

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## Agreement on Trade in Civil Aircraft

### COMMITTEE ON TRADE IN CIVIL AIRCRAFT

#### Minutes of the Meeting held in the Centre William Rappard on 10 October 1984

Chairman: Mr. B. Côté (Canada)

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#### 1. Progress Report of the Technical Sub-Committee - Harmonized System - Conversion of Annex

1. The Chairman recalled that in March 1984 the Committee had asked the Technical Sub-Committee to transpose the new Annex into Harmonized System and to examine methods of incorporating aircraft concessions in GATT Schedules and national tariffs. He invited the Chairman of the Technical Sub-Committee to make a progress report on the work done to date.

2. The Chairman of the Technical Sub-Committee Mr. J. Schraven (Federal Republic of Germany) said that the Technical Sub-Committee had met twice to undertake this particular task, on 17 and 18 July and on 8 and 9 October 1984. On transposition of the Annex into Harmonized System the Technical Sub-Committee had made considerable headway, and was currently working on a draft list of items in Harmonized System. However, there was much work to be done still. Areas of difficulty had arisen such as: differences of product coverage between the current CCCN, TSUS and CTS lists in the Annex. The Technical Sub-Committee was not attempting to settle the question of whether to aim at maximum or minimum coverage, but it was working to establish a list in Harmonized System which should indicate minimum

common coverage and maximum partial coverage. There were also some general problems of interpretation of Harmonized System classification for which some members of the Technical Sub-Committee had suggested that clarification might be sought from the Interim Harmonized System Committee of the Customs Co-operation Council in Brussels.

3. On the questions of methods of incorporating aircraft concessions in the Harmonized System in GATT Schedules and national tariffs, the Technical Sub-Committee had heard the views of Japan (contained in document AIR/TSC/W/58) on how to reflect aircraft concessions in GATT Schedules and national tariffs and proposing a Committee decision on the matter. Views had been expressed in the Technical Sub-Committee to the effect that the method of incorporating aircraft concessions in GATT Schedules involved legal matters beyond the jurisdiction of the Aircraft Committee such as the status of loose-leaf schedules and obligations under the Convention on the Harmonized System. Concerning incorporation of aircraft concessions in national tariffs, the Sub-Committee had felt that there were a number of valid methods to do so and that Signatories were free to choose whatever method suited them, provided it ensured full transparency and was able to provide the comparable and compatible aircraft trade statistics requested by the Committee.

4. He added that the Technical Sub-Committee would meet again in January 1985 and would make a further progress report to the Committee at its next meeting.

5. The representative of Japan referred to his authorities' proposal in document AIR/TSC/W/58. He emphasized that each Signatory should be free to choose whatever method suited him provided it was reasonable, that it provided appropriate transparency, and that it avoided unnecessary complexity. His authorities preferred the first method described on page 4, which consisted of putting an asterisk to each corresponding tariff item, leaving the full description to an annex in the schedule. In his view this method avoided unnecessary complications. He hoped that the Technical Sub-Committee would continue to examine the matter.

6. The representative of the EEC recalled the Community's view there were not only two methods of incorporating aircraft tariff concessions but probably many; the important fact was not the method per se but whether it fulfilled the conditions of clarity and transparency, both in GATT Schedules and in national tariffs, and whether it was able to yield the trade statistics which had been requested by the Committee. Any method that met these conditions was acceptable. The second method described in the Japanese paper, which did not require asterisks referring to an annex in the GATT Schedule or in the national tariff, was not complex or difficult as the Japanese authorities seemed to think. It was not the number of tariff positions that made for complexity. Of paramount importance was the clarity of the tariff schedule or the GATT Schedule.

