

GENERAL AGREEMENT ON

RESTRICTED

SCM/97

3 January 1990

TARIFFS AND TRADE

Special Distribution

Committee on Subsidies and
Countervailing Duties

Original: English

REQUEST FOR CONCILIATION UNDER ARTICLE 17:1 OF THE AGREEMENT

Communication from the United States

The following communication has been received by the Chairman from the United States Trade Representative.

My authorities have instructed me to refer to the Committee for conciliation pursuant to Articles 13:1 and 17:1 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 concerning an export subsidy of the Federal Republic of Germany.

On 20 March 1989, the United States requested consultations with the European Communities under Article 12:1 of the Subsidies Code. (The request was circulated as SCM/92.) In response to that request, the United States and the European Communities held consultations on 9-10 May 1989. In addition, the United States has since that time held additional discussions with the European Communities, the Federal Republic of Germany and other interested member States of the Communities to attempt to reach a mutually acceptable solution to this matter. Unfortunately, we have been unable to reach such a resolution.

Thus, my authorities have instructed me to request that the Committee meet to review this matter at an early date. We are hopeful that this additional opportunity for discussion will lead to a resolution of this matter.

The basis of our request for conciliation by the Committee is as follows. My Government remains deeply concerned about the approval by the European Commission earlier this year of the German 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 Federal Republic of Germany to facilitate the merger of Messerschmitt-Boelkow-Blohm ("MBB") into Daimler-Benz and the financial rescue of the MBB subsidiary, Deutsche Airbus.

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Since our Article 12:1 consultation, the Federal Republic of Germany has, despite my government's strong objections, continued to take steps to implement the Daimler-Benz/MBB merger plan, including the exchange rate scheme. In particular, on 8 September 1989, the Federal Republic of Germany's Economics Minister Helmut Haussmann announced his government's approval of the merger.

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

Based on our understanding of the plan, the exchange rate insurance scheme constitutes a direct cash export subsidy in violation of Article 9 of the Subsidies Code, 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 Federal Republic of Germany is inconsistent with these provisions of the Subsidies Code. Accordingly, the United States seeks this opportunity for conciliation.

In light of the upcoming holidays, and in order to allow sufficient time for the Committee to convene and consider this matter thoroughly, we would propose a meeting during the week of 15 January 1990, notwithstanding that this would fall outside the conciliation period specified at Article 17:3. Our willingness to accept that date is, of course, made without prejudice to our rights under Article 17:3 to take any further steps should the matter remain unresolved thereafter.

My authorities ask that the description of the request for conciliation contained above be circulated to the Committee signatories prior to the meeting.