

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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Committee on Trade in Civil Aircraft

MINUTES OF THE MEETING
OF THE COMMITTEE HELD ON
21 OCTOBER 1994

Chairman: Mr. M. Abdel-Fattah (Egypt)

	<u>Page</u>
1. Adoption of Agenda	1
2. Proposed technical revisions to the 1979 Agreement on Trade in Civil Aircraft	1
3. Decision required by Appendix 1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes Annexed to the WTO Agreement	5

1. Adoption of Agenda

1. The Chairman noted that the agenda for the present meeting was contained in GATT/AIR/3632.

2. Proposed technical revisions to the 1979 Agreement on Trade in Civil Aircraft

2. The Chairman drew attention to document AIR/W/96 which had been circulated to all Signatories on 18 March 1994. He recalled that the Note introducing this document had referred to a need to make certain technical revisions in the text of the 1979 Agreement on Trade in Civil Aircraft in order for this text to fit properly into Annex 4 to the Agreement Establishing the World Trade Organization as a Plurilateral Trade Agreement. The Note explained the proposed exercise and included a draft text, containing suggested technical revisions, of the 1979 Agreement on Trade in Civil Aircraft and of the Annex on Product Coverage. He also recalled that on 5 June and 15 July 1994 an unnumbered Airgram had been circulated inviting Signatories to communicate in writing any suggestions or changes they wished to propose on the draft Protocol contained in AIR/W/96.

3. He said that most of the delegations present had recognized that it would be desirable to make the necessary technical rectifications to the 1979 Agreement as soon as reasonably possible. In order to help achieve this goal, he proposed that the Committee go through the text of the draft Protocol amending the Agreement (in document AIR/W/96) on a paragraph-by-paragraph basis, so that each Signatory could propose any modifications it felt necessary to the text, and the Secretariat could indicate any additional changes of a technical nature that it felt were necessary.

4. He expressed the hope that the Committee could informally agree on the text of the Protocol at the present meeting. He proposed that the Committee also review a draft decision of the Committee that he had circulated in the meeting room that morning. The intent was to have the Secretariat prepare a revised text of the draft Protocol in AIR/W/96 that would incorporate the additional changes agreed

at the present meeting and which would be submitted to Signatories as soon as possible for final review. Translations in French and Spanish would be provided as promptly as possible. He emphasized that as many delegations might not have authority to take a formal decision adopting the revised text at the present meeting, he was seeking only an informal agreement that this revised text be submitted to capitals for review. He would then convene another meeting of the Committee for the purpose of formally adopting the revised text of the Protocol as well as the decision he had circulated in draft form. The Secretariat would subsequently prepare the Protocol in final form for signature.

5. The Chairman then proposed that the Committee begin the exercise of going through the text of the draft Protocol contained in AIR/W/96 paragraph-by paragraph.

6. The representative of the United States suggested that a date or year should be included in the title of the Protocol in order to distinguish it from other Protocols to the Agreement on Trade in Civil Aircraft.

7. The Secretariat suggested that in the third paragraph after the title, the word "insure" be changed to "ensure".

8. The representative of the United States suggested the following change in the tenth recital of the Preamble: replace "General Agreement on Tariffs and Trade, hereinafter referred to as 'the GATT', and under other multilateral agreements negotiated under the auspices of the GATT" with "Agreement Establishing the World Trade Organization, including the Agreements and associated legal instruments in Annexes 1, 2 and 3 and the other Agreements and associated legal instruments in Annex 4 which a Party has accepted (hereinafter referred to as 'MTAs and PTAs')".

9. The representative of Japan asked for clarification of the change suggested by the United States.

10. The Secretariat said that as currently drafted in the tenth recital, some countries which were not parties to certain plurilateral trade agreements might be recognizing their obligations under Agreements to which they were not parties. The US formulation made it clear that a country was only recognizing its obligations under a plurilateral trade agreement to the extent that it had accepted that Agreement. However, one additional change to the US formulation should be made to reflect the fact that Annexes 1, 2 and 3 refer to the Multilateral Trade Agreements, and that Annex 4 refers to the Plurilateral Trade Agreements. Thus, the text should read "... in Annexes 1, 2 and 3 (hereinafter referred to as 'the Multilateral Trade Agreements') and ... in Annex 4 (hereinafter referred to as 'the Plurilateral Trade Agreements')".

