GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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Special Distribution

Committee on Trade in Civil Aircraft

MINUTES OF THE MEETING HELD ON 8 OCTOBER 1992

1. Request from the Russian Federation for observer status in the Committee

2. Discussion of the bilateral agreement between the EEC and the United states on subsidies in the large civil aircraft sector

3. Follow-up to the Committee's decision to open negotiations under Article 8.3 of the Agreement

4. Report to the CONTRACTING PARTIES on the activities of the Committee since October 1991

1. Request from the Russian Federation for observer status in the Committee (AIR/W/87)

1. The Chairman drew attention to a request made by the Russian Federation for observer status in the Committee (AIR/W/87). The letter in which this request was made described it as "a further step in examination of the prerequisites for a future accession of the Russian Federation to the General Agreement and the Agreement on Trade in Civil Aircraft." He also drew attention to the decision taken by the GATT Council on 16 May 1990 (C/M/241) to grant the USSR observer status in the Council and of the Council's agreement to review the whole issue of the status of observers and their rights and obligations at the end of 1992.

2. He proposed that the Committee agree to grant observer status to the Russian Federation, notwithstanding paragraph 2 of the Committee's decision of 20 February 1980 (AIR/M/1) on the participation of observers - which specifies participation in the Tokyo Round of trade negotiations as a condition for observership. He recalled that according to the aforementioned decision,

> "Observers may participate in the discussions but decisions shall be taken only by Signatories", and
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> "The Committee may deliberate on confidential matters in special restricted sessions."

3. The Committee so agreed and took note of the statements.

2. Discussion of the bilateral agreement between the EEC and the United States on subsidies in the large civil aircraft sector

4. The Chairman recalled that at the Committee's meeting of 16 July 1992 (AIR/M/32), the EEC and the United States had presented to the Committee the text of their bilateral agreement on subsidies in the large civil aircraft sector, and that members of the Committee had sought clarification of various aspects of the text. Subsequently, the delegations of Japan, Canada and Switzerland had submitted questions in writing (AIR/W/88, 89 and 90 respectively) to the two parties. He understood that the two delegations intended to respond orally to those questions at the present meeting. He suggested that the Committee focus on the questions that were specific to the text of the bilateral agreement, leaving aside for the time being those questions relating to a new multilateral agreement.

5. The representative of the United States said that as with any agreement, parts of the EEC-US agreement would become clear only as time passed and provisions were implemented. However, his delegation would do its best to provide clarification on the points raised. Regarding Article I, he said that the interpretative note (in Annex I of the bilateral agreement) of which Article 1 was comprised, was without prejudice to any signatory's rights and obligations under the existing Article 4 of the Aircraft Code, and had not been intended to substitute for the competence of the Aircraft Committee as the final arbiter of the obligations contained in Article 4. Annex I dealt with the three principle subjects of Article 4: government-directed procurement, mandatory sub-contracts and inducements. He recalled that over the years, the Committee had been unable to reach consensus on where the line of demarcation was between "reasonable" and "unreasonable" government pressure. The bilateral agreement interpreted "unreasonable pressure" quite broadly as discrimination or favouritism. At the same time, certain practices were set out as being "reasonable" - for example, government establishment of safety standards and environmental requirements. Also taken up was the role of government members on the board of directors of aircraft companies or purchasers; as long as these individuals acted in the commercial interest of the entity they represented, this was not considered as unreasonable pressure. The Annex basically restated what was in Article 4.3 of the Aircraft Code. The issue of government-mandated offsets - which covered a range of commercial and industrial compensation practices that were de facto required as a condition of purchase, such as counterpurchase of products, transfer of technology, investment subcontracts, production, etc. - was also taken up in the Annex. However, concessions which were typically offered in transactions on completed aircraft - such as training, provision of spare parts, etc. - were of direct benefit to the airline purchaser and did not have other perceived economic advantages. The bilateral agreement prohibited government-mandated offsets.

