

**GENERAL AGREEMENT ON
TARIFFS AND TRADE**

RESTRICTED
AIR/W/71
21 November 1988
Special Distribution

Agreement on trade in Civil Aircraft

**DRAFT MINUTES OF THE MEETING
HELD IN THE CENTRE WILLIAM RAPPARD
ON 9 NOVEMBER 1988**

Chairman: Mr. T. Koda (Japan)

Harmonized System

1. The Chairman said that the purpose of the meeting was to take a decision to complete the item Harmonized System, discussed at the 19 October 1988 meeting of the Committee. He recalled the discussion at that meeting on whether to extend the Protocol (1986) or open a new Protocol (1988). A consensus had emerged to open a new Protocol (1988), provided no objection was recorded with the secretariat within 15 days. On 24 October 1988, a formal objection to opening a new Protocol was recorded with the secretariat. Thus, the consensus arrived at on 19 October 1988 was no longer valid. The Chairman again pointed out that two or three signatories were waiting for a legal instrument to be opened in order to accept it; it was important to reach a consensus and take a decision at this meeting. At the last meeting there had been a majority preference expressed in favour of extending the Protocol (1986) and it was around this preference that he now sought consensus. He asked if there were any objections to extending the date for acceptance of the Protocol (1986).

2. The representative of Sweden said that at the 19 October 1988 meeting he had opposed this solution. He still thought that it was imprudent to take retroactive decisions. However, he would not block a consensus on the matter. Nevertheless, he wanted to place on record that the decision the Committee might take should not serve as a precedent for other retroactive decisions.

3. Mr. Kautzor-Schröder (secretariat) said that the secretariat wished to recall the points which it had made at the last meeting of the Committee and which were recorded in paragraphs 14, 15 and 25 of the Draft Minutes (AIR/W/70). The secretariat continued to hold the view that the retroactive extension of a legal instrument, in this case the Protocol (1986), whose validity had expired some ten months ago, was, to say the least, doubtful from the legal point of view and, in addition created a dangerous precedent for other areas of the GATT. The secretariat was not convinced of the validity of the arguments which had been made by some Signatories against the opening of a new Protocol (1988); it disagreed with the view contained in paragraph 30 of the Draft Minutes of the previous meeting (AIR/W/70) concerning the legal relationship between Signatories which would have signed the Protocol (1988) and those who had signed the Protocol (1986). Following normal practice, he requested this statement to be recorded in the minutes.

4. The representative of the United States said that his delegation did not see the extension of the date of acceptance of the Protocol (1986) as

retroactive in effect as it applied to prospective acceptances, and was explicitly provided for within the text of the Protocol (1986). Therefore, he could not see any adverse precedent being set.

5. The representative of the EEC agreed with the view expressed by the representative of the United States; there was nothing to prevent the Signatories reopening the Protocol (1986), as specifically provided for by the terms of the Protocol itself.

6. The representative of Japan supported the view expressed by the United States and by the EEC.

7. The Chairman said that there was a consensus to extend the date for acceptance of the Protocol (1986) and proposed the adoption of a formal decision, like the one taken on 12 November 1987 (AIR/65). A draft text was before the Committee, with only a date to be added.

8. The representative of the EEC said that the Agreement itself contained no date limiting its acceptance; similarly, the Protocol (1986) should not have a date-limit. He proposed to leave the date open.

9. The representative of Canada said that his authorities had asked exactly the same question and thought that the Protocol did not need a time-limit for acceptance, as the Agreement itself was open indefinitely.

10. The Chairman said that he had asked advance counsel from the Legal Advisor of GATT on whether any legal difficulties would arise from an "indefinite" extension of the Protocol (1986). Mr. Lindén (secretariat) had given the following written response. "I cannot see any legal reasons against an unlimited extension of the period during which the Protocol remains open for acceptance."

11. The representative of the United States said that his delegation supported an indefinite extension; this would avoid future extensions.

12. The representative of Japan said that his authorities also supported an indefinite extension. He pointed out that if the Committee decided on an indefinite extension, the term "time-limit" throughout the text of the decision was not appropriate and should be replaced by the term "date".

13. The Chairman proposed that the term "time-limit" in the decision be replaced by "date", and that the last line should read "Decides to extend the date for acceptance of the said Protocol indefinitely".

14. The Committee adopted the Decision extending the date for the acceptance of the Protocol (1986) indefinitely (AIR/68).