4 March 1992

GERMAN EXCHANGE RATE SCHEME FOR DEUTSCHE AIRBUS

Report by the Panel
(SCM/142)

1. INTRODUCTION

1.1 On 20 March 1989, the United States requested consultations with the European Economic Community ("EEC") under Article 12:1 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement (the "Subsidies Agreement"), regarding an Agreement between the German Government and Deutsche Airbus ("D.A.", the German partner of the Airbus consortium) on exchange rate guarantees in connection with Airbus aircraft programmes. These consultations, held on 9-10 May 1989[1], and additional discussions held subsequently did not result in a mutually acceptable solution to the matter. On 11 December 1989, the United States referred this matter to the Committee on Subsidies and Countervailing Measures (the "Committee") for conciliation pursuant to Articles 13:1 and 17:1 of the Subsidies Agreement (SCM/97). As the conciliation meeting held by the Committee did not lead to a satisfactory adjustment of this matter, the United States, on 14 February 1991, requested the establishment of a panel under Article 18 of the Subsidies Agreement to examine the matter (SCM/108).

1.2 At its meeting on 6 March 1991, the Committee agreed to establish a panel on the matter, and authorized its Chairman to conduct consultations on the terms of reference and composition of the Panel (SCM/M/49).

1.3 At its meeting on 11 April 1991, and in the absence of the parties' agreement on modified terms of reference[2], the Committee decided on the standard terms of reference provided in Article 18:1 of the Subsidies Agreement as follows (SCM/M/50):

Terms of Reference:

"The Panel shall review the facts of the matter referred to the Committee by the United States in SCM/108 and, in light of such facts, shall present to the Committee its findings concerning the rights and obligations of the signatories party to the dispute under the relevant provisions of the General Agreement as interpreted

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Chairman: H.E. Mr. Julio Lacarte-Muró

Members: Mr. Pekka Huhtaniemi
Mr. Peter Hussin

1.5 The Panel met with the parties on 5 June, 17 July and 4 October 1991.

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[1]The EEC considered that these consultations were carried out without prejudice to their legal basis.

[2]Full details of the disagreement concerning modified terms of reference for the Panel are contained in the Minutes of the meeting (SCM/M/50).

2. FACTUAL ASPECTS

2.1 The following are the factual aspects of this dispute as the Panel understands them.

Establishment of the German exchange rate scheme

2.2 On 8 March 1989 the European Commission approved measures proposed by the Federal Republic of Germany regarding the privatization of Messerschmidt-Bölkow-Blohm (MBB) via its merger with Daimler Benz. These measures included the Agreement signed on 24 November 1989 between the Federal Republic of Germany and Deutsche Airbus on Exchange Rate Guarantees for the Airbus Programme (hereinafter referred to as the "scheme") concluded on the basis of the framework agreement between the Federal Republic of Germany, Daimler Benz, Messerschmidt-Bölkow-Blohm and Deutsche Airbus of October/September 1989.

2.3 Subsequently, an additional Agreement was concluded which relates to Paragraph 10 of the original Agreement, concerning possible arrangements for German equipment suppliers to the A320 programme. This additional Agreement was

"From 1 January 1997 compensation for exchange rate losses under the guarantee mechanism shall only be made if DA makes an annual deficit, excluding the amount of any adjustment under the guarantee system. The balance sheet and valuation provisions of the Framework Agreement shall also be taken into account for the purposes of calculating the

Structure and operations of Airbus Industrie

2.6 Airbus Industrie is registered under French law as a "Groupement d'Intérêt Economique" ("G.I.E.") and governed by Ordinance No. 67-821 of 23 September 1967 and Decree No. 68-109 of 2 February 1968. A G.I.E. is a French legal framework which allows its members to carry out collectively certain economic activities while maintaining their separate legal identities, and which does not have as its goal the making of profits. Airbus Industrie has its registered office in Blagnac, France and is comprised of four aerospace companies:

- Aerospatiale Société Nationale Industrielle, a limited company under French law whose registered office is in Paris, France;

- Deutsche Airbus GmbH, a limited liability company whose registered office is in Hamburg, Germany;

- Construcciones Aeronauticas S.A., a limited company under Spanish law whose registered office is in Madrid, Spain; and

- British Aerospace Public Limited Company, a limited liability company whose registered office is in London, England.

