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GENERAL AGREEMENT ON TARIFFS AND TRADE

Agreement on Trade in Civil Aircraft

COMMITTEE ON TRADE AND CIVIL AIRCRAFT

Draft Minutes of the Meeting held in the Centre William Rappard on 17 and 18 April 1985

Chairman: Mr. B. Coté (Canada)

1. Election of Officers

1. The Committee re-elected Mr. B. Coté (Canada) as Chairman and elected Mr. H. Döring (Germany, F.R.) as Vice-Chairman of the Committee. The Committee also elected Mr. J. Sangway (United Kingdom) as Chairman of the Technical Sub-Committee.

2. The Chairman expressed the Committee's appreciation for the work done by the out-going Chairman of the Technical Sub-Committee, Mr. J. Schraven.

2. Harmonized System - Conversion of Annex: Progress Report of the Technical Sub-Committee

3. The Chairman recalled that the Committee had, in March 1984, asked the Technical Sub-Committee to transpose the new Annex into Harmonized System. He invited the out-going Chairman of the Technical Sub-Committee, Mr. J. Schraven, to report on the work done since the last progress report to the Committee in October 1984.

4. The out-going Chairman said that since October 1984 the Technical Sub-Committee had met twice to continue its work, on 14 and 15 January and on 15 and 16 April 1985. On transposition of the Annex into Harmonized System, the Technical Sub-Committee had made good progress, and now had an advanced draft list of items in Harmonized System which contained a good number of final ex 6-digit, HS product numbers, and some unfinalized numbers. At its most recent meeting, the Technical Sub-Committee had undertaken a first examination of draft Harmonized System language. An informal working draft, showing the present status of the work, would be drawn up. Although there was much to be done still, the paper would show those Harmonized System numbers and/or product coverage that had not yet been agreed to. These items generally fell into three groups: (i) products which might be covered by the Agreement but were never used in civil aircraft (theoretical products); (ii) products which were covered by one or two of the current annexes, but not all three (non-equivalent products); (iii) products which were not covered by any of the lists.

5. These and other matters were questions which eventually would call for Committee consideration. The Technical Sub-Committee did not attempt to settle the question of whether to aim at maximum or minimum coverage, but was

working to establish a list in Harmonized System which would indicate minimum common coverage and maximum partial coverage. The Technical Sub-Committee intended to meet again in July to further its work on draft Harmonized System language. It would make a further progress report to the Committee in the Autumn.

6. The representative of Japan said that his authorities were in favour of maximum product coverage. It was their view that if an item was used in and incorporated into a civil aircraft, it should be included in the Harmonized System Annex.

7. The representative of Canada shared this view and said that the Technical Sub-Committee should seek maximum coverage in Harmonized System. The Committee's work was not completed yet; it should go as far as possible so that when the Committee considered the results, decisions could be taken with as full a background as possible.

8. The representative of the United States said that the Technical Sub-Committee's work on Harmonized System conversion had been a model for other sectors. A more uniform annex in HS would avoid future discrepancies of coverage. He hoped that the final text of the Technical Sub-Committee work would be ready for the next meeting of the Committee.

9. The representative of the EEC said that it was probably too early to expect a final draft from the Sub-Committee for the next meeting. The Sub-Committee had just started its examination of draft language and had not yet looked at details.

10. The Chairman concluded by thanking the Technical Sub-Committee for the progress it had made in this complex work; he noted that more work was needed and that the Technical Sub-Committee would meet in July to refine the list and work on draft language. The Committee looked forward to a further progress report at its next meeting.

3. Implementation of New Annex

11. The Chairman drew attention to the certified true copies of the Third Certification of Modifications and Rectifications to the Annex of the Agreement which had entered into force on 1 January 1985, and to the updated edition of the Agreement which the secretariat had reissued. Concerning the status of implementation he noted that the new Annex had entered into force on (1 January 1985) according to the procedures adopted by the Committee (AIR/41). In addition to those procedures, the Committee, in March 1984, had invited Signatories who had completed their internal legislative procedure to send a letter to the secretariat for the information of other Signatories. Such notifications had been received from all but one Signatory.

