

# GENERAL AGREEMENT ON

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## TARIFFS AND TRADE

Special distribution

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### Agreement on Trade in Civil Aircraft

#### COMMITTEE ON TRADE IN CIVIL AIRCRAFT

##### Minutes of the Special Meeting held in the Centre William Rappard on 23 July 1987

Chairman: Mr. Ch. Manhusen (Sweden)

#### Review of Articles 4 and 6

1. The Chairman recalled the initial debate on the review of Articles 4 and 6 of the Agreement which had taken place at the special meeting of the Committee on 19 and 20 March 1987. Since then there had been a number of informal consultations which, hopefully, had contributed to narrowing differences of views. It had been agreed that this meeting would be called to see where Signatories stood in the process of consultations. He was pleased to note all Signatories' readiness to continue the discussions, a process which should yield an improved understanding of the matters under discussion.
2. The representative of the United States said that in March 1987 the Committee had agreed to attempt to clarify, on an expeditious basis, Articles 4 and 6 of the Agreement on Trade in Civil Aircraft. At that time the United States had tabled a proposal (AIR/W/63) which contained its interpretations of the two articles. These proposed interpretations were presented in accordance with past practice of the Committee. Delegations would remember that an agreed interpretation of Article 2.1.2 had been adopted on 8 March 1983.
3. Since March 1987 delegations had met informally several times, and as discussions progressed it appeared that a consensus was emerging on the interpretation of Article 4, though several significant differences of opinion still remained. On the other hand, a number of delegations had indicated they had difficulties with the US proposed interpretation of Article 6; he was interested to review, for the record, these positions. He made the following comments on the two articles.
4. In its proposed interpretation of Article 4, the United States had underlined the importance of a deliberate absence of government intervention in the civil aircraft industrial sector. Some delegations had objected to the introduction of words such as "indirect, implicit" and "appearance" as unlikely to clarify the meaning of Article 4. His

delegation remained open to consideration of alternative constructions so long as the basic principle of Article 4 was intact, i.e. that purchasers of civil aircraft (as defined in Article 1.2) should be free to select suppliers on the basis of commercial and technological factors.

5. The US proposal for Article 4 outlined certain types of government intervention to be avoided. One particular word became the focus of extensive discussion: the word "unreasonable" as used in Article 4.2. His delegation was unable to think of any sort of government pressure on airlines or manufacturers which could be termed as "reasonable", so in its proposed interpretation of Article 4.2 his delegation had not used the word "unreasonable" as it seemed to be without application. Some Signatories had objected to the absence of the word, since the presence of current or past government officials on the boards of airlines or manufacturers was a common occurrence in the aircraft industry. These Signatories had felt that the presence of such officials on corporate boards, and their responsibilities as members of such boards, might be construed as inappropriate if the word "unreasonable" were not included in the interpretations. Yet they agreed or seemed to agree with the US view of the principle of Article 4, as expressed earlier, i.e. that purchasers of civil aircraft should be free to select suppliers on the basis of commercial and technological factors. The issue of government officials on airline or manufacturers boards was a special problem worthy of further consideration, as long as it was clear that these board members were not to use their government positions to influence management procurement decisions for reasons other than the commercial and technical advantages of such decisions to the firm. Article 4.2 was an area where there was little disagreement on principle, yet which could benefit from further discussion leading to clarification. His delegation planned to consider ways in which its concerns and those of others could be reflected in an interpretation of Article 4.2.

6. With regard to vendor selection, several delegations had commented on Article 4.3 in a positive way, offering suggestions for improvement of interpretation while generally supporting the principles and standards expressed. These suggestions had been useful and would be carefully considered during his delegation's overall evaluation of the comments made by other delegations.

7. Delegations in general had agreed that Article 4.4 was a strong Article, with clear prohibitions against government inducements. Comments had been useful, particularly those suggesting the possible inclusion of an illustrative list of prohibited inducements. Indeed, it was his understanding that all delegations had agreed that an illustrative list of inducements would be a useful clarification to Article 4. There were several suggestions as to how such a list should be constructed, and these would be carefully considered. He did not believe that this would be a difficult issue to resolve. At the same time there appeared to be continuing differences over whether Article 4.4 applied to so-called political representations. His delegation believed that it did, but others did not.

8. In sum, the informal discussions since last March had indicated that there was a real possibility that interpretative language clarifying Article 4 of the Aircraft Agreement could be agreed to in the near future. There seemed to be three areas where further work was required: (1) how to clarify "unreasonable pressure"; (2) whether political pressures were covered or not by Article 4.4; and (3) the contents of an illustrative but non-exhaustive list of prohibited inducements.