2.7 Within the Airbus system, partner companies are involved in all aspects of the business as members, manufacturers and financiers. As members, they take strategic decisions, appoint the directors of Airbus Industrie, approve its general policy and set the administrative and financial rules governing the sharing of risk and profits among the four partners. The sharing of Airbus Industrie's profits and losses among the partners is based on their membership rights. These profits or losses are distributed to the partners in respect of Airbus Industrie's overall activity, and not on a programme-by-programme basis.

2.8 As suppliers, they are committed to deliver to Airbus Industrie specific work packages ("workshares") contracted out to them in dollars under conditions approved by the partners as a whole. Unlike profit participation, the worksharing is defined for each programme. There is de facto a substantial degree of specialization between the partners (British Aerospace is in charge of manufacturing the wings, Deutsche Airbus is responsible for main fuselage sections, Aerospatiale manufactures the cockpit and the central wing box), in order to avoid a costly duplication of heavy industrial investment. While the manufacture of most of the parts of the aircraft is largely carried out directly by the partner companies, a significant proportion of the parts and components for the aircraft is purchased from other suppliers. Amongst the partners and Airbus Industrie and between each individual partner and Airbus Industrie, negotiations take place in respect of each programme, the purpose of which is to define the respective workshares and the transfer price of all aircraft parts and services. The workshare of each of the four partners for an aircraft programme roughly corresponds to the partner's membership rights.

2.9 Airbus Industrie constructs aircraft in the following manner:

- On the basis of planning assumptions which include a given sale price (in US dollars) for the completed aircraft, the four partners decide on the launch of a new aircraft programme.

- They agree among themselves on workshares and on the relative transfer prices, after an elaborate and full assessment of offers from their own companies for parts, components, services, etc. Starting with the A321, tenders from outside companies were also considered for certain sections of the aircraft, additional to the A320 model (from which the A321 is derived). The four partners in turn make their own planning assumptions when they undertake to deliver to Airbus Industrie parts or services for an aircraft programme.

- The subassemblies and components furnished by the four partners are assembled by Aerospatiale in Toulouse (excluding future assembly of the A321 in Hamburg); the aircraft is then flown to Hamburg where cabin fitting is performed and flown back for final reception to Toulouse, which is the point of sale.

2.10 All workshares for the Airbus programmes to which the exchange rate scheme applies, with the exception of the A321 (i.e. the A300, A310, A320, A330 and A340), were decided prior to the entry into force of the scheme. The dates of these decisions coincide with the launch dates for these aircraft programmes and were as follows:

Programme	Launch date/ Workshare decision
A300	1970
A310	1978
A320	1984
A330/340	Spring 1987
A321	2 March 1990

2.11 With regard to transfer prices, these decisions are made in two steps, the first establishing the preliminary transfer price and the second establishing the definitive transfer price. The preliminary transfer price is agreed at the same time as workshare, and is used in the calculation of the expected profitability of a given aircraft programme. The definitive transfer prices are agreed upon after internal negotiation among the partners and between the partners and Airbus Industrie. The dates of these respective decisions were as follows:

	Decision	
Programme	Preliminary transfer price	Definitive transfer price
A300	1974 or 1983 (depending on the specific sub-programme of the A300)	before 1985
A310	1982	before 1985
A320	1984	24 November 1989
A330/340	1987	no decision yet taken

Transfer prices for all currently produced aircraft programmes (i.e. excluding the A330/340 which are not yet produced) had been decided prior to the entry into force of the German exchange rate scheme. Workshares - in terms of the partner's responsibility for a certain aspect of the aircraft's production - remained fixed throughout the life of a given programme with the only exception being the existence of a major

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definitive transfer prices had been very close to the preliminary transfer prices, they could be different, and for the A330 and A340 programmes, the definitive transfer prices remained open. For the A320 programme, the definitive transfer prices were decided after the implementation of the German scheme. The quantities of parts/components to be delivered by the partners is not fixed, due to the fact that the number of aircraft that will be ordered is not known in advance. Each partner takes responsibility for delivering parts/components for a particular aircraft programme over the life of that programme. A price escalation adjustment clause based on an automatic formula is included in the transfer price decisions in order to take account of inflation effects on prices.

2.12 Each partner funds the research and development work in relation to its workshare of an aircraft programme. Airbus Industrie itself has a rôle of planning and co-ordinating the work performed on the aircraft programme by the partner companies and is the sole interface with the client, i.e. the purchaser of the completed aircraft.