11. The representative of Canada recalled that his delegation had made a proposal in AIR/W/97 for a technical revision to the 1979 Aircraft Agreement which was to expand the product coverage in the Annex to include ground maintenance simulators. Canada hoped that in Article 1 of the Agreement, entitled "Product Coverage", this change would somehow be reflected.

12. The Chairman asked Canada to propose specific language for Article 1.

13. The representative of Canada said that his delegation was not proposing any changes to the wording in Article 1 but merely the addition to the Annex of the item identified as ground maintenance simulators for which Canada had provided the Harmonized System numbering in its submission. Nevertheless, Article 1 might be amended to include an additional category that would include all ground maintenance simulators, as the latter did not appear to be covered by Article 1 in its current form.

14. The representative of the European Union said that his delegation would not object to the proposal to include the item in question in the Annex, provided all other elements were accepted by all other participants.
15. The Chairman suggested that Canada's proposal be put on hold for the moment.
16. The representative of the United States proposed the following change in Article 2.1.3: replace "GATT Schedules" with "Schedule annexed to the Marrakesh Protocol".
17. The representative of Japan asked, with regard to Article 2.1.3, whether as a result of the proposed change, there would be any additional requirements or obligations on countries which were already Signatories to the 1979 Aircraft Agreement. He said that his delegation would like to confirm that the words "for it" in this Article would clarify this situation.
18. The Secretariat said that since any country which was a Signatory to the 1979 Aircraft Agreement had already made certain tariff commitments regarding the products covered under Article 1, the intent of the Secretariat's proposal in Article 2.1.3 was not to change anything but simply to refer to the relevant updated Schedule. In addition, it was suggested that points 13 and 14 in AIR/W/96 be combined so that point 13, regarding Article 2.1.3, read: "Delete 'by 1 January 1980, or'."
19. The representative of the United States proposed the following changes: in Article 3.1 to add, after "Agreement on Technical Barriers to Trade", the words "contained in Annex 1A to the Agreement Establishing the World Trade Organization"; in Article 5.1 to replace "GATT", in both places where it appears, with "Multilateral Trade Agreements"; in Article 5.2 to replace "GATT" with "Multilateral Trade Agreements". He went on to say that regarding Article 6.1, his delegation had proposed some new language which it was withdrawing in light of the Chairman's efforts to deal with this matter differently.
20. The Secretariat suggested that for consistency, the reference in Article 6.1 to the Agreement on Subsidies and Countervailing Measures should include the phrase "contained in Annex 1A" to the Agreement Establishing the World Trade Organization.
21. The representative of the United States said that taking into account the considerable discussion on Article 6.1, his delegation proposed that the second sentence of Article 6.1 be redrafted as follows: "They affirm that in their participation in, or support of, civil aircraft programmes no Party should cause adverse effects on trade in civil aircraft in the sense of the Agreement on Subsidies and Countervailing Measures."
22. The representative of Romania suggested that in Article 8.2, a different formulation was perhaps needed to replace "CONTRACTING PARTIES to the GATT".
23. The representative of the United States suggested that the correct reference in Article 8.2 would be "General Council of the World Trade Organization". Regarding Article 8.7, the phrase "GATT or under instruments multilaterally negotiated under the auspices of the GATT" should be replaced with "Multilateral and Plurilateral Trade Agreements"; and the phrase "GATT and such instruments" should be replaced with "Multilateral and Plurilateral Trade Agreements".
24. The representative of Japan asked whether the two phrases in Article 3.7 which the United States was proposing be replaced with other language referred to the same thing.
25. The Chairman said that this was correct.

26. The representative of the European Union proposed that in the footnote to Article 9.3.1, the word "Economic" be deleted.