6. He responded to further questions as follows: The words "shall abstain" meant a prohibition. Regarding the relationship of this agreement to the existing GATT Government Procurement Code, he noted that the draft new Procurement Code contained a prohibition of offsets, but that this new Code would cover only those entities listed in the Annex to that Code. Regarding inducements, the two parties had agreed on an illustrative list of inducements divided into three categories, and had taken account of the fact that inducements could be both positive and negative. As to questions on the meaning of particular words, he said that the common definitions would apply. The terms "supplier" and "vendor" meant the same thing. No distinction was drawn between suppliers and sub-contractors in the section of the Annex dealing with Article 4.3.

7. The representative of the EEC said that both the US and the EEC had over the years been bombarded with complaints from domestic industry concerning alleged government interference in purchasing policies, both in the domestic and third-country markets. Thus, it had been necessary to make the rules much clearer. This is what had been attempted in the bilateral agreement. The provisions in the Annex contained clarification, restatement and add-ons to Article 4 of the GATT Aircraft Code. For the EEC, the two main additions were the introduction of an outright prohibition of government-mandated sub-contracts, and the expansion, clarification and amplification of what constituted unacceptable government inducements. He said that the Community would like to see the substance of these provisions inserted in the new multilateral aircraft agreement, in whatever form proved best.

8. The representative of Switzerland asked for clarification of the part of the Annex dealing with "Political Representations" and its relation to Article 7 of the Aircraft Code.

9. The representative of the EEC said that the Community felt that this provision should apply all the way up and down the line of authority, at both the federal and sub-federal levels. A parallel to this was found in the subsidies area, where all subsidies, whether federal or local, would be covered.

10. The representative of Canada asked what the intent was of including the last tiré under Article 4.4 - "defence and national security policies and programmes".

11. The representative of the EEC said that the idea was that the government of a party should not provide so-called positive inducements by creating a de facto link between its support for parallel military programmes or military assistance and procurement of civil aircraft.

12. Turning to Article 2 of the bilateral agreement, the representative of the EEC said that since the new substantive disciplines introduced in this Article were such an innovation in terms of rule-making, it was necessary

to wipe the slate clean regarding existing or prior government commitments. This had given rise to several questions of interpretation. In the Community's view, the term government "support" was a much wider notion than "subsidy". The Community did not consider some of the government support provided for the civil aircraft industry to constitute any form of subsidy, to the extent that much, if not all, of this support was required to be reimbursed over a certain period of time in the form, mostly, of royalty payments. Using the term "government support" also obviated any risk of getting into a theoretical debate over what constituted a subsidy. What was important was that the parties had agreed on what should constitute the outer limits of such subsidy or support. Regarding the disciplines that would apply to prior government commitments and the possibility of rolling back such programmes, the text was clear. The parties had agreed that terms and conditions of such support shall not be modified so as to render it more favourable to the recipient; de minimis meant something of small importance as compared with the overall size of the grandfathered support. The term "firm commitment" meant that such grandfathering should cover government support for which the government in question had given an irrevocable promise, in whatever form, to the aircraft manufacturer.

13. The representative of the United States said that the notion of grandfathering related to the disciplines of this particular agreement and had nothing to do with the status of the programmes thus grandfathered, under the GATT or regarding the application of national countervailing duty laws. Regarding recoupment, he said that Article 2 referred to the direct support commitments of governments. The discipline on indirect supports was somewhat different, and there was no commitment on any particular recoupment policy.

14. The representative of Japan asked how prior government commitments could be grandfathered if they were not known beforehand to exist. He asked what the mechanics of such notification would be.

15. The representative of the EEC said that the inclusion of such a clause in a new multilateral agreement would have to be subject to a transparency clause, similar to what was foreseen in the bilateral agreement.