2.13 Each partner's workshare is laid down in individual industrial agreements set up between each partner and Airbus Industrie. Under these agreements most supplies are ordered directly by the partners, and each is responsible for buying the equipment and material to be used in manufacturing the parts of the aircraft under its responsibility. For example, Deutsche Airbus is at liberty to subcontract part or all or none of its work to any supplier of its choice. Airbus Industrie is not allowed to order from outside suppliers parts which partners decide to manufacture themselves. Airbus Industrie is responsible for ordering directly from suppliers certain other items which are not included in any partner's workshare (e.g. engines).

2.14 When Airbus Industrie receives delivery of parts/components from the partners, the physical arrival of such parts/components is noted. This act of noting corresponds to the assumption by Airbus Industrie of an "imperfect obligation" fo

2.16 Deutsche Airbus supplies goods and services to Airbus Industrie and to its partners through the Airbus Industrie G.I.E. in accordance with the pre-established workshare. Airbus Industrie takes title - to the extent that it assumes legal liability for any risk involved - to subassemblies and components furnished by the partners when such subassemblies and components leave the respective partners' production facilities en route to Toulouse.

2.17 The partners of the G.I.E. conduct all of their intra-Groupement transactions in US dollars and, in line with general practice on the world market, the completed aircraft are priced in dollars. Deutsche Airbus's production costs are primarily in deutschemarks.

Provision for repayment under the scheme

2.18 The repayment provisions of the scheme vary according to the Airbus programme to which the scheme applies. However, common to all the programmes is the fact that repayment by Deutsche Airbus and by the suppliers covered by the scheme is contingent on the occurrence of specified future events, such as depreciation of the deutschemark and the ensuing exchange rate "gains" for Deutsche Airbus. The scheme establishes no certain time by which repayment must commence, nor any deadline by which repayment must be completed. Amounts disbursed by the Government which have not been repaid by 31 December 2000 will be recovered only in certain circumstances dependent on the DM/dollar exchange rate:

> "The FRG shall move to recover Deutschemark accounting profits on US dollar exchange rates (exchange profit) exceeding
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> - DM 2.00 in the case of the A300, A310 and A320* programmes; and
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> - DM 1.80 in that of the A330 and A340 programmes."
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> Footnote: "*For the purposes of this Agreement A320 is the basic version and the A321 (originally the A320-stretched)."
>
> (Article 1(2) of the Agreement)

> "Exchange rate profits from the A300/310 programmes from 1 January 1997, the A320 programme from the date of delivery of the 652nd aircraft, but not later than from 1 January 1997, and in the case of the A330/340 programme from the date of delivery of the first aircraft, shall result in claims by the FRG for repayment of amounts due to the FRG and equivalent to the payments it made in previous years under the exchange rate guarantee mechanism. Any further exchange rate profits shall result in claims by the FRG up to the percentages to be offset by the FRG pursuant to paragraph 16(1) in the year in which such profits are achieved. Interest shall be charged in accordance with paragraph 1(2) on payments by DA which are deferred up to 31 December 2000 in order to offset them against future exchange rate losses. In the case of the A320 and A330/340 programmes, however, this provision shall be applied up to 31 December 1996 on a specific programme basis.
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> "Any claims for recovery by the Federal Republic of Germany outstanding at 31 December 2000 shall become void on this date."
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> (Article 17 of the Agreement)

> However, even after the year 2000, payments by the Federal Republic of Germany under the scheme
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> "… which have not been offset by exchange rate profits shall be repayable in line with exchange rate movements if recovery claims would have otherwise arisen under the Agreement's rules."

(Article 18(4) of the Agreement)

The Final Provisions section of the Agreement states that

"Facts on which the granting, repayment, claiming, further granting or unaltered retention of the allocation depend shall be taken to be facts relevant to subsidies within the meaning of Paragraph 264 of the StGB. A list of facts relevant to subsidies shall be annexed to this Agreement. In accordance with the

"The German exchange rate insurance programme provides a significant pricing advantage for Airbus products …"

(SCM/92)

"… the US hereby requests information on the nature and extent of any subsidies provided to Airbus, including the exchange rate insurance scheme …"

(SCM/100)

"… the German exchange rate export subsidy alone amounts

in the costs of exported products or of exchange risk programmes, at premium rates, which are manifestly inadequate to cover the long-term operating costs and losses of the programmes."