7. The representative of the United States stressed the importance of the Technical Sub-Committee's work on Harmonized System and the need for it to keep pace with the overall work programme of the Harmonized System exercise. It was his understanding that discussions on national conversions were scheduled to begin in December 1984 and continue through early 1985. In

support of that time-table it seemed desirable that the Technical Sub-Committee complete its work in time for the full Committee to review the proposed new Harmonized System Aircraft Annex at its next meeting. Because of the substantial differences between the Harmonized System and those nomenclatures currently in use, there would be a number of policy questions to discuss at the next meeting, including product coverage of the Annex and questions of interpretation of the nomenclature. With regard to the Japanese proposal concerning incorporation of aircraft concessions in national tariff schedules and in GATT Schedules, he said that there were several ways that this could be done. The appropriateness of any method was dependent on the extent to which that method provided for full transparency and the ability to collect comparable trade statistics. He drew a distinction between incorporating concessions in national tariff schedules and in GATT Schedules; there was considerable work going on in the context of the loose-leaf exercise, and he expected that there would be additional discussions of ways to reflect Harmonized System obligations in GATT Schedules. He suggested that the Japanese proposal be considered during these discussions. In his view the work and decisions of the Aircraft Committee should be consistent with the decisions made in the context of the overall Harmonized System negotiations.

8. The representative of the EEC said that a general problem of scope of the coverage had emerged in the Technical Sub-Committee, for which it needed Committee guidelines. The conversion of the Aircraft Annex was a limited exercise of transposition into Harmonized System and did not aim further. However, as there were three different Lists, in three different nomenclatures in the current Annex, the coverage was not identical. When transposing into Harmonized System, should the Technical Sub-Committee aim for maximum coverage, minimum coverage or somewhere in between, within the limits set by the Headnote?

9. The Chairman noted that more work needed to be done in the Technical Sub-Committee and invited delegations to give priority to this exercise. He also noted that the next meeting of the Technical Sub-Committee would be held on 14 and 15 January 1985. Regarding the questions raised in the paper by Japan (AIR/TSC/W/58) on the methods of incorporating aircraft tariff concessions in GATT Schedules and national tariffs, he concluded that Signatories considered that there were a number of different methods possible and that they would all be valid, provided they ensured transparency and were able to deliver the trade statistics on civil aircraft that were required. He added the Committee would have to address the question of maximum or minimum product coverage in Harmonized System.

## 2. Implementation of New Annex - Signatories' Progress Reports

10. The Chairman drew attention to document AIR/48 of 28 September 1984 containing the Draft Third Certification of Modifications and Rectifications of the Annex with entry into force on 1 January 1985. This document had been issued on 28 September to allow three months for objections before 1 January 1985, pursuant to the adopted procedures (AIR/41). He recalled that at the last meeting (AIR/M/12, page 8) Signatories having completed their internal procedures had been invited to send a letter to the secretariat for the information of other Signatories. To date two such letters had been received, one from Japan on 18 May 1984 (AIR/46), and the other from Austria, on 24 September 1984 (AIR/49).

11. The representative of Canada said that the Canadian tariff legislation to implement the extended Annex had initially been tabled in the Canadian Parliament in February 1984. This proposed legislation, which was expected to be reviewed by the new Government shortly, would need to be reintroduced in Parliament before the end of the year so that it could take effect on 1 January 1985. However, there was an alternative course: the Government had delegated legislative authority under Section 11 of the Customs Tariff to make reductions in duties by an Order in Council to give compensation for tariff concessions granted by other countries. The Canadian authorities thus would have no problem in meeting the implementation date of 1 January 1985. The secretariat would be informed as soon as action was taken.
12. The representative of the EEC said that their internal procedures were under way and the Council of Ministers was expected to take a decision within some ten days; this would be published in the Official Journal in November. Thus the European Communities would be on schedule for implementation on 1 January 1985.
13. The representative of the United States said that it had been his delegation's hope that it could inform the Committee that Congress had completed action; however, final action was still pending. While his authorities did not anticipate any problems in the passage of the bill containing the new Annex it could not second-guess the US Congress. His delegation would be in a position to know definitively within a few days, to which should be added a two week period within which the President could veto the bill. In the unlikely event that action would not be completed, his delegation would have to indicate to the Committee before the end of the year that the United States could not proceed with the implementation by 1 January 1985.
14. The delegation of Sweden said that all the products contained in the extended Annex were already duty free in Sweden under the end-use system or on an m.f.n. basis. Implementation was therefore only a formality. There was no difficulty in meeting the implementation date of 1 January 1985.
15. The representative of Norway said that the implementation of the new Annex was also on schedule in Norway. The products concerned were included in a bill presented to Parliament, which was expected to take a decision in November. His authorities did not expect any difficulty in meeting the implementation date of 1 January 1985.
16. The representative of Romania said that there was no change as far as Romania was concerned from the situation which was reflected in AIR/M/12; approval procedures had been initiated and his delegation would inform the secretariat as soon as they were completed.
17. The representative of Japan recalled that the Japanese situation had been made quite clear in document AIR/46; Japan was prepared to implement the new Annex on 1 January 1985. Referring to the procedures for the certification contained in document AIR/48, which provided a three-month period during which objections could be raised, he asked what would happen to the certification should there be an objection delaying the three-month period beyond 1 January 1985. Would the certification still be effective for some countries at that date? He invited the Committee to consider the establishment of new procedures in addition to those contained in AIR/41.