9. The representative of the United States said that Article 6 was, in his view, one of the most important Articles in the Agreement, if not the most important. Indeed the inclusion of Article 6 had been one of the major reasons the United States had signed the Agreement. Unfortunately, it had become clear that the positions of Signatories varied widely as to the meaning of this Article and the nature of the obligations it contained. The United States believed that Article 6 placed obligations on the provision of subsidies and supports in the aircraft sector that were in addition to the obligations of the Subsidies Code. While some other Signatories appeared to believe that the special relationships between governments and their aircraft manufacturing industries justified subsidies and supports in the civil aircraft sector, his delegation believed that reference to these special relationships and special factors in Article 6 in no way were intended to diminish the obligations of Article 6. The US position on Article 6 derived from certain underlying principles that his delegation believed should be readily embraced by all Signatories. First, that subsidies could and did distort the international market place when provided directly to civil aircraft programmes. Second, that the special relationship between aircraft industries and their governments required that extra efforts be made to ensure that civil aircraft programmes were as unaffected as possible by government purchases of goods and services in the aircraft sector.

10. As an example, all governments procured aircraft-related goods and services for their military establishments. This provided a broad business and technology base for the aircraft sector. In the United States the Department of Defence had rules and regulations which required clear separations between military research and production activity and civil programmes, as well as separate accounting requirements. His delegation recognized that there was a synergism between the technologies used in the military and civil aircraft sectors. When an aircraft technology development had been funded by the Department of Defence for application in the defence mission areas, and then was to be used in a civil application, the Department negotiated a recoupment agreement with the manufacturer to obtain a pro rata reimbursement to the United States Government in return for granting the manufacturer the rights to use the identified technology in the civil sector. Conversely, the Department of Defence did not reimburse contractors for military application of commercially developed programmes and technologies.

11. Third, the public money provided to industrial enterprises should be publicly accounted for. Fourth, the government should be the last resort for industrial funding rather than the bank of choice. Fifth, the private

banking and investment community should be primarily responsible for financing industrial enterprises in lieu of government supports. In light of these principles, he made the following statement for the record with respect to the obligations of Article 6:

- (i) the emphasis of Article 6 should clearly be on civil aircraft programmes;
- (ii) the provisions of Article 6 should be read as a coherent functioning whole;
- (iii) the obligations on government supports were supplemental to the obligations with respect to subsidies contained in the GATT and the Subsidies Code and in no way derogated from these other GATT obligations;
- (iv) Articles 6.1 and 6.2 taken together obliged Signatories to provide support only on the basis of commercial considerations. The implication was that Signatories to the Agreement should avoid using subsidies, but not supports, altogether;
- (v) the obligations of Article 6.2 increased as governments provided direct support to civil aircraft programmes;
- (vi) to demonstrate compliance with Article 6, Signatories should provide full transparency of their support of civil aircraft programmes. A fundamental principle running through the GATT and the related Codes was the provision of information to resolve differences. The United States believed that its programmes for military aircraft research and development and procurement were transparent.

12. As the series of informal discussions had proceeded since last March, it had become abundantly clear that many Signatories did not share the US interpretation of Article 6 and based their own positions on Article 6 on adherence to a different set of underlying principles than those articulated above. While there was nothing resembling even an emerging consensus on Article 6 - indeed the positions appeared to be as far apart as when this exercise had begun - at least his delegation had succeeded in developing a profound understanding for the positions of the other Signatories on this article. He supposed that this was a necessary prerequisite to future progress.

13. The US delegation appreciated the time and effort that delegations had put into their consideration of the US proposals for interpretation of both Articles 4 and 6. He would listen closely to the comments of others on their view of where they all stood now in this process.

14. The representative of the EEC said that the process of consultations had been useful; it was even an example to follow in moving toward a consensus on certain key issues and narrowing differences on others. At

an informal meeting in May the EEC had given details of its interpretation of Articles 4 and 6 and subsequently, had circulated, on an informal basis, a number of complementary ideas on the subject. This was a way of providing an informal focus for the bilateral and plurilateral consultations. Work was proceeding on a paper which would contain the Community's official position on the issues of interpretation. He hoped that all Signatories would be persuaded to join this interpretation. In the meantime he wanted to make some remarks on the interpretation of mutual obligations under Article 6 as it stood. The largest divergencies of views were on this Article, yet he believed that the EEC's view was fair and reasonable and borne out by the text. While it was difficult to summarize the EEC position on Article 6 because of its complexity, he nevertheless put forward the EEC view on some of the more important issues of interpretation. An important premise to the Aircraft Agreement was the fact that many Signatories viewed the aircraft sector as a particularly important component of their economic and industrial policy, and Article 6.1 recognized that government supports were widespread in that area. Government support was not defined in the Agreement but it was clear that its meaning was broader than that of subsidies. It should be recognized that Article 6.1 was based on the Preamble and that government supports were not by themselves distortions of trade but could have adverse effects on trade. The Aircraft Agreement was not intended to protect existing market positions; one of its explicit aims was to provide fair and equal opportunities in the civil aircraft sector. There was also an obligation on Signatories, when giving supports, to seek to avoid adverse effects on trade, although there was no presumption that government supports necessarily had adverse effects on trade.