3.3 The parties to the dispute disagreed as to whether or not the scheme was a subsidy.

3.3.1 The

was known as a "cylinder", whereby exchange risk losses were offset by exchange risk gains within certain exchange rate bands. Such operations were self-financing with zero cost (no premium) to the beneficiary. If such schemes were available through the private capital market in some countries, why should a government not have the right to offer a comparable arrangement? Furthermore, Deutsche Airbus did have an

Mr. Pierson characterized Airbus Industrie's four members as having the double rôle of shareholder and supplier and said that as suppliers, they had to deliver to Airbus Industrie specific work packages contracted out to them.

3.4.2 The EEC replied that transfers between Deutsche Airbus and Airbus Industrie were not sales, let alone export sales. There was therefore no "export transaction" between Deutsche Airbus and Airbus Industrie. Airbus Industrie was a single enterprise, a unique example of industrial co-operation between companies in several member States of the European Economic Community. Airbus Industrie was the instrument through which its four members operated. There existed no mere buyer-seller relationship. The supplier, shareholder and financier rôles of each of the partners were aspects of one and the same relationship between Airbus Industrie and its partners. To contend that where goods crossed from one member State to another, trade remained trade - regardless of the level of integration of the member States and regardless of the fact that the industry involved was totally integrated - was nothing more than language, without any foundation in law. Domestic (i.e. member State) legislation had no relevance to this question. The fact that member States themselves treated intra-EEC trade as imports and exports could have no legal consequences; this practice stemmed from purely bureaucratic decisions related to statistical purposes and had no bearing on the EEC's legal obligations. For example, German import/export statistics for 1989 showed the total turnover of the German aerospace industry to be 2.3 billion ECUs, while total aerospace exports were carried at 4.58 billion ECUs.

3.4.3 The EEC further said that to follow the United States' line of argument - that the dispute concerned alleged "exports" of aircraft fuselages from a German firm to a

both the Community and each member State." Nowhere in the record of this legislation was there any suggestion whatever that the obligations of the EEC member States would not be owed to each other. A derogation from the Subsidies Agreement of that magnitude would havm/F8 11 Tf(would) Tj730at

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3.4.5 The EEC said that contracting parties had implicitly recognized that the EEC shouldered the obligations of the member States under the Subsidies Agreement. The member States were bound, in logic and in law, by the same obligations as the EEC. The EEC was only bound under Article 9 not to grant subsidies on exports to third parties; thus, the member States were bound by exactly the same obligation, i.e. not to grant subsidies on exports to non-EEC countries. Regarding the references by the United States to footnotes to the Subsidies Agreement, Footnote 22 to Article 7, if applied to the EEC, meant that the governments and public bodies of the member States, next to the institutions of the EEC, could be regarded as organs granting subsidies within the meaning of the Subsidies Agreement. This confirmed the fact that the member States and their governments were bound by the Subsidies Agreement disciplines through the EEC, but it said nothing about the scope or nature of the member States' obligations under that Agreement. Footnote 37 to Article 18:3 confirmed the unity of the EEC as a party to the Subsidies Agreement, as it excluded the participation as a panel member - in a dispute settlement panel - of an individual from any member State should the EEC be involved in the dispute. Footnote 39 to Article 19:4 was a simple convenience which had allowed the drafters to avoid making a separate mention of the EEC in the text of the Agreement and which confirmed that the EEC and its institutions were bound by the Subsidies Agreement. The paragraph of Footnote 2 to Item (e) of the Illustrative List referred to by the United States did not have any bearing on the kind of obligations that member States had under the Subsidies Agreement, as the Irish preferential tax measures were illegal under both GATT and EEC law. Regarding Article 8:4(c), the term "third country market" would mean a non-EEC country market, based on the logical implications flowing from the EEC's participation as a signatory to the Subsidies Agreement. This was not just a matter of the EEC's own interpretation of the level of integration the EEC had reached, but something which had been recognized by the other parties contracting with the EEC and in the practice of the GATT, by recognizing the EEC as a de facto or even de jure successor to the obligations and rights of its member States in the field of trade, and especially in the field of subsidies.