27. The Secretariat suggested that following Article 9.11.1, a new Article be inserted as follows:
"9.12 Authentic Texts

9.12.1 This text is authentic in the English, French and Spanish languages". This change was intended to reflect the decision of the Committee taken in March of 1987 that the text of the Agreement in Spanish contained in document AIR/61/Rev.1 was an authentic text. Other proposed changes that related to this change were the following: in the final paragraph of the text of the Agreement, delete "in a single copy, in the English and French languages, each text being authentic, except as otherwise specified with respect to the various lists in the Annex"; and in the first paragraph of the Protocol following the suggested changes to the Annex, add a new paragraph as follows: "The Parties recall their Decision of 25 March 1987 (BISD 34S/217) in which they agreed that the Spanish text of the Agreement on Trade in Civil Aircraft, reproduced in the Annex to the document AIR/61/Rev.1, shall be considered authentic."

28. The representative of Canada recalled that his delegation had made a proposal to add ground maintenance simulators, HS Code ex 9023.00, to the Annex on Product Coverage. It was his understanding that the Committee would revert to this proposal at the end of the discussion under this agenda item.

29. The Secretariat proposed that the paragraph beginning "This Protocol shall be open for acceptance, ..." should be redrafted as follows: at the end of the first sentence, delete the word "until", replace the comma with a period, and insert "The Protocol shall remain open for acceptance by those Signatories for a period of two years following". This change was proposed in order to have the period during which the Protocol would remain open for acceptance track with the period provided for in the Agreement Establishing the World Trade Organization.

30. With regard to the paragraph beginning "This Protocol shall enter into force ...", the Secretariat proposed that the text be reformulated in order to make clear that the Protocol could not enter into force for a Signatory until two conditions had been met: (1) it had accepted the Protocol, and (2) the Agreement Establishing the World Trade Organization had entered into force for it. Thus, it was proposed that the paragraph read as follows: "This Protocol shall enter into force with respect to a particular Signatory with effect from the later of (a) the date of acceptance of the Protocol by that Signatory, and (b) the date of entry into force of the Agreement Establishing the World Trade Organization for that Signatory."

31. The Committee adopted the proposed technical revisions and agreed that they should be incorporated in a revised text for review in capitals.

32. The Chairman then turned to the draft decision of the Committee which he had circulated at the meeting.

33. The representative of the United States said that his delegation much appreciated the Chairman's efforts in trying to solve the difficulties of a number of delegations, and could accept the decision proposed. However, the United States wanted to state for the record that, as the Chairman had made clear from the outset, the negotiation of this Protocol had been merely a technical exercise and did not affect the substantive rights and obligations under either the Agreement on Subsidies and Countervailing Measures annexed to the WTO Agreement or the Agreement on Trade in Civil Aircraft. Furthermore, with respect to paragraph 1, it was the United States' understanding that the conclusion of this Protocol was completely neutral with respect to the matter of Article 8.3 negotiations. While

it did not represent completion of those negotiations, neither did it imply any commitment to continue them.

34. The representative of Canada said that his delegation had no objection in principle to agreeing to a statement that reflected what Canada understood to be an existing obligation that all Signatories to the Agreement had under Article 8.3, nor to a statement that reflected Canada's understanding of the meaning of the aircraft-related footnotes in the Subsidies Agreement. Canada also agreed in principle that the Subsidies Agreement did not take precedence over the Aircraft Agreement. However, Canada hoped that its final acceptance of such a decision to update the Agreement would be part of a package that would include the specific technical suggestions that his delegation had made previously.

35. The representative of the European Union also thanked the Chairman for his efforts, and asked the Secretariat to explain the legal significance of presenting this decision as a decision of the Signatories to the Agreement in connection with the conclusion of the Protocol amending the Agreement. He asked whether in legal terms this would be tantamount to this decision being part and parcel of the revised Aircraft Agreement.

36. The Secretariat explained the reference to "a decision in connexion with the conclusion of the Protocol Amending the Agreement" in terms of the provisions on treaty interpretation of the Vienna Convention on the Law of Treaties. Under Article 31 of the Vienna Convention, a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. Under the Vienna Convention, the first item of context to be considered in interpreting the terms of the treaty was any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty. The intention was that the decision proposed by the Chairman would represent such an agreement relating to the treaty, i.e. the Protocol, which was made between all the parties in connection with the treaty, i.e. the Protocol, so that any interpretation of the Aircraft Agreement as amended would be done in the context of this decision.