18. The Chairman said that he presumed that any objections raised would be of a strictly technical nature and could probably be corrected within the three months. A more serious problem would be raised if there were an impossibility of one Signatory to implement the new Annex by the date of 1 January 1985. In such a case, the Committee would have to convene to discuss the problem and stop the clock temporarily and arrive at a new date of entry into force. Concerning the procedures contained in document AIR/41 the experience gained in extending the Annex showed that maybe some improvement was needed. He invited delegations to make suggestions and said that he was prepared to put the matter on the agenda of one of the future meetings of the Committee.

3. Matters under Article 4.4

19. The Chairman drew attention to document AIR/47 which had been submitted by the delegation of the United States.

20. The representative of the United States recalled that some six years had passed since the Agreement on Trade in Civil Aircraft had been negotiated. His authorities were of the opinion that a discussion of the interpretation of certain articles in the Agreement would be useful now, both for the current members of the Committee and for future participants. He recalled that Article 4.4 provided that "governments should 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". When that Article had been negotiated it had been decided not to delineate an illustrative list of prohibited inducements so that Signatories would not be restricted in their interpretation of such a list. But in the absence of an illustrative list, his authorities felt that other Signatories, by virtue of their actions, had interpreted Article 4.4 and thus its scope in a manner significantly different from the US interpretation. Examples, by no means exhaustive, of what had been intended by the United States negotiators comprised linkage of aircraft sales to any of the following political and/or unrelated economic considerations: bilateral development assistance; landing rights, route rights; loan conditions on non-aircraft projects; overall bilateral trade balance; agricultural import policies; existing quota régimes for unrelated products; grant aid; airport and infrastructure financing; policies on alien workers; government conducted barter; debt re-scheduling. This was by no means an exhaustive list of trade practices considered by the United States as contrary to the letter and spirit of Article 4.4.

21. In his authorities' view Article 4.4 was designed to preclude the offer of inducements of a type that only a government could make; and he submitted for the Committee's consideration his authorities' interpretation that mixed credits/tied aid were such a prohibited inducement. He noted that the aircraft sector had traditionally been free of mixed credits and commercially oriented concessional financing that had become characteristic of other capital goods sectors. However, over the past year there had been an alarming use of mixed credits/concessional aid for a number of aircraft sales. This was unfortunate. It was not his delegation's intention to single out particular countries that had used concessional financing for aircraft exports, but rather to use those incidents to build toward a consensus that such financing was in fact an inducement. If his delegation

had singled out aircraft, despite the fact that financing agreements for aircraft did not presently prohibit mixed credit/tied aid, it was because that sector was unique in that it was the only one where there was a GATT Agreement that specifies that aircraft sales will be made on a commercial basis. In general the United States Government was opposed to the use of mixed credits and concessional financing used for commercial advantage. Its priority in the OECD Export Credits Group was to secure agreement on improved discipline over the use of mixed credits and tied aid for commercially-oriented sales in the belief that such financing distorted normal trade patterns as well as aid flows. In fact OECD countries had already agreed to prohibit mixed credits in the recently negotiated Nuclear Financing Agreement.

22. Consistent with this overall policy, his authorities objected to the use of mixed credits/tied aid for civil aircraft purchases. Such financing distorted normal competitive factors, subordinating price and technology considerations to the terms of the financing package. His delegation viewed such financing as a discriminatory inducement, not permitted under Article 4.4. The Signatories to the GATT Agreement on Trade in Civil Aircraft shared a common interest in ensuring that aircraft sales were made on a commercial basis. A consensus of views that mixed credits were a prohibited inducement would be of benefit to all.

