

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

AIR/RN/1

24 November 1992

Special Distribution

Original: English

Sub-Committee of the Committee
on Trade in Civil Aircraft

ELEMENTS OF THE FRAMEWORK FOR NEGOTIATIONS

Communication from the European Community

At the meeting of the Committee on 8 October 1992, the Chairman suggested that Signatories prepare for distribution to other participants in the negotiations an outline of the structure and contents of the new GATT Agreement on Trade in Civil Aircraft. The Community welcomed this suggestion and has prepared the attached draft outline which, it is hoped, together with contributions from other Signatories, will help focus and accelerate the negotiating process. The ideas expressed in this draft outline are of a preliminary character, the more so that no discussion of the substantive content of such an agreement has yet taken place, bilaterally or in the GATT. The Community therefore intends, in the light of the draft outlines which will be presented by other Signatories and following discussion thereof in the Committee, to prepare a revised version of this paper. As will be explained later in this note and in the attached outline, there is yet a further reason for insisting on the preliminary nature of this draft: in many respects the draft outline draws on the Draft Subsidy Agreement of December 1991 (MTN.TNC/W/FA). In circumstances where the Uruguay Round negotiations, including the negotiations on the new Subsidy Agreement have not yet been finalized, all references to the Draft Subsidy Agreement should be taken as being only illustrative of the type of provisions that the Community would like to see appear in those instances where it is suggested to transpose the corresponding Subsidy Agreement provisions into the new GATT Agreement on Trade in civil Aircraft. It follows that all suggestions regarding such a transposition of parts of the Draft Subsidy Agreement will have to be reviewed upon the completion of the Uruguay Round negotiation.

The draft outline presented here is intended to create a lex specialis. The Community proposes to establish one single GATT legal instrument which should include all relevant substantive and procedural provisions concerning government support and subsidies to the civil aircraft sector. A provision should also be inserted in the Uruguay Round Agreement on Subsidies and Countervailing Measures to the effect that the new Subsidy Agreement does not, as concerns the Signatories of the new Aircraft Agreement, apply to aircraft as defined in the 1979 Agreement on Trade in Civil Aircraft, and that all subsidy rules applicable to the Signatories of the new Aircraft Agreement are, with respect to this sector to be found in the new Agreement on Trade in Civil Aircraft.

It is proposed to transpose virtually all substantive provisions from the Bilateral Agreement into the new GATT Agreement with respect to the new government support régime applicable to large civil aircraft. The EC/US Bilateral Agreement on Trade in Large Civil Aircraft does, however, only provide incomplete guidance for the purpose of establishing a fully comprehensive agreement. For example, the Bilateral Agreement only contains disciplines on programme-specific direct and indirect support, leaving unresolved the question of what disciplines should apply to other forms of government support or subsidy. On dispute settlement it only contains consultation and withdrawal provisions. These lacunae have to be filled.

In order to construct a comprehensive agreement, it would seem useful to draw to the largest extent possible on work already undertaken in the Uruguay Round, provided, of course, that this would be applicable to the civil aircraft sector. The attached draft outline therefore combines the substantive disciplines drawn from the EC/US bilateral with a number of substantive and procedural provisions drawn from the Draft Subsidy Agreement. As indicated above, this possible transposition of provisions from the Draft Subsidy Agreement must be subjected to further scrutiny in the light of the definitive outcome of the Uruguay Round negotiations on subsidies. It is also proposed that the provisions on dispute settlement follow those to be agreed upon in the Uruguay Round. The Community will also wish to review the institutional aspects of this outline in the light of the outcome of the discussions on the MTO.

Finally, the draft outline also incorporates the market access provisions of the 1979 Agreement on Trade in Civil Aircraft in respect of which no substantive modifications are proposed but only a number of clarifications, including in particular an interpretative note to Article 4 of the 1979 Agreement.