16. The representative of the United States said that there were a number of questions on Article 3 (production support) concerning the relationship to the draft Dunkel text on subsidies, in particular, whether any subsidies allowed under the draft subsidies text would be prohibited under the bilateral agreement. He underlined that GATT obligations would be unaffected by this bilateral agreement; however, by the same token, if the bilateral agreement specified that something was prohibited, it would still be prohibited, even if allowed by the GATT or by the draft subsidies text. For example, production support was prohibited in the bilateral agreement, but not in the draft subsidies text. As to whether or not production support would include research activities, the definition in Annex II basically defined production supports as the kind of supports that were not

development supports; thus, research activities would almost certainly not be included in development support. The definition of production support fell under direct government support. Regarding recourse in cases of violation of the prohibition, there were provisions on consultations to deal with problems with implementation of the agreement. Should these not be successful, recourse lay in the fact that either party could terminate the agreement. In a few instances, there was provision for more rapid termination, for example where consultations under "exceptional circumstances" did not yield satisfactory results. Both parties recognized that this would not be a suitable mechanism in a multilateral agreement, and that there would be a need for an improved dispute settlement mechanism along the lines of that being contemplated in the Uruguay Round.

17. The representative of the EEC said that several of the questions submitted addressed the complex issue of the relationship between this bilateral agreement, the existing Subsidies Agreement and the future aircraft and subsidies agreements, which could more usefully be discussed in the Sub-Committee. While it was true that this bilateral agreement was without prejudice to the existing rights and obligations under GATT, including the existing Aircraft Code, the EEC's position was that a lex specialis should be negotiated to cover all subsidy-related issues in the aircraft sector. Thus, the above questions would have to be addressed specifically and precisely.

18. Regarding the questions on Article 4, he said that in Article 4.1, the term "development" related to what happened after the basic research had been undertaken. However, basic research and applied research activities were covered in Article 5 on indirect support. Article 4.1 covered only direct government support. Regarding the kinds of disciplines that should be applied in the multilateral agreement when the subsidy or support scheme differed from that addressed in Article 4, he said that in the EEC's view, one had to make sure that all subsidy practices were covered, and not just the type of government support covered bilaterally. The basic intention behind the provision in Article 4.1 was that governments should be put in a position of being answerable for support of the launch of programmes which the other party could reasonably demonstrate could be expected to constitute a white elephant type of programme. A "conservative assumption" was one which was not frivolous and was based on serious evidence and forecasts. Regarding the critical project appraisal and who should carry it out, the two parties had decided that this decision would have to made by each party, depending on its institutional set-up; to do otherwise would have been to introduce the notion that a government's executive power could be limited and thus to create constitutional difficulties. Regarding Article 4.2(b), what was meant was the addition of one point to the interest rate. Regarding recourse available should one party exceed the limits set out in Article 4.2, there was nothing more than the consultation and withdrawal provisions. This raised the question of what should be done in the new multilateral agreement.

19. The representative of the United States reiterated that in many cases, a clearer understanding of how these provisions would work and what problems might arise would come as the agreement was implemented. Regarding the terms "unfair advantage" and "distortions" in Article 5.1, these were not precise definitions, but were aimed at dealing with a problem that could arise from indirect supports. The rest of Article 5 was an attempt to make these terms operational. Regarding the definition of "manufacturers", the bilateral agreement would cover the companies associated with Airbus, and on the US side, Boeing and McDonnell Douglas. He clarified that the agreement did not require that the results of R&D would have to be made available on a non-discriminatory basis, but simply that if it were not, it would have to be included in the calculation of identifiable benefits. Any more precise definition of what constituted a non-discriminatory basis and what was needed to demonstrate it would have to emerge from discussions of particular cases. The idea behind the concept of "early access" was that in some cases the indirect support might yield an identifiable benefit to a manufacturer if it was involved very early on in a project and the results of the R&D were not made generally available until some significantly later date. Should these limits be exceeded, the recourse provided was consultations and, ultimately, withdrawal from the agreement. The notion of "identifiable benefit" was a benefit that was concrete and could be quantified, as opposed to more subjective benefits that might flow from, for example, the presence of a large R&D establishment in the country. The term "net of recoupment" meant that any recoupment would be subtracted from the measurement provided. The term "annual commercial turnover" meant the revenue of firms that was attributable to the sale of products covered by the agreement. The figures of three and four per cent in Article 5.2 had emerged from the negotiating process; the higher figure for an individual company reflected the fact that there might be more year-to-year variation in turnover with a particular company, whereas with the industry as a whole one would expect a somewhat lower figure. The agreement required each of the two governments to work with their respective industries to develop the figures and the information called for under its transparency provisions.