23. The representative of Japan said that he had listened with interest to the examples of inducements under Article 4.4 cited by the United States delegation. The particular question of mixed credits/tied aid was a matter of wide implication, not only for the aircraft sector, but for financing policies in general. Basically it was a matter for discussion in the framework of the OECD, which was already involved in the question. However, his authorities did not preclude a general discussion in the Aircraft Committee, where the matter should be addressed in due course.

24. The representative of Canada said that he shared the concerns expressed by the United States on the use of mixed credits/tied aid. Discussions within the OECD on export financing for aircraft could make matter progress; however, he did not preclude discussion in this Committee. The Canadian aircraft industry had expressed concern over the financing terms of certain Signatories in the past, and his authorities supported the idea of arriving at an international arrangement on the matter, which should also provide rules for interest rates applied in export financing of aircraft sales. He hoped that the work underway in the OECD and discussions in this Committee could lead to a solution; it was not in the interest of Signatories to have their treasuries competing against each other.

25. The representative of the EEC said that the Community did not share the United States interpretation of Article 4.4 which in their view did not include mixed credits/tied aid. The Community shared the view expressed by the delegation of Japan that other fora, such as the OECD, were more appropriate to discuss this matter. He pointed out that this Committee was not equipped to discuss such financial questions. Until such time as changes would be made in the OECD agreements, mixed credits remained normal and legal practice.

26. The representative of the United States said that he had not suggested that mixed credits be taken up in the Aircraft Committee to the exclusion of its discussion elsewhere. It was his hope that Signatories would recognize the problem and look to other fora for solutions. However, he did think that the Aircraft Committee was equipped to discuss the matter and that it was within the purview of its activities. Article 4.4 referred to "inducements of any kind", logically this should also cover mixed credits.

27. The representative of the EEC said that he also did not preclude discussions and possibly negotiations within the OECD on this question. It was the Communities' view that Article 4.4 of the Aircraft Agreement dealt more with inducements such as landing rights, i.e. non-financial inducements. Financial inducements were covered under Article 6.

28. The representative of the United States said that had that been the intention of the drafters, they would have specified non-financial inducements in Article 4. There was indeed a need for clarification of the interpretation of this Article. The Aircraft Committee had been created in order to have a meaningful forum in which to discuss developments in trade in civil aircraft. As new problems arose, this Committee should find a way to deal with them. As trade practices changed over time, this Committee should find a way to apply its rules to them.

29. The representative of Japan suggested that he would be in a better position to comment on this matter at the next meeting.

30. The Chairman said that, beyond the interpretation of Article 4, there was a problem of concern to all Signatories and that was export credits for aircraft. It was known to all that the matter was under discussion in another forum, but because of the importance of these discussions the Committee should continue to follow the matter and keep it on its agenda. He suggested that the Committee revert to the matter at its next meeting.

#### 4. Matters under Article 6

31. The Chairman recalled the discussions at the previous meeting, at the end of which he had concluded that the Committee had an obvious interest in following the discussions under way in the OECD on export credits for civil aircraft.

32. The representative of the United States said that governments were commonly involved, for a number of reasons, with research, development, production and/or marketing of civil aircraft programmes and that government/industry relationships varied widely among Signatories; for these reasons a careful monitoring of the operation of Article 6 was desirable. The Committee's concern was not with how a government related to industry but rather what effect that relationship had on trade. Article 6 stated in part that Signatories "affirm that in their participation in, or support of, civil aircraft programmes they shall seek to avoid adverse effects on trade in civil aircraft." The Agreement recognized that governmental support in itself was not deemed a distortion of trade. However, in order to have a reasonable assessment of the impact on trade of governmental support, Signatories should have regular and timely access to information relating, in particular, to governmental financial assistance provided for the

development, production or marketing of civil aircraft programmes. It was for this reason that the Preamble of the Agreement recognized "the need to provide for international notification ... procedures with a view to ensuring a fair, prompt and effective enforcement of the provisions of this Agreement ...".