As this is a draft, preliminary outline, subject to review during negotiations in the Committee and upon the completion of the Uruguay Round, we have not yet undertaken the "micro-editing" which would be necessary to ensure the definitive transposition of the provisions drawn from the EC/US Bilateral Agreement or from the Draft Subsidy Agreement text.

Summary of the Main Features of the Draft Agreement

The draft outline below may, because of its comparative novelty, represent certain difficulties of the analysis. To facilitate the discussions of the Committee, following please find a brief summary of the salient features of the subsidy-related provisions of this draft outline:

All aircraft, as defined in the 1979 Agreement, would be covered by the government support and subsidy provisions. Since it is expected that most government support in this area will remain programme-specific, direct or indirect, it is suggested to transpose the corresponding provisions of the EC/US Bilateral, to apply to large civil aircraft, and their engines

and parts, with certain differences for large aircraft engines. No specific proposals are yet made with respect to programme-specific support for small and medium-sized aircraft and their engines and parts. Different economic characteristics apply to these categories of civil aircraft and this suggests that disciplines different from those of the EC/US Bilateral Agreement should apply. The Community will, taking into account the discussion which will take place in the Committee on these issues, prepare and present its proposals concerning such special régimes.

Disciplines on subsidies of a non-programme-specific character could follow the basic approach suggested in the Draft Subsidy Agreement and would apply to all aircraft:

Certain subsidies should be prohibited and it is suggested that the list of prohibited subsidies contained in the Draft Subsidy Agreement text be combined with a more precise prohibition of "production" subsidies. The latter is already contained in the EC/US Bilateral Agreement, but is too vague.

It is also thought necessary to include a definition of actionable subsidies. Some of the provisions of Article 6 of the Draft Subsidy Agreement are inapplicable to this sector. It is therefore proposed to include under the heading of serious prejudice a non-exhaustive list of criteria which may guide governments when defining the existence of serious prejudice.

The heading of non-actionable government support and subsidies includes in particular government support provided in accordance with the disciplines on direct programme-specific government support as defined above (e.g. for large civil aircraft, disciplines similar to those of the EC/US Bilateral), as well as government support to disadvantaged regions on which the provisions are drawn from the Draft Subsidy Agreement.

It is suggested that the Draft Subsidy Agreement text provisions on countervailing measures be transposed. A clause on prior government commitments similar to that included in the Bilateral Agreement should be inserted, as should a provision on exceptional circumstances. Transparency and notification requirements could be drawn from the Draft Subsidy Agreement.

DRAFT OUTLINE OF A NEW GATT AGREEMENT ON
TRADE IN CIVIL AIRCRAFT

Abbreviations

- "1979 ATCA" = 1979 GATT Agreement on Trade in Civil Aircraft
- "EC/US Bilateral" = Agreement between the US and the EC concerning the application of the GATT Agreement on Trade in Civil Aircraft to Trade in Large Civil Aircraft, 17 July 1992.
- "Draft Subsidy Agreement" = Draft Agreement on Subsidies and Countervailing Duties contained in MTN.TNC/W/FA of December 1991.
- "New ATCA" = New Agreement on Trade in Civil Aircraft, to be negotiated.
- "Aircraft" = Unless otherwise specified, the term "aircraft" includes all civil aircraft, civil aircraft engines and their parts and components, all other parts, components, and sub-assemblies of civil aircraft and all ground flight simulators and their parts and components.

PREAMBLE

Article 1 PRODUCT COVERAGE = 1979 ATCA, Article 1

SECTION I. MARKET ACCESS

Article 2 CUSTOMS DUTIES AND OTHER CHARGES = 1979 ATCA, Article 2 (but with a new date)

(The Community is examining the possibility of clarifying this provision in order to overcome certain difficulties of implementation at the level of customs authorities).

Article 3 TECHNICAL BARRIERS TO TRADE = 1979 ATCA, Article 3 (but to include a reference rather to the New Agreement on Technical Barriers to trade to be concluded at the end of the Uruguay Round.) (The Community is examining the possibility of clarifying this provision, in particular to overcome obstacles encountered with respect to the certification of foreign repair facilities.)