3.4.6 The EEC went on to say that the alleged "precedents" which the United States had cited regarding income tax practices maintained by France, Belgium and the Netherlands were not only 15 years old and predated the signing of the Subsidies Agreement, but did not deal explicitly, or even implicitly, with the question raised here; at no time did they address the question of a distinction to be made between a taxation of companies from other member States and from third countries, based on the obligations incumbent on the EEC. Furthermore, by accepting the EEC as sole signatory of the Subsidies Agreement, which fully applied and interpreted the provisions of Articles VI, XVI and XXIII of the General Agreement, the other contracting parties, including the United States, had accepted that the EEC was the entity responsible for full application and interpretation of these GATT Articles.

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3.4.7 The United States replied that, at least for the present, the level of integration of the EEC had not reached the point where imports and exports had ceased to exist as such, and the EEC had offered no substantiation of its arguments to the contrary. National boundaries still counted for something, and most instruments of, at least, fiscal and monetary policy operated according to national laws. If import and export statistics were meaningless, as the EEC had suggested, why were they kept? The G.I.E. legal status of Airbus Industri(practice) TjETBT12 Tm2 Tm/F8 11 Tf(EEC) Tj1 0 0 1 168.24 318 Tm/Fsub

> "… the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories."

The EEC's interpretation of the member States' Subsidies Agreement obligations was incongruous in that, for example, Spain and Portugal, prior to signing the Treaty of Rome, could have had different obligations regarding subsidies vis-à-vis other member States after signing the EEC treaty.

3.5 The United States claimed that the scheme was an export subsidy.

3.5.1 The United States said that the German scheme was designed as a support for Deutsche Airbus's exports of subassemblies to Airbus Industrie and that it operated directly on the export transaction between Deutsche Airbus and Airbus Industrie. Regardless of whether Airbus Industrie was viewed as a foreign purchaser or simply as a conduit, the fact remained that it was Deutsche Airbus's supply of German-produced components and subassemblies for which Deutsche Airbus was subsidized under the scheme. The subsidy was paid directly on the export transaction between Deutsche Airbus and Airbus Industrie or, in the alternative, the subsidy was paid on the supply of German components for incorporation into an aircraft sold to a foreign purchaser. Thus the subsidy operated directly also on export sales of completed aircraft, because it was the share of the aircraft purchase price allocated to Deutsche Airbus that was guaranteed against exchange rate risk. There had been, and were, no domestic sales covered by the scheme, i.e. no sales within Germany of either subassemblies or completed aircraft. Consequently, every transaction covered by the scheme to date was an export transaction.

3.5.2 The EEC replied that the scheme was not export oriented for the following reasons: trade in large civil aircraft was conducted entirely in US dollars, whatever the final destination of the aircraft and whatever the national currency of the seller and buyer; the German scheme covered exchange losses on Deutsche Airbus's share of the revenue stream in US dollars arising from the sale (including on the domestic market) of completed Airbus aircraft; since Airbus Industrie was a consortium of four partners located in four member States of the EEC, and since there was no other independent manufacturer of large civil aircraft in the EEC, its domestic market was the EEC; the scheme did not in any way discriminate between export and domestic sales, either in respect of eligibility for, or extent of, the coverage. The scheme applied to Deutsche Airbus's activities at double arm's length: (a) it was contingent upon sales of Airbus aircraft, not on the individual transfer of parts; and (b) the transfer of parts was totally divorced from the operation of the scheme and could not be encouraged or discouraged by the existence of the scheme. Contrary to what had been suggested by the United States, there was a total lack of causal relationship between exports and the German scheme. Prior to the signing of the scheme in December 1988, the Airbus Industrie partners had already fixed, for all Airbus programmes (except the A321) and for the remainder of the economic life of those programmes, what the workshare to each partner would be, and the precise modalities of all future deliveries. These decisions thus predated the entry into force of the exchange rate scheme. N° production or sales decision by Deutsche Airbus would be affected by this scheme. Furthermore, the scheme would apply in exactly the same way to the A321 programme for which assembly would take place in Hamburg, Germany. In summary, the United States' line of argument would lead to the absurd result that all aircraft subsidies within the EEC were export subsidies and that there was no relevant domestic market. Item (j) of the Illustrative List could not be invoked on the

the United States would have to demonstrate that there was an upstream subsidy on finished aircraft; and (2) the subsidized product and the finished product allegedly affected by the subsidy were not "like" products.

