

GENERAL AGREEMENT ON

RESTRICTED

TARIFFS AND TRADE

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Committee on Trade in Civil Aircraft

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US - EEC AGREEMENT CONCERNING THE
APPLICATION OF THE GATT AGREEMENT
ON TRADE IN CIVIL AIRCRAFT

Questions Submitted to the US
and the EC by the Delegation of Canada

Questions on Multilateralization of EC-US Agreement Concerning the
Application of the GATT Agreement on Trade in Civil Aircraft

Canada fully supports the objective of strengthening multilateral disciplines on government support to the aircraft sector, both through improvements to the existing GATT Agreement and via the Uruguay Round negotiations. The following questions, put forward in a spirit of constructive dialogue, seek clarification of the meaning of the provisions of the EC-US bilateral agreement tabled in the Aircraft Committee meeting of 16 July 1992 and their relationship to the provisions of the draft Final Act of the Uruguay Round negotiations.

Article 1

This Article incorporates Article 4 of the current Civil Aircraft Code into the Agreement. Its interpretations of certain provisions of Article 4 of the Code are, in many ways, helpful advances in tightening disciplines. Nevertheless, some outstanding questions remain.

1. What are "government-mandated offsets"? Which offsets would not be covered by Article 4.3? Is "abstain" equivalent to "a prohibition"?
2. Would this Article prevail over the provisions of the current Government Procurement Code and the proposed Agreement on Procurement in the Uruguay Round?

Article 2

1. What disciplines would apply to Prior Government Commitments?
2. Is there any possibility for roll-backs on existing support programmes?
3. How would de minimus be defined?
4. Will the recent changes to US policy on waiving recoupment be, in effect, grandfathered by this Article?

Article 3

1. Should the term "production support" be defined in the Annex? The definitions of "direct government support" and "indirect government support" provided in the Annex appear to be inclusive of production support.
2. What exactly is meant by "firmly committed"?
3. What recourse is available in cases of violation of prohibition?

Article 4

1. What defines the boundaries of a "civil aircraft programme"? The definition will affect the key variables involved in determining whether the disciplines of the Agreement have been observed, e.g. costs, forecast deliveries, etc.
2. Who should perform the "critical project" appraisal? An independent, qualified third party?
3. Calculations in Article 4.3 are based on delivery performance against forecast levels. What disciplines would exist to ensure that forecast levels are reasonable?
4. How can the terms of this Article be generalized so as to apply equally effectively to support schemes with different pay-back design features?
5. More generally, what is the relation between this Article (and Article 5) and the normal GATT rules on subsidies, including the Agreement on Subsidies in the Uruguay Round (UR)?
 - (a) What are the differences in coverage of the terms "support" and the term "subsidy" as defined in Article 1.1 of the Uruguay Round text on subsidy/countervail?
 - (b) Would disciplines on "support" apply equally to generally-available subsidies?
 - (c) Is the definition of "development support" equivalent to the concept of "assistance to research activities" as defined in Article 8.2(a) (i)-(v) in the UR Text?
 - (d) Would assistance to disadvantaged regions (Article 8.2(b) of the UR text) be equally subject to the disciplines of the Agreement?
 - (e) It would seem that we would lose our access to Serious Prejudice provisions if "support" which displaces our exports in third markets is consistent with this Agreement. Is this intended?

- (f) What remedies would exist for instances where support was provided which breached the terms of this Agreement? Countervail? Serious prejudice? Nullification and impairment?

Article 5

1. How can the terms "unfair advantage" and "distortions" be made operational?
2. The concept of "indirect support" while defined in the Annex, remains too vague:
 - (a) "Identifiable benefits" needs tightening/clarification. For example, Article 5.3 refers to cost reductions and the Annex refers to "financial support". Must both criteria be met for government assistance to become subject to the disciplines?
 - (b) Does "annual commercial turnover" include sales which are government-supported? Sales to governmental entities?
 - (c) In calculating turnover of "any one firm", how will joint ventures and other alliances or independent operating divisions be treated? Disciplines could be easily side-stepped in the event of a merger with a company that has significant non-subsidized sales.
3. Article 5.3 seems to require significant identification/policing activities. How can this be put into practice?
4. It appears from Article 5.3 that the exemption for research whose results are made available on a non-discriminatory basis does not apply if manufacturers are "responsible for, or have early access to, the conduct or results of such research". When does this exemption apply? When the research is conducted by government agencies? When it is carried out by independent research firms.?
5. Would constraints apply on military purchases of civil aircraft for non-military uses? (e.g. re cross-subsidization)

Article 6

Which agencies, state trading enterprises and levels of government would be bound?

Article 7

1. While "government equity infusions" are excluded from the scope of this Agreement, would they continue to be disciplined by the terms of the UR Subsidies Text?

2. What remedy would be available in the event that an equity infusion is found to "undermine the disciplines in the Agreement"?

Article 8

What guidelines would be used to determine whether the provision of information would be contrary to "national security interests"?

Article 9

1. For a multilateral agreement, would not this Article be more along the lines of Article XXV in the Uruguay Round Text? What about the question of compensation?
2. While international rationalization and restructuring may well require some temporary "waiver" procedure, it should be subject to sufficient and appropriate disciplines so as not be abused. For example, would a consensus decision of the signatories be required for the granting of such a waiver?
3. Article 9.1 appears to deny access to derogation in cases of Article 4 support for new aircraft programmes. While this may make sense in the Airbus situation, it may not when applied to products covered by the GATT Agreement (e.g. landing gear).

Article 10

1. Article 10.2 appears to prohibit self-initiation of countervail or anti-dumping proceedings ("action under national trade laws") by signatories. Would signatories be free to launch multilateral complaints regarding export subsidies or serious prejudice?
2. The whole question of remedies for actions inconsistent with the Agreement needs to be revisited. While perhaps suitable as an ultimate sanction in a bilateral agreement, the option of withdrawing from the Agreement would greatly reduce the viability of a multilateral agreement. Many participants in this negotiation attached a great deal of importance to broad membership in a new aircraft agreement. Moreover, a withdrawal option would be difficult to reconcile with Article 12.1, which calls for the use of the general dispute settlement provisions of the Uruguay Round Text in a new aircraft agreement.
3. What would be the role of the Dispute Settlement Body established in the Uruguay Round Final Act text?
4. Would cross-retaliation be allowed?
5. Would there be cross-interpretation with other Uruguay Round agreements in the course of dispute settlement proceedings?

6. If the aircraft negotiations are concluded prior to the coming into force of the Uruguay Round results, what dispute settlement mechanism would be employed during the transition period?
7. What would be the obligations of Parties with respect to practices by sub-national authorities? The current terms of the Civil Aircraft Agreement? The Uruguay Round Text on Article XXIV:12?