12. The representative of the United States recalled that at the last meeting he had explained that United States legislation required an Act of Congress. The legislation referred to in the US notification (AIR/51) had a clause requiring that all Signatories would have to apply the new Annex on 1 January 1985 for the United States to be in a position to implement. Romania had failed to implement the Agreement, thus making it impossible for the United States to proceed with timely implementation. His administration had nevertheless tried to find ways to proceed with implementation but had not succeeded. The way the law had been written left it with no flexibility.

His delegation had been in touch with Romania in order to get early implementation. Pending Romania's implementation, his authorities would try to obtain a Customs Service instruction to implement the changes in the duties.

13. The representative of the EEC said that while they understood the difficulties encountered by the United States, the Commission could only deplore the delay. The situation created a degree of uncertainty which was bad for trade. He sought confirmation from the United States that, once the difficulties were overcome, implementation would be made retroactive to 1 January 1985.

14. The representative of Canada said that his authorities were concerned that the United States had not been in a position to implement the new Annex as agreed. He also asked whether implementation, when it came, would be retroactive to 1 January 1985, to match other other Signatories' implementation.

15. The representative of Japan regretted that neither the United States nor Romania had implemented the Annex on 1 January 1985. It was a source of some embarrassment for his authorities who, in the course of their internal procedure, had had to explain to the Diet that the date of 1 January 1985 was very important. He invited both the United States and Romania to implement without delay; he also wished to know if such implementation would be retroactive.

16. The representative of the United States said that the US had been put in a position which made implementation impossible. As a matter of law, the

administration did not have the option of retroactive application. The date of effective implementation would be the date of publication in the Federal Register. He added that most items in the new Annex currently entered the United States in a basket category, which was given duty-free treatment. Thus the delay in implementation had not affected the flow of trade.

17. The Chairman said that the Committee looked forward to receiving notification of implementation by the United States. Non-implementation on 1 January 1985 had come as a surprise to Signatories, especially in the absence of a United States notification to that effect. Romania's non-implementation was also regretted. The Committee urged those Signatories that had not yet implemented to do so without delay.

18. The representative of France said that his authorities regretted formally that the United States was delaying, by more than four months, the implementation of an agreement. It was not acceptable that Signatories could submit, unilaterally, their implementation to external conditions. If other Signatories had inserted similar wording in their domestic legislation, the new Annex would never come into force. He pointed out that there was no common measure between the trade responsibilities of the United States and non-implementation of the Annex by Romania.

19. The representative United Kingdom also expressed his authorities disappointment at the time it was taking for the United States to implement.

Procedures

20. The representative of Japan recalled that Japan had also had internal difficulties of implementation, but that these had been resolved with the

help of the Committee. His authorities were now reconsidering the rectification and modification procedure with a view to avoiding future difficulties in amending the Annex.

21. The Chairman said that this problem had already been raised and that the question of improving procedures should be born in mind for future discussion.

22. The representative of Canada said that in his view there were two problem areas. The first concerned the procedural steps to finalize an agreement to amend the Annex or the Agreement itself; there the difficulties stemmed from the casualness of the procedures. Maybe the Committee should consider reverting to more formal procedures. The second area concerned the implementation process itself. Some thought should be given on how to ensure that all Signatories implement on the same date. These procedural questions should be dealt with before starting a new process of negotiations.

23. The representative of the EEC said that the matter should be considered.

24. The Chairman invited Signatories to reflect on the matter of procedures and to find solutions well ahead of the next amendment of the Annex or the Agreement. He noted that the Committee was prepared to examine any proposals or comments Signatories might wish to make.

GATT Bindings

25. The Chairman said that the entry into force of the new Annex called for follow-up action under Article 2.1.3 - binding of aircraft concessions in Signatories' respective GATT Schedules. The Committee on Tariff Concessions

had decided on 5 November 1984 to prepare a Sixth Certification of Changes to Schedules and in GATT airgram 2096 of 21 January 1985 had called for the "additional aircraft concessions to be included in the Schedule of the countries signatories of the Aircraft Agreement". He added that it was useful to review the status of Signatories' bindings in the Sixth Certification.

26. The representative of the EEC said that the Commission was currently preparing a draft notification for the Sixth Certification which would incorporate the new concessions of the 1985 Annex.

27. The representative of Canada confirmed that his authorities were currently working on a submission for the Sixth Certification. Progress would be slow in the case of Canada because of complications due to other tariff items.

28. The representatives of Norway, Sweden and Switzerland said that their authorities were currently working on submissions for the Sixth Certification; these would incorporate the new items in the Annex.

29. The representative of Japan said that Japan's binding of aircraft concessions was based on Headnote 8 to their Schedule in the Geneva 1979 Protocol. His authorities interpreted Headnote 8 as being applicable to the new Annex to the Agreement; therefore the aircraft concessions of the new Annex were bound with respect to Japan, as of 1 January 1985.

30. The representative of the United States said that it was the intention of his delegation to add the new aircraft items of the Annex into the

submission they were preparing for the Sixth Certification, and that it would be forwarded as soon as possible.

31. The representative of the EEC said that he was puzzled by the Japanese position. Headnote 8 to Japan's Schedule in the Geneva 1979 Protocol limited duty-free treatment as concessions under the GATT to products in the Annex "which is effective on the date of entry into force", i.e. on 1 January 1980. This could not cover any changes to the Annex after 1 January 1980. The changes in the 1985 Annex should be the object of new bindings.

32. The representative of Canada was surprised that Japan could bind through the Geneva 1979 Protocol, concessions which it had only given on 1 January 1985.

33. The representative of the United States said he shared the concerns expressed by the EEC and Canada concerning the bindings by Japan, and invited Japan to give a detailed explanation of its position at the next meeting.

34. The representative of Japan said that the legal situation was complex; he would give more explanations as needed. The question of transparency of the Japanese tariff Schedule would be clarified with the introduction of the Harmonized System.

35. The Chairman said that the Committee was interested in hearing further explanations from the Japanese delegation at the next meeting. He invited all Signatories to proceed with the binding of new aircraft concessions in

the Sixth Certification of Changes to Schedules as required by Article 2.1.3. The Committee would revert to this matter at its next meeting.

4. Export Credits for Civil Aircraft

36. The Chairman said that at the previous meeting the Committee had expressed interest in following developments in the OECD on export credits for civil aircraft. Since October 1984, there had been at least two meetings in the OECD to draft an Understanding on Export Credits for Aircraft. The next meeting was scheduled for July 1985. As this matter was of major interest to the Committee, he proposed to follow developments closely and to revert to the matter at the next meeting.

5. Matters under Article 4

37. The representative of the United States recalled that at the last meeting his delegation had expressed concerns regarding the interpretation of Article 4.4 of the Agreement - government inducements. In that context, his delegation had referred to mixed credits/tied aid. However, this had been only an example in his delegation's attempt to have a broader discussion on the interpretation of Article 4.4. His Government was concerned that lack of consensus on what should be considered prohibited inducements under the Agreement threatened to adversely affect United States trade interests. He proposed that the Committee attempt to reach a consensus on an illustrative list of prohibited inducements or linkages. Such a consensus would help to ensure that all Signatories interpret Article 4.4 in the same way, thereby reducing the chances that a Signatory's trade interests be impaired because of a different reading of the Agreement by another Signatory.

38. It was clear from the negotiating history of the Agreement that Article 4.4 was intended to preclude Signatories from offering inducements of a type only governments could make. The representative of the EEC had stated at a previous meeting that the only inducement negotiators had intended to prohibit under Article 4.4 was the linkage of landing or route rights to a procurement decision. Clearly the United States had a far stronger interpretation of Article 4.4. This implied that not all Signatories were playing by the same rules; but surely the purpose of the Agreement was to establish one framework with a single set of rules. Could the Agreement function at all if each Signatory could interpret its provisions at will. It was critical to the success of the Aircraft Agreement that the Committee arrive at a consensus interpretation of its provisions, in particular of Article 4.4, and not merely regard the Agreement as a tariff agreement, when there were so many provisions in it addressing non-tariff barriers.

39. His delegation had had a number of bilateral consultations on this matter; in some cases it had found total agreement with its views, in other cases there had been little enthusiasm. What was needed at this juncture was to seek the views of delegations, in particular on a list of examples of reported "inducements" to the sale of aircraft, which the United States believed were covered by Article 4.4. It was the United States view that linkage of aircraft sales to unrelated political or economic considerations such as bilateral development assistance, landing rights, route rights, loan conditions on non-aircraft projects, agricultural import policies, existing quota régimes for unrelated products, grant aids, airport and infrastructure financing, policies on alien workers, government conducted barter or debt rescheduling, should be prohibited.

40. The representative of the EEC said that the issues raised by the United States were very broad indeed and required careful thought as to their implications, not only in the field of civil aircraft. He believed it was in the interest of all Signatories to reflect on what the real problems were. Some elements in the United States list might be issues under Article 4.4, but some might refer to Article 6, others concerned mixed credits, which related to the work undertaken in the OECD. Internal consultations within the European Communities were needed before he could comment further. At this stage it might be preferable to discuss these matters bilaterally rather than in a full Committee where positions could easily become rigid. Certainly some informal discussion was needed to clarify the issues generally, but also to examine specific cases. As far as the list was concerned, he thought it was certainly not exhaustive and that it would be easy for any Signatory to add examples to it. Generally, he felt that a more factual approach was called for, and that this could best be done bilaterally. There was also need for reflection in capitals.

41. The representative of the United States said that Article 4.4 was written in broad language. However, there had been instances of narrow interpretation. He was encouraged to note that the EEC had not found the list he had enumerated incompatible with Article 4.4. Bilateral consultations could indeed be useful. His purpose for the time being was not confrontational but to create clarity and to avoid potential conflicts. Bilaterals could not be a substitute for Committee consensus on the coverage of Article 4.4. Progress in this direction could only be made through dialogue, whether multilateral, in the Committee, or in specific cases, bilaterally. He could agree on any procedure that would ensure that the

matter would be discussed usefully. If successful, then Signatories could reach a consensus that could be written and agreed to.

42. The representative of Sweden said he shared a number of the EEC reactions. He would bring the matter to his authorities' attention.

43. The representative of Japan recognized the importance of the matter. His authorities were still examining the impact of discussing the matter in the Committee. He was interested in hearing the views of other representatives on the clarification of the coverage of Article 4.4.

44. The representative of Canada said he had no specific instructions. He was aware that there was a great deal of sensitivity and concern over these matters. He suggested that it might be agreed to have an informal meeting to discuss the issue so as to avoid locking Signatories into formal positions.

45. The representative of the EEC said that he was surprised that the US representative had found so much encouragement in his statement. He repeated that the Commission needed time to reflect and probably further consultations before it could decide if and when to broach the problem of interpretation of Article 4.4. He noted that the wording of that article was very broad, probably to cover a variety of cases. He could not see how an illustrative list could be drawn up with in such general terms; it could lead to an outright prohibition of all or any package deal in which civil aircraft was involved; it might also condemn preferential arrangements when aircraft were concerned. He therefore had reservations as to the form of the approach and reiterated the need to have bilateral consultations on concrete cases.

46. The representative of Switzerland said that the first questions to settle was whether the Committee really wanted such an illustrative list. Minutes of past meetings showed that the negotiators had not wanted such a list. Had the situation changed and was there now a common need for a consensus on prohibited inducements? Before going any further it should be clear that it was this Committee's aim to have such an illustrative list.

47. The representative of the United States said that his delegation had perceived the need for such a list. The examples that he had given had all been reported to occur with some regularity. This had not been the case in 1979, when the Agreement was negotiated. Reported cases had to be dealt with, either by clarifying the rules, or on an ad-hoc basis bilaterally. The issues could not be ignored, whichever approach was taken. His delegation thought that taking the matter up in the Committee was the best way to build a consensus. Circumstances had changed, so the Committee should also change.

48. The representatives of the EEC and Japan expressed some preference for discussing the matter on an informal basis.

49. The Chairman concluded that an informal discussion of Article 4.4 would be arranged at the time of the next meeting of the Committee. The discussion would take into account the views expressed at this meeting and with the aim of reverting to the Committee, according to the results.

6. Matters under Article 6

50. The representative of the United States recalled that at the last meeting his delegation had expressed the desire that the Committee address

the question of transparency in government supports. Little progress had been made toward a consensus on how the Committee might improve transparency so as to allow Signatories to assess whether particular government supports might be adversely affecting trade. He recognized that the Agreement did not require Signatories to notify government supports to the Committee. However, the Preamble did refer to "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 ...". He also noted that no notifications for the civil aircraft sector had been made to the Subsidies Committee, despite the Subsidies Code's informal reporting requirements. The fact remained that the Committee had no basis for assessing the impact on trade of Signatories of government supports for civil aircraft programmes; yet it was this Committee that had been established to be the forum for discussing and overseeing trade in this sector. Article 6 disciplined government supports and the Committee had been reluctant to discuss or review the operation of this very important provision.