15. The basic principle of Article 6.2 was that pricing of aircraft should be based on a reasonable expectation of the recoupment of all costs. However, there was no operational responsibility for pricing decisions attributed to Signatories; this was the aircraft manufacturers' responsibility. The provisions regarding pricing were not intended to apply to day-to-day pricing of individual transactions.

16. Another important issue in the interpretation was the reference to "special factors" applying to the aircraft sector. This reference implied that questions of evaluation of the existence of injury, nullification or impairment, prejudice, trade distortion, etc. should take into account the special factors applied also to the imposition of countervailing measures.

17. On the issue of transparency the EEC considered that trade distortion was an essential prerequisite for the provision of information on supports. There should be a clear causal link between subsidies and trade distortion before the provisions of Article 7 of the Subsidies Code could be invoked.

18. He also drew attention to the fact that Article 6 was drafted in the late 1970's; the drafters clarified their meaning by giving the Article short and explicit titles: "government supports, export credits and aircraft marketing". Therefore, Article 6.1 was intended to cover

government supports while Article 6.2 was directed at aircraft marketing; the reference to export credits in the title was there for reasons of drafting and was at the time meant to refer to the Annex in the Subsidies Code, in particular to sub-heading (k). Article 6 dealt with two separate issues - government supports and pricing - and any attempt to read the two together to construe further obligations was not appropriate. In support of this interpretation of the obligations of Article 6 the representative of the EEC quoted from a report prepared by the United States International Trade Commission for the US Congress in August 1979 to the effect that the reference in Article 6.1 to "special factors" appeared to lessen the impact of the Subsidies Agreement with respect to trade in civil aircraft; and the reference in Article 6.2 to "reasonable recoupment of all cost" was not as strong as it could be since there was no commitment for the repayment of subsidies. He concluded that the EEC subscribed to this interpretation by the ITC.

19. The representative of Sweden, speaking on behalf of the Nordic countries, said that in principle they welcomed the US initiative to seek improved discipline and transparency in trade in civil aircraft. They also shared the US view that Articles 4 and 6 of the Agreement were vague and thus difficult to interpret and agreed that these matters should be dealt with in the Committee.

20. However, most of the vagueness of the rules concerned was intentional and constituted an integral part of the negotiated balance of the Agreement. It also reflected the very special situation prevailing in the civil aircraft industry and trade relations. Anything beyond rather obvious interpretations of the relevant texts would therefore have to be dealt with in the context of negotiations. The interpretations suggested by the United States went considerably beyond the present wording of the Agreement. The Nordic countries therefore perceived them as an initiative to renegotiate the relevant articles, an exercise they were prepared to undertake.

21. They welcomed this opportunity to formally take stock of where matters stood at the moment. The contributions made, both formally and informally, had been very useful. There were many obscurities in Article 6 which would benefit from greater clarity. As regarded transparency the Nordic countries did not believe there should be a strict link to injury as a prerequisite for information on support measures. It was not necessary to apply a narrow approach in this respect. As for the relation of Article 6 to the Subsidies Code, they were prepared to continue discussions on improved transparency and discipline. Their basic approach was that subsidies otherwise prohibited in the GATT should not, in principle, be tacitly legitimized in the aircraft sector.

22. He underlined the value which the Nordic countries attached to a continued multilateral discussion on these issues. More work was needed in order to cover all aspects, the issues being extremely complex. Without prejudice to any possible solutions, it seemed generally desirable

to work for as simple and transparent a language as possible, whether amending the relevant articles themselves or establishing interpretative notes or recommendations. A balanced solution would also have to comprise all significant aspects of inducements and supports, for example the impact of various kinds of supports related to the military industry, as well as local support activities. Thus, the military dimension should not be forgotten.

23. It seemed to him that the differences of opinion on Article 4 were smaller than those on Article 6. Views on how to elucidate the provisions of Article 4 appeared to be converging. The Nordic countries had supported the elaboration of a non-exhaustive list of inducements which were contrary to the intentions of Article 4.i. They had also suggested that there might be a need for more effective consultation and dispute settlement procedures. Additionally they deemed it important to include best efforts to ensure that local and regional governments and authorities observed Article 4.4. They hoped that substantive work on these elements could start as soon as possible.