3.5.3 The United States recalled its earlier argument regarding intra-EEC exports and that the "G.I.E." legal status of Airbus Industrie did not exempt the partner countries from normal import/export transactions with each other. Furthermore, there was neither a factual nor a legal basis for the EEC argument that the domestic market was the 12 member States of the EEC. There had been and were to date no "domestic" sales covered by the scheme, and should the German Government decide to expand the scheme's coverage to include, for example, the A321 programme which involved assembly in Hamburg, and should such aircraft assembled in Hamburg be purchased by a German airline, this domestic transaction would not insulate the scheme from challenge as an export subsidy. To permit inclusion of some domestic sales in order to defeat a programme's characterization as an export subsidy would be wholly without support in either the language or the rationale of Item (j), would fail to protect the integrity of the provision and would eviscerate the export subsidy disciplines of the Subsidies Agreement. The dollar denomination of large commercial aircraft sales did not excuse the scheme as a non-prohibited export subsidy. There was no requirement that aircraft be traded in dollars, and it was by no means universally "customary" to buy and sell aircraft components in dollars; Airbus Industrie's "internal" transactions could have been priced in any currency. The EEC argument that the scheme, if it were to be considered a subsidy, could only be prohibited if it were "export oriented" would impose a new requirement not contained in the language of the

price received by Deutsche Airbus which is

it was crucial that all indirect support currently being granted to manufacturers in this sector be m

manifestly inadequate to cover the long-term

the analysis of other Articles of the General Agreement, e.g. Articles III and XIII. Thus, the use of this term in the General Agreement indicates that a good was exported if it moved from the territory of one contracting party to the territory of another contracting party. The Panel then proceeded to examine whether this criterion had been met in the case of the movement of goods from Germany to France.

5.6 The Panel turned first to the text of the Subsidies Agreement. Article 9 refers only to the term "export", and does not specify what might be the relevant border for export subsidy purposes. However, Article 9 was an interpretation of Article XVI:4. Article XVI:4 applied to Germany as a contracting party. The Panel therefore considered that the German national boundary was a relevant border for the purposes of determining an export subsidy under Article XVI of the General Agreement. Since the signatories of the Subsidies Agreement intended to "apply fully and interpret" the General Agreement, they could not have intended to modify the concept of relevant border, which was a key element in the determination of export subsidies. Additionally, a major purpose of the Tokyo Round was to tighten disciplines on non-tariff measures. The Panel therefore considered that it could not have been the intention nor was it the legal right of the signatories of the Subsidies Agreement to authorize export subsidies which were prohibited under the General Agreement. In the absence of any clear indication in the Subsidies Agreement, the Panel could not assume, where a customs union but not its constituent member states had signed the Agreement, that national borders within the customs union were not relevant for the purpose of determining the existence of an export subsidy. The member States of the EEC were today still GATT 11 Tf(German) TjETBT1 0 "export",

of another contracting party, i.e. it had to export. The Panel therefore concluded that the scheme was granted on exports. It also noted that as the scheme applied

consideration for the purpose of determining whether that practice was covered by the Illustrative List. Furthermore, any such test would imply the existence of an agreed definition of export subsidy or of agreed exhaustive criteria which would determine a measure to be an export subsidy. Not only did such agreed definition or criteria not exist, but the drafters of the Agreement made a clear choice not to use any generic definition or criteria but to set forth the coverage in Article 9 by providing a list of measures and practices which were examples of export subsidies.[1] There was therefore no agreed legal basis in the text of Article 9 or in the Illustrative List itself which would allow the Panel to examine any item on the List in the light of the "export orientation" criterion. As to implicit criteria underlying some other items of the Illustrative List, the Panel noted that if a measure was not specifically covered by Items (a) through (k) of the Illustrative List, then it had to be examined in the light of Item (l) and not in the light of other criteria which could be derived from other items in the Illustrative List. In this relation the Panel noted that Item (l) of the Illustrative List did not refer to any such criteria but that it specifically referred to Article XVI:4 which prohibited "any form of subsidy on the export of

6. CONCLUSION

6.1 In light of its findings and reasoning in paragraphs 5.2, 5.3 and 5.8 above, the Panel concluded that the German exchange rate guarantee scheme resulted in a subsidy granted on exports and that the scheme was prohibited in terms of Article 9, as an export subsidy covered by Item (j) of the Illustrative List.

6.2 The Panel recommends that the Committee on Subsidies and Countervailing Measures request that the exchange rate guarantee scheme operated by the Government of Germany with respect to Deutsche Airbus be brought into conformity with the provisions of Article 9 of the Subsidies Agreement.