51. As in the area of inducements (Article 4.4), his delegation believed that it was crucial that the Committee reach some consensus on how Article 6 was to be interpreted and how its operation could be enhanced. Without a consensus or the political will to abide by its provisions, the merits of the Agreement could be questioned.

52. The United States simply could not accept that the Agreement be merely a tariff agreement. Nor could it accept the current situation in which there was no consensus on how the Agreement's non-tariff measure provisions were intended to govern trade in civil aircraft. At the time the Agreement was negotiated there had been a consensus to raise all issues affecting trade in civil aircraft within the Aircraft Committee rather than in other fora.

53. At the October 1984 meeting his delegation had hoped for an exchange of views on the apparent lack of transparency in government supports. No real discussion of this question had ensued. This was unfortunate, as government supports was one of the important issues affecting trade in civil aircraft and thus was appropriate for discussion in this Committee. Should the Committee fail to discuss transparency, the United States industry, labour and Congress were apt to conclude that Article 6, and perhaps the entire Agreement, was meaningless. Congress would then come under considerable pressure to address issues affecting United States trade in civil aircraft in other fora - domestic and international.

54. He reiterated his request that there be a general discussion or exchange of views on how the non-tariff barrier provisions, and Article 6 in particular, were interpreted by other Signatories. Did Article 6 have any meaning? Was it enforceable? Would the objectives of the Agreement be better served with some notification or exchange of information on government supports for civil aircraft? Was the United States alone in wanting this to be a living meaningful Agreement?

55. The representative of Canada said that his authorities very much wanted this Agreement to be effective and meaningful. His delegation had supported placing limits on export financing. Article 6 did not refer only to government support of civil aircraft programmes; the second paragraph of Article 6 referred to less direct, but not less significant types of government supports. Improved transparency should include both paragraphs of Article 6. Also, was the matter of transparency as critical as the United States seemed to think? There were surely other ways of ensuring that

the provisions of the Agreement were observed. He could not conclude that lack of notifications on government supports made the Agreement inoperative. While he did understand some of the concerns expressed by the representative of the United States, he was not sure how best to deal with them.

56. The representative of the EEC noted that government supports under Article 6 were more sector specific than the examples of inducements given by the United States under Article 4.4. In this case aircraft was the centrepiece. However, it was difficult to draw a boundary between Articles 4 and 6. The type of problems the United States had in mind should be identified and insinuations, not sufficiently backed by facts, should be avoided. A first examination of concrete cases should be made on a bilateral basis and informally. Article 6 had no provisions for notification. Even if it had and even if there was a Committee consensus on notification, the EEC would have nothing to notify.

57. The representative of Japan said that there was merit in an exchange of views and information on this matter, particularly regarding transparency. However, any notification of subsidies should be made to the Subsidy Committee and not to the Aircraft Committee. He also drew attention to the recognition by Signatories that special factors applied in the aircraft sector, as stated in Article 6.1.

58. The representative of the United States said that he was aiming at the linkage of sale or purchase of aircraft to other factors. Export financing of civil aircraft was only one aspect of the issue. As for Article 6 and its provision that government support or participation in civil aircraft

programmes should avoid adverse effects on trade, he insisted that in the absence of some form of reliable information on government supports there was no way of knowing whether Signatories were fulfilling their obligations under those provisions. There was at present no obligation to notify, but there was a need for a system of notification. Article 6 would be meaningless without it. What his delegation was pursuing was something meaningful, not a system of notification under which the Community felt it had nothing to notify.

59. The representative of the EEC repeated that time was needed for reflection and exploratory bilateral meetings to examine concrete cases before it could take a position on the matter.

60. The representative of the United States said that his delegation would continue to pursue the matter on a bilateral basis.

6. Dates of next meetings

61. The dates for the next meetings were set for 9 and 10 October 1985 and 23 to 24 April 1986.