

GENERAL AGREEMENT ON

RESTRICTED

AIR/W/83

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TARIFFS AND TRADE

Special Distribution

Committee on Trade in Civil Aircraft

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COMMUNICATION FROM THE EUROPEAN COMMUNITIES

The following communication, dated 22 April 1991, has been received by the Chairman of the Committee from the Commission of the European Communities.

As part of its proposal to undertake negotiations in the Aircraft Committee with a view to broadening and improving the Agreement (cf AIR/W/79), the Community expressed its readiness to submit a draft interpretative note of Article 4 of the Agreement to the Committee as a basis for negotiations on this subject.

In view of the interest expressed by other Signatories, the Community has prepared the attached proposal.

It is hoped that this text, together with the other suggested negotiating aims, will form the basis for the negotiations which should be undertaken without delay.

PROPOSED INTERPRETATION OF ARTICLE 4 OF THE GATT AGREEMENT ON TRADE IN CIVIL AIRCRAFT BY THE SIGNATORIES TO THE AGREEMENT

Article 4 of the GATT Agreement on Trade in Civil Aircraft ("the Agreement") deals with three specific issues:

- government directed procurement (paragraph 2)
- mandatory sub-contracts (paragraph 3)
- inducements (paragraph 4)

ARTICLE 4.1

This paragraph states the general principle, applicable throughout Article 4, that purchasers of civil aircraft¹ should be free to select suppliers on the basis of commercial and technological factors.

¹For the purposes of this Annex, "civil aircraft" is defined as in Article 1 of the Agreement on Trade in Civil Aircraft.

ARTICLE 4.2 (GOVERNMENT DIRECTED PROCUREMENT)

This paragraph states that "Signatories shall not require airlines, aircraft manufacturers, or other entities engaged in the purchase of civil aircraft, nor exert unreasonable pressure on them, to procure civil aircraft from any particular source, which would create discrimination against suppliers from any Signatory."

This means that Signatories will abstain from imposing preference policies in favour of or against the suppliers of one or more Signatories.

Unreasonable governmental pressure relating to the selection of suppliers by airlines, aircraft manufacturers or other entities engaged in the purchase of civil aircraft ("purchasers") is also prohibited.

Government-industry relationships vary widely among Signatories, a fact recognized in the Preamble of the Agreement. The Signatories agree that the following are not considered as exerting unreasonable pressure:

- the participation of government or former government representatives on the boards of wholly or partly government-owned purchasers, but only if they act in the best commercial interests of the purchaser concerned and do not influence procurement decisions in a manner which creates discrimination against suppliers from any other Signatory;
- government policies concerning safety and environmental considerations.

ARTICLE 4.3 (MANDATORY SUB-CONTRACTS)

The first sentence states that "Signatories agree that the purchase of products covered by this Agreement should be made only on a competitive price, quality and delivery basis".

This means that Signatories will not intervene to obtain favoured treatment for particular firms and that they will refrain from interfering with the selection of vendors in a situation where vendors of different Signatories are competing. Signatories shall not therefore impose conditions requiring sub-contractors or suppliers to be of a particular national origin. Article 4.3 does not permit government mandated offsets.

The second sentence of this paragraph states that "in conjunction with the approval or awarding of procurement contracts for products covered by this Agreement a Signatory may ... require that its qualified firms be provided with access to business opportunities on a competitive basis and on terms no less favourable than those available to the qualified firms of other Signatories". The footnote makes clear that this does not mean that the amount of contracts awarded to the qualified firms of one Signatory entitles the qualified firms of other Signatories to contracts of a similar amount.

This means that a Signatory may, in conjunction with the approval or awarding of procurement contracts to vendors of another Signatory for products covered by the Agreement, require such vendors to admit and consider bids by the qualified firms of the first Signatory, along with bids from other qualified firms, on the basis of competitive price, quality and delivery. Signatories may not require that favoured treatment be given to particular firms and must refrain from interference in the selection of vendors where vendors of different Signatories are competing.

ARTICLE 4.4 (INDUCEMENTS)

This paragraph states that "Signatories agree to avoid attaching inducements of any kind to the sale or purchase of civil aircraft from any particular source which would create discrimination against suppliers from any Signatory".

This means that Signatories will avoid the use of linkages between the sale or purchase of civil aircraft and other decisions or policies which might influence such sale or purchase whenever there is competition between suppliers of Signatories. The following is an agreed illustrative, non-exhaustive list of such prohibited inducements:

- rights and restrictions relating to the airline industry such as landing or route rights;
- general economic programmes and policies, such as import policies, measures aiming at the reduction of bilateral trade imbalances, policies on alien workers or debt rescheduling;
- development assistance programmes and policies, such as grant aid and infrastructure financing; it is understood that the use of development aid for the purchase of civil aircraft does not fall under this category to the extent that the granting of these funds is not conditional on such purchase taking place;
- defence and national security policies and programmes.

ARTICLE 4.2 AND 4.4 (POLITICAL REPRESENTATIONS)

All participants in the domestic political decision-making process should refrain from action, including political representations to other governments or foreign airlines, which would be contrary to Article 4 as interpreted in this annex, and, in particular, to the prohibition of unreasonable pressure and inducements. Signatories shall draw these participants' attention to this interpretation of Article 4. On request, Signatories shall also use their best efforts to dissuade these participants from taking such action.