33. A number of new civil aircraft programmes had been launched since the Agreement entered into force, some of them reportedly with substantial governmental supports, none of which had been notified to the Committee. This lack of transparency was cause for concern over what effects on trade these governmental supports might have. His delegation did not wish at this meeting to raise specific cases of direct concern to the United States, but rather to voice a general concern about what was perceived in the United States as a serious threat to the effective operation of the Agreement. His delegation would welcome observations or suggestions with regard to the apparent lack of transparency in governmental supports. His delegation felt there was a need for the Committee to improve transparency in this area before it faced a crisis and before a lack of accurate information led to misunderstandings, problems and disputes that could be avoided, and before any government or any industry reached the conclusion that the Agreement and its disciplines were ineffective and that some other response, perhaps of a unilateral nature, was required.

34. The representative of the United States invited other delegations, at the next meeting, to report on their support programmes and the measures they had taken to ensure that they had no detrimental effect on trade flows in accordance with the provisions of Article 6. What his delegation was seeking was effective notification or transparency so that it could reassure its industry.

35. The Chairman pointed out that there was no notification procedure provided for under Article 6. This did not preclude the provision of information by Signatories, or a discussion of the matter. He noted that the United States was proposing such a discussion under Article 6 and invited Signatories to reflect on the matter so as to be prepared for a discussion at the next meeting of the Committee.

##### 5. Trade in Counterfeit Civil Aircraft Parts

36. The Chairman recalled that the United States had raised this matter at the previous meeting.

37. The representative of the United States said that his delegation generally supported the attention being given to the problems raised by trade in counterfeit goods, including counterfeit aircraft parts. The issue was especially serious for the aircraft industry since it was so closely related to issues of safety. Commercial counterfeiting posed very serious problems for international trade, extending well beyond luxury goods. Both importers and exporters were adversely affected by it. Counterfeit goods could be lethal when the products were pharmaceuticals, heart pumps, automotive brakes, food and agricultural chemicals and, of special interest to this group, aircraft and helicopter parts. In the aircraft sector a particular problem arose from the need to periodically replace critical parts of the equipment. Unfortunately the need to reduce operating costs might make some

purchasers vulnerable to lower priced counterfeit parts, that might not meet the exacting standards of the original equipment manufacturer. This affected exporters in both developing and developed countries who stood to lose credibility as to the quality of their products as a result of commercial counterfeiting.

38. Consultations with the US aerospace industry on this issue had revealed that it was a matter of considerable, although not immediate, concern to American manufacturers. The development of a set of rules designed to curtail trade in counterfeit goods, which would impose disciplines over actions taken by Signatories and provide dispute settlement procedures, was the best way for countries to ensure that national anti-counterfeiting laws were not used as barriers to legitimate trade. He added that the GATT Council was currently considering the question of whether multilateral action was appropriate and, if so, how to approach the matter. His delegation therefore urged the Committee to agree to convey to the Council its support for a positive decision.

39. The representative for the EEC said that they had consulted with their equipment producers who saw no immediate problem. However, the Communities fully supported the proposal by the United States.

40. The representative of Japan said that his authorities had also consulted with its aerospace industry who had not found a specific problem yet. However, the problem of counterfeiting was generally important and for this reason it had been included in the 1982 GATT Work Programme. He also supported the United States' initiative.

41. The representative of Canada said that consultations with the Canadian aerospace industry had not revealed any immediate problem. His authorities considered, however, that it was important to deal with trade in counterfeit goods generally, and he could thus support the United States' proposal.

42. The representative of Sweden suggested that the Committee should draw on developments in the general GATT context on this issue.

43. The Chairman concluded that the Committee expressed the hope that consideration of trade in counterfeit goods initiated in a general GATT context would be carried forward expeditiously.

#### 6. Report to the CONTRACTING PARTIES

44. The Chairman recalled the provisions of Article 8.2 of the Agreement, which called for an annual report to the CONTRACTING PARTIES to the GATT.

45. The Committee adopted its Fifth Report to the CONTRACTING PARTIES contained in document L/5698.

#### 7. Dates of Next Meeting

46. The dates of the next meeting were set for 17 and 18 April 1985.