interpretation of Article 9 in relation to the pasta issue. As noted, the code dispute settlement procedures allow a full and careful examination of differences of interpretation between two signatories. In those procedures, the Committee is first to serve as a conciliatory body. If conciliation does not successfully resolve the dispute, then there is detailed consideration by a panel, and finally the Committee must act on the panel report (assuming there has been no intervening bilateral settlement). In this case, the Community is asking the Committee to discuss the issues of interpretation before any of the contemplated phases of the dispute settlement process. Such discussion can only be prejudicial to the Committee's functions as conciliators and, if necessary, judges of this dispute.

Obviously, the United States does not take the position that the Committee should not discuss interpretations of the provisions of the code. When particular interpretations have been raised in a dispute under the code, however, we believe such discussions should take place in the manner, and in the order, provided in the code's dispute settlement procedures, and not in a manner that would prejudice those procedures.

As the United States has already expressed the above views to the Community and the Community has nevertheless persisted in its present course, we have concluded with regret that there is not further point to seeking bilateral consultations under Article 12.1. We would therefore request, under Article 13.1 that the Committee begin conciliation of this dispute in accordance with Article 17. We would hope that, through the good offices of the Committee, a mutually satisfactory solution of the pasta matter might still be possible.

My authorities would ask that this communication be circulated to the signatories.