20. The representative of the EEC said that regarding the principle of "net of recoupment", the parties were not proposing to introduce any bilateral or multilateral obligation to lay down a specific recoupment régime. Each party was free to decide whether it wanted to recoup such indirect support, the consequence being that if it decided not to recoup, it would reach the established ceiling much faster. The indirect support discipline in Article 5 referred exclusively to the indirect support provided by the government, for example, through government financing of research activities carried out by an individual firm. The fact that the firm itself had undertaken a certain effort in carrying out this research was irrelevant, as it had been paid - by the government - to do it. However, if the research was carried out by an independent research institute and if the results of this research was made available to other parties on a non-discriminatory basis, such support would not necessarily be counted against the three per cent ceiling except if the research was

carried out by a potential beneficiary who thereby got early access to the results, in which case this would be counted against the ceiling. Regarding the question of whether these constraints would apply to military purchases of civil aircraft for non-military uses - and would thus be a constraint on the government's capacity to provide cross-subsidization if, for example, its air force were to procure civil aircraft at advantageous prices - the answer was both yes and no. Governments were free to organize their defence procurement and related policies as they saw fit. The only constraint in the bilateral agreement was that if they decided to provide cross-subsidization through this means and if they hit the three or four per cent ceiling, that would be a breach of the agreement. However, that breach would be constituted by a whole series of government actions.

21. The representative of the United States said that regarding the calculation of identifiable benefits, there had to be a linkage in that such benefits were defined in terms of the identifiable reduction in the cost of large civil aircraft.

22. The representative of the EEC said that regarding Article 6, all competent government departments or agencies were bound by this particular provision. Regarding the reference to the Large Aircraft Sector Understanding of the OECD, he suggested that non-members of the OECD could nevertheless, if such a provision were included in the new aircraft agreement, agree to abide by its rules. However, the most important part of this Article was contained in the first three lines.

23. Turning to Article 7, the representative of the United States said that remedies would be the same as those described earlier. He reiterated that the bilateral agreement did not affect any existing Subsidies Code obligations. The notion behind this provision was that if a party believed that equity infusions had been made which were undermining the agreement, it would have to enter into consultations and make a judgment on the basis of the facts of the case. Other questions received reflected a concern that in a multilateral agreement there would have to be a stronger discipline on equity infusions. The United States shared this concern.

24. Turning to Article 8, the representative of the EEC said that a new aircraft agreement would need to provide transparency with regard not only to the type of support that had been granted in programme-specific fashion by the European countries, but also to any other forms of support. Regarding the interpretation of the term "essential security interests" in Article 8.12, the intent had been to use language identical to that of GATT Article XXI.

25. The representative Japan asked what the scope of the information to be provided would be. One easy distinction might be general support and specific support, but this could be discussed later in the Sub-Committee.

26. The representative of the EEC said that it would be important not to put the cart before the horse in these matters. Transparency should be taken up once there was basic agreement on the basic provisions. In the Community's view, whatever was covered by a substantive discipline in the new multilateral agreement should be covered by a corresponding transparency provision.

27. Turning to Article 9, the representative of the United States said that the terms "financial viability" and "commercial viability" meant the same thing. It was correct that there was no maximum duration of specific measures under this Article; however, Article 9.3(a) provided that any specific measures taken under exceptional circumstances should be limited in scope and duration to the extent strictly necessary to remedy the difficulty. The phrase "possible implications for other large civil aircraft manufacturers" was a concept similar to that of "adverse effects" in the Aircraft Code and Subsidies Code; however, Article 9.3(c) said that Parties shall take due account of the possible implications for other large civil aircraft manufacturers and shall avoid depressing prices on the market by producing aircraft for which there is no firm order. This was a specific and precise injunction to the parties to take that factor into account in their behaviour. It was correct that the derogation provided in Article 9.1 could not be invoked with regard to disciplines on the launch of new civil aircraft programmes. Regarding the conditions and procedures required in order to derogate from the disciplines of the agreement, these were spelled out clearly in Article 9.

