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REQUEST FOR ESTABLISHMENT OF A PANEL UNDER ARTICLE 17:3 OF THE SUBSIDIES CODE

Communication from the United States

The following communication, dated 14 February 1991, has been received by the Chairman from the United States Trade Representative.

My authorities have instructed me to request that the Committee establish a panel in accordance with the provisions of Article 17, 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"), to consider a dispute between the United States and the European Communities (the "EC") concerning an export subsidy of the Government of Germany.

On 20 March 1989, the United States requested consultations with the EC under Article 12:1 of the Subsidies Agreement. In response to that request, the US and the EC held consultations on 9-10 May 1989. Following those consultations, the United States held additional discussions with the EC, Germany and other interested member States of the EC to attempt to reach a mutually acceptable solution to this matter. Unfortunately, we were unable to reach such a resolution.

Accordingly, my Government referred the matter to the Committee for conciliation. The Committee met on 31 January 1990, to review the matter.

During the discussion of that matter, the representative of the United States noted that the US had, during the consultations, requested an official description of the exchange rate scheme. The representative of the United States noted that the EC had not provided such information to the United States and reiterated the request. In response to the US statement, the representative of the EC indicated that he did not consider that it would be appropriate to provide this information to the Committee because the Committee was "incompetent" to consider the matter at issue.

On 26 February 1990, the US submitted a written request pursuant to Article 7, paragraph 1 for all information on the nature and extent of any subsidies provided to Airbus, including (but not limited to) the exchange rate insurance scheme that is part of a comprehensive plan of the Government of Germany to facilitate the merger of MBB into Daimler-Benz. We have yet to receive a response from the EC. Pursuant to Article 7, paragraph 2, we call this fact to the attention of the Committee.

Since the Committee undertook conciliation, the United States has continued to attempt to reach a mutually satisfactory solution of this matter through repeated meetings with the EC as well as individual member States. Unfortunately, the United States and the EC have been unable to reach such a solution through the conciliation process. Thus, we have no choice but to request the establishment of a panel in accordance with the provisions of Article 17, paragraph 3 and Article 18 of the Subsidies Agreement.

The basis of our request for the establishment of a panel by the Committee is as follows. My Government remains deeply concerned about the approval by the European Commission and the subsequent implementation by the Government of Germany in 1989 of the export subsidy. The subsidy, which was approved by the Commission on 8 March 1989, is an exchange rate "insurance" scheme that is included as part of a comprehensive plan of the Government of Germany to facilitate the merger of Messerschmitt-Boelkow-Blohm ("MBB") into Daimler-Benz and the financial rescue of MBB and its subsidiary Deutsche Airbus.

After our Article 12:1 consultation, the Government of Germany, despite my Government's strong objections, continued to take steps to implement the exchange rate scheme as part of its Daimler-Benz/MBB merger plan. In particular, on 8 September 1989, Economics Minister, Helmut Haussmann, announced his government's approval of the merger. Similarly, since the Committee undertook conciliation, the German Government distributed in excess of DM 390 million under the guarantee scheme.

Under the insurance scheme, as we understand it, the Government of Germany would provide exchange rate risk insurance through the year 2000, whereby the government would cover most losses deemed attributable to lower actual market rates for the dollar than specified in the plan. We understand that the Government of Germany will charge no premiums for the provision of this "insurance", neither will the Government of Germany charge interest on the funds advanced. The funds for the export subsidy have come directly from the Government of Germany.

In addition, it has also recently become clear that the German programme is more extensive than previously indicated and extends to German component suppliers as well as Deutsche Airbus. The German exchange rate export subsidy alone amounts to an average of approximately \$2.5 million on each plane delivered by Airbus in 1990.

Based on our understanding of the plan, the exchange rate insurance scheme constitutes a prohibited export subsidy in violation of Article 9 of the Subsidies Agreement, with reference to the Illustrative List and, in particular, items (a), (j) and (l) of the List. Item (j) in particular forbids "[t]he provision by governments ... of exchange risk programmes, at premium rates, which are manifestly inadequate to cover the long-term operating costs and losses of the programmes." In our view, the exchange risk programme of the Government of Germany is inconsistent with these provisions of the Subsidies Agreement. Accordingly, the United States requests the establishment of a panel to adjudicate this matter.

Thus, my authorities request that a panel can be constituted according to the provisions of Article 18, paragraph 2, so that it can proceed to adjudicate this matter swiftly.