Article 4 GOVERNMENT-DIRECTED PROCUREMENT, MANDATORY SUB-CONTRACTS AND INDUCEMENTS = 1979 ATCA, Article 4, to which would be appended Annex I of EC/US Bilateral (containing the agreed interpretation of this Article.) (Alternatively, Article 4 could be completely redrafted so as to incorporate directly the agreed interpretation.)

Article 5 TRADE RESTRICTIONS = 1979 ATCA, Article 5.

SECTION II - GOVERNMENT SUPPORT, SUBSIDIES AND COUNTERVAILING MEASURES

Insert into the Uruguay Round Agreement on Subsidies and Countervailing Measures a provision to the effect that this Agreement does not, as concerns the Signatories of the new Aircraft Agreement, apply to aircraft as defined in the 1979 ATCA (and in the New ATCA), and that all relevant subsidy rules applicable to these Signatories are in this sector, to be found in the New ATCA. (CPs not Signatories of the new Aircraft Agreement will, with respect to the aircraft sector, be bound by the new Subsidy Agreement.)

GENERAL

Article 6 The parties to the present Agreement shall conform with the following provisions on government support, subsidies and countervailing measures with respect to the products covered by Article 1. All disputes relating to government support, subsidies and countervailing measures concerning these products shall be governed by the relevant provisions of this Agreement.

Article 7 Definition of a Subsidy = Draft Subsidy Agreement, Article 1.

Article 8 Definition of Direct and Indirect Programme-Specific Government Support = EC/US Bilateral, Annex II, points 5 and 6.

Article 9 Specificity = Draft Subsidy Agreement, Article 2.

PROHIBITED SUBSIDIES

Article 10 Prohibition = Draft Subsidy Agreement, Article 3. Furthermore, should also be prohibited subsidies to reduce production costs of civil aircraft manufacturers (such production costs should be defined more precisely by way of an illustrative list).

Article 11 Remedies = Draft Subsidy Agreement, Article 4.

DIRECT PROGRAMME-SPECIFIC DEVELOPMENT SUPPORT

- Article 12 For large civil aircraft, their engines and all other products covered by Article 1 used for such aircraft - transpose here the provisions of the EC/US Bilateral, Article 4, except that such engines should be subject to a longer reimbursement period and not to the discipline contained in Article 4.3 (shape of the reimbursement profile).
- Article 13 Medium and small aircraft and their engines and parts. No specific proposals are yet made with respect to programme-specific support for small and medium-sized aircraft and their engines and parts. Different economic characteristics apply to these categories of civil aircraft and this suggests that disciplines different from those of the EC/US Bilateral Agreement should apply. The Community will, taking into account the discussion which will take place in the Committee on these issues, prepare and present its proposals concerning such special régimes.

INDIRECT GOVERNMENT SUPPORT

- Article 14 EC/US Bilateral, Article 5, to be applied to all aircraft.

ACTIONABLE SUBSIDIES

- Article 15 Trade Effects - Draft Subsidy Agreement, Article 5.
- Article 16 Serious prejudice in the sense of Article 15 (above) may arise in any case where one or several of the following apply:
- (a) the effect of the subsidy is significantly to displace or impede the imports of like product into the market of the subsidizing signatory;
 - (b) the effect of the subsidy is to significantly displace or impede the exports of like product of another signatory from a third country market;
 - (c) the effect of the subsidy is a significant price undercutting by the subsidized products as compared with the price of a like product of another signatory in the same market, leading to significant price suppression, price depression or lost sales in the same market.

Article 17 Provision of Relevant Information - Draft Subsidy Agreement, Article 6, point 6.

Article 18 bis Remedies - Draft Subsidy Agreement, Article 7.