24. With regard to Article 4:2 the words "unreasonable pressure" did indeed beg the question of what was reasonable. Attempting such a definition would probably not be practicable or feasible. The Nordic countries had an open mind as to how the language could be strengthened.

25. As indicated at the 27 May 1987 meeting of the Committee, the Nordic countries were prepared to participate in future discussions on these subjects. They hoped to be able to make additional contributions and that other Signatories would approach the discussions in the same manner. A subject which had intrigued them was the question of transparency. They were currently looking into this and hoped to be able to have some preliminary views later this year. So far they had only done some cursory thinking, but even this had shown them that it was an extremely complex subject that would require considerable discussion in order to reach any meaningful conclusion.

26. The representative of Japan said that his delegation recognized the importance of the interpretation of Articles 4 and 6 of the Agreement. In seeking to reach an agreement on interpretation, especially of Article 6, it was necessary to bear in mind the basic concept of the Agreement as described in its Preamble.

27. With regard to Article 4 there had been no agreement on interpretation of the scope of inducements covered in Article 4.4. In light of the discussions at the informal meetings his delegation agreed to continue discussions in an attempt to come up with a non-exhaustive list of inducements.

28. With respect to Article 6, he noted that in view of the Preamble and the third sentence of Article 6.1, not all subsidies were prohibited in the Agreement. The United States proposal was based on the premise that

subsidies were approved only when they were applied under commercial considerations. However, considering the spirit of the Preamble and the third sentence of Article 6.1, his delegation believed that it did not follow that the Agreement prohibited subsidies which did not adversely affect trade.

29. With regard to the transparency issue he said that, as the Agreement itself provided that the provisions of the Subsidies Code applied to trade in civil aircraft, notification was not required beyond the level indicated in Article 7 of the Subsidies Agreement, i.e. for subsidies which increase exports or reduce imports.

30. While further examination should be carried out on the content of notifications, it was his authorities' view that proper protection should be given to proprietary information, trade secrets of companies, etc. His delegation agreed to pursue discussions on the issue of transparency.

31. The representative of Canada welcomed this process of consultations on the interpretation of Articles 4 and 6. His delegation had indicated its view that the US interpretation of these articles went beyond the provisions within the Agreement. This should lead to a process of negotiation for improvements to the Agreement, and his delegation was willing to participate fully in such an exercise.

32. There seemed to be a large convergence of views on Article 4 and a basis for possible agreement appeared to exist. The Committee should consider at an early date starting work to draft an illustrative list of prohibited inducements. His delegation was also prepared to consider language in Article 4.2 concerning "unreasonable pressures" in the context of a package of modifications to the Agreement. On Article 6 he had indicated that there were many basic issues which needed clarification. Issues to be addressed concerned direct and indirect supports, including military and space programmes, special factors, as well as transparency and the modalities of transparency provisions. It seemed to him that early agreement was possible on the clarification of Article 4, but that clarification of Article 6 would require considerably more work.

33. The representative of the United States referred to the EEC's remark on the title of Article 6 and pointed out that one element of the title (Export Credits) was out of context. With reference to the International Trade Commission's view of the Aircraft Agreement, he pointed out that the US administration had also put on record its view of the Agreement at the time, and it differed from that of the International Trade Commission. He noted that this exercise had unfolded in a responsible manner, all Signatories had participated in a co-operative way. Obviously, there were some fairly profound decisions regarding the interpretation of Article 6, but at least his delegation had a better understanding of how other Signatories interpreted the Agreement. At this stage his delegation needed further instructions on how to proceed. All formal and informal comments made would be reviewed in depth, and his delegation would seek the

most enlightened guidance possible from the appropriate authorities in Washington. This argued for a period of reflection but did not rule out rapid resumption of work along the lines of the past several months. He thanked the Chairman for his initiative that allowed the process of consultations to go forward.

34. The representative of the EEC said that he would not make any final statement. He agreed with the United States that a period of reflection was called for and thanked the Chairman and Signatories for their positive spirit in these consultations. He suggested that the Chairman might want to consider taking the initiative of a further meeting of the Committee before the regular meeting in October, should he feel it would be helpful.

35. The Chairman said that this meeting had allowed the Committee to take stock of the situation and that gradually a clearer idea of the areas of convergence and divergence of views was emerging. The prospects were improving for a mutually acceptable interpretation of Article 4. There seemed to be different views with respect to Article 6 but at least the Committee had achieved a better understanding of the various positions. It seemed to him that time was needed for reflection and also to seek further instructions. He noted that all Signatories agreed that the multilateral process of consultations should continue. He therefore suggested that the date for the next meeting be left open; he would consult the interested parties to find the appropriate time, bearing in mind that a further special meeting might be called before the regular meeting of the Committee in October 1987.