37. The representative of the European Union said that his delegation would either accept or reject the draft decision as it stood, and would not nitpick either now or in future. It was on that understanding that he assumed that the decision would be attached to the Protocol in some way. In response to the US statement, he said that the decision to pursue the negotiations had been taken on 16 July 1992 on the basis of Article 8.3 of the Agreement. Until the Committee decided to do otherwise, that decision to continue the negotiations would remain in effect.

38. The Chairman proposed that the Committee take note of the statements, agree to the draft decision, and agree to include ground maintenance simulators in the Annex on Product Coverage.

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

"Other Business"

3. Decision required by Appendix 1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes Annexed to the WTO Agreement

39. The representative of the European Union recalled that the submission which his delegation had circulated in the Sub-Committee on 20 October included a proposal regarding the decision required by Appendix 1 of the Dispute Settlement Understanding (DSU). In the EU's view, Articles 8.6 and 8.7 of the Aircraft Agreement constituted provisions of that Agreement which had to do with dispute

prevention. Whether in the strict legal sense of the term these provisions should be included in Appendix 2 was perhaps debatable. However, his delegation believed that all would agree that dispute prevention was a good thing, and perhaps even more important than the dispute settlement that might follow. For this reason the EU hoped that the Committee could agree to adopt the proposed decision.

40. The representative of Canada said that when this item had been discussed previously in the Committee, his delegation had said that it did not see Articles 8.6 and 8.7 as dispute settlement provisions *per se*, but rather Committee provisions. In Canada's view no provisions of the Aircraft Agreement should be included in Appendix 2 of the DSU.

41. The Chairman noted that the Minutes of the meetings at which this matter had been discussed were contained in documents AIR/M/34 and 36.

42. The representative of the United States said that his delegation questioned the need for a decision along the lines proposed by the EU, and in particular did not agree that Articles 8.6 and 8.7 were special dispute settlement rules as foreseen under Appendix 1; his delegation therefore felt that it would not be appropriate to notify these provisions as proposed.

43. The representative of the European Union said that a decision seemed to be necessary one way or the other. If there was no consensus on the EU's informal proposal, his delegation understood that the reason was that others did not consider that the omission of a reference to these two provisions in Articles 8.6 and 8.7 would modify Signatories' respective rights and obligations and that, put differently, this omission in the context of the DSU in no way affected the continued applicability and operation of these two provisions.

44. The Chairman said he understood that what the EU was proposing was that there be a simple decision stating that the DSU applies to the Aircraft Agreement and that this did not detract from what was in Articles 8.6 and 8.7. He suggested that one way to do this would be a statement from the Chairman.

45. The representative of the United States said that he would have no immediate objection to the Chairman's idea. As the text clearly stated these two provisions and parties would obviously have recourse to them, some formulation along the lines proposed might be acceptable. He understood that what was behind the EU's informal proposal was the need to notify the Dispute Settlement Body that the Aircraft Agreement was a covered Agreement. He asked whether a decision to that effect was necessary or whether this could be taken care of by the Chairman through, for example, a letter.

46. The Secretariat said that it would appear from the text of the DSU that it would be desirable, for the sake of clarity, that there be a decision that the DSU applied to the Agreement as amended. It would be possible to have a decision that simply said that the DSU applied to the Agreement on Trade in Civil Aircraft as amended by the Protocol (1994). That decision could be accompanied by a statement, made by the Chairman at the time the decision was adopted, with respect to the continued applicability of Articles 8.6 and 8.7 of the Aircraft Agreement.

47. The Chairman said that the Secretariat would circulate a document which would incorporate all of the agreed technical changes and the draft decision circulated at the meeting. He would convene a meeting of the Committee on 10 November in order to formally approve the Protocol and the draft decision. The Secretariat would also circulate a draft decision on the application of the DSU to the Aircraft Agreement and a text of his proposed statement on the continued applicability of Articles 8.6 and 8.7.

48. The Committee took note of the statements.