28. Turning to Article 10, the representative of the EEC said that most of what was contained in this Article had been agreed upon only for the specific bilateral context, with the exception of the general thrust which was to avoid trade conflict. Both parties had reiterated that the conclusion of this bilateral agreement did not detract from their respective rights and obligations under the existing GATT. The intention in concluding this bilateral agreement had been to eliminate the tensions which had existed for several years in this sector between the US and the EEC, and to preclude further disputes between the two parties pending the conclusion of the Uruguay Round and the negotiation of a new multilateral civil aircraft agreement. The bilateral agreement had been concluded in the expectation that disciplines of a similar character would be negotiated and agreed upon multilaterally. It was the Community's strongly held wish that the new GATT aircraft agreement would be sufficiently comprehensive so as to avoid all the uncertainty and disagreement of the past with respect to the proper locus for dispute settlement in this area. Should this objective be achieved, all other detailed questions concerning the relationship of the bilateral agreement and a new multilateral agreement would become moot.

29. The representative of the United States said that Article 10.2 would not affect any party's rights under the GATT, and that the United States would still be free to have recourse to countervailing and anti-dumping actions. However, as the EEC had said, the intention in signing this

agreement was to have a mechanism that could be used to resolve disputes in this area. He noted that a footnote to Article 10.1 specified that dumping was not a matter covered by the agreement and thus was not covered by Article 10. He noted that in Article 12, the parties proposed that the improved dispute settlement provisions agreed in the Uruguay Round be used to resolve disputes and the implementation of a new aircraft agreement, and this was what the United States hoped to achieve.

30. The Chairman thanked the EEC and the United States for their explanation of the bilateral text. This exercise illustrated one of the prime roles of the GATT, which was to ensure transparency. The discussion that had just taken place would provide useful preparation for the upcoming effort to negotiate a new multilateral agreement.

31. The Committee took note of the statements.

3. Follow-up to the Committee's decision to open negotiations under Article 8.3 of the Agreement

32. The Chairman recalled that at the Committee's most recent meeting on 16 July 1992, the Committee decided to open negotiations under Article 8.3 of the Agreement with a view to broadening and improving the Agreement on the basis of mutual reciprocity. The Committee also decided on the procedures (AIR/M/32, pages 11-12) for the conduct of such negotiations, which included the establishment of a Sub-Committee in which the negotiations would be conducted. The Sub-Committee would hold its first meeting that afternoon. It would report regularly to the members of the full Committee on developments in the negotiations in the form of a note on the meeting prepared by the secretary of the Sub-Committee.

33. He also recalled that the Committee had decided that participation in the Sub-Committee be open to signatories and to non-signatories interested in this matter. The Airgram convening the Sub-Committee (GATT/AIR/3353) requested contracting parties interested in participating to inform him, as Chairman, accordingly. He had been notified by the following signatories and non-signatories of their wish to be members of the Sub-Committee:

Australia
Austria
Belgium
Brazil
Canada
Commission of the European Communities
Czechoslovakia
Denmark
Egypt
Finland
France
Germany
Greece
Ireland
Israel
Italy
Japan
Luxembourg
Netherlands
Norway
Poland
Portugal
Romania
Spain
Sweden
Switzerland
United Kingdom
United States

34. The representative of the United States proposed that membership in the Sub-Committee be open also to interested non-contracting parties having observer status in the Committee and those in a formal process of acceding to the GATT.[1]

35. The Committee so agreed and took note of the statements.

4. Report to the CONTRACTING PARTIES on the activities of the Committee since October 1991

36. The Chairman recalled that the Committee had an obligation under Article 8.2 of the Agreement to inform the CONTRACTING PARTIES of developments under the Agreement during the year. To facilitate this work, the secretariat had prepared a draft report which could be used as a basis of work.

37. The Committee adopted its twelfth report to the CONTRACTING PARTIES, contained in document L/7101.

[1]Subsequent to the meeting, the delegation of the Russian Federation indicated its interest in participating in the work of the Sub-Committee.