NON-ACTIONABLE SUBSIDIES AND GOVERNMENT SUPPORT

Article 19 Non-Actionable Government Support and Subsidies

1. Signatories agree that the following shall be considered as non-actionable:
 - (a) subsidies which are not specific, within the meaning of Article 9 (specificity);
 - (b) subsidies which are specific within the meaning of Article 9, but which meet all of the conditions provided for in paragraph II below.
2. Notwithstanding the provisions of Articles 15-18 (Actionable Subsidies) and Articles 21-34 (Countervailing Measures), the following government support or subsidies shall be non-actionable.
 - (a) government support provided in accordance with the provisions of Articles 12 and 13 above;
 - (b) Assistance to Disadvantaged Regions - Draft Subsidy Agreement, Article 8:2(b).

Article 20 Notification, Review Procedure = Draft Subsidy Agreement, Articles 8:3, 8:4 and 8:5.

Article 20 bis Authorized Remedies and Consultations = The possible transposition of Article 9 of the Draft Subsidy Agreement with respect to Assistance to Disadvantaged Regions (cf. Article 19(2)(b) above) should be examined in the light of the outcome of the Uruguay Round negotiations on this provision.

COUNTERVAILING MEASURES

Articles 21 through 34 Articles 10 through 23 of the Draft Subsidy Agreement.

EXISTING GOVERNMENT SUPPORT

Article 35 EC/US Bilateral, Article 2 (but replace the phrase "not subject to the provision of this Agreement" by "not actionable or countervailable").

NOTIFICATION AND SURVEILLANCE

Article 36 Notification - Draft Subsidy Agreement, Article 25 (adding the words "government support or" before the word "subsidy" whenever the latter occurs in that Article. This notification requirement should also include an obligation to notify government indirect support.

Article 37 Surveillance - Draft Subsidy Agreement, Article 26.

TEMPORARY DEROGATIONS IN EXCEPTIONAL CIRCUMSTANCES

Article 38 EC/US Bilateral Agreement, Article 9, paragraphs 1, 2 and 3 (with drafting changes rendered necessary by the difference between a bilateral agreement and a multilateral agreement, including, for example, the fact that notice of intent to have recourse to this provision should be provided to the Committee to be established under the New Agreement).

SECTION III

COMMITTEE, CONSULTATIONS, DISPUTE SETTLEMENT

Article 39 Committee, Consultations - Combine 1979 ATCA, Article 8, paragraphs 1 through 6 with Article 11 of the EC/US Bilateral Agreement.

Article 40 Avoidance of Trade Conflict and Litigation - EC/US Bilateral Agreement, Article 10 (but delete reference to termination in paragraph 3).

Article 41 Dispute Settlement - Transpose the final results agreed upon in the Uruguay Round into this Agreement. Modify accordingly (if necessary) relevant procedural provisions transposed from Draft Subsidy Agreement on subsidies.

SECTION IV, FINAL PROVISIONS

Article 42 Acceptance and Accession - 1979 ATCA, Article 9, point 1.

Article 43 Reservations - 1979 ATCA, Article 9, point 2.

- Article 44 Entry into Force - pro memoriam
- Article 45 National Legislation - 1979 ATCA, Article 9, point 4.
- Article 46 Amendments - 1979 ATCA, Article 9, point 5.
- Article 47 Withdrawal - 1979 ATCA, Article 9, point 6.
- Article 48 Non-Application - 1979 ATCA, Article 9, point 7.

ANNEXES

- Annexes I through V Draft Subsidy Agreement, Annexes I, II, III, V, VI.
- Annex VI Definition of Total Development Cost - EC/US Bilateral Agreement, Annex II, point 3.
- Annex VII Government Directed Procurement, Mandatory Sub-Contracts and Inducements - EC/US Bilateral Agreement, Annex I.
- Annex VIII Product Coverage, List of Products, etc. - insert here 1979 ATCA Annex, as amended by the 1986 Protocol.