

GENERAL AGREEMENT ON TARIFFS AND TRADE

Agreement on Trade in Civil Aircraft

COMMITTEE ON TRADE IN CIVIL AIRCRAFT

Draft Minutes of the Meeting held in the
Centre William Rappard on 29 April 1986

Chairman: Mr. H. Döring (F.R. Germany)

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1. Election of officers

1. The Committee elected Mr. H. Döring (F.R. Germany) as Chairman of the Committee and Mr. Ch. Manhusen (Sweden) as Vice-Chairman. The Committee also re-elected Mr. K. Sangway (United Kingdom) as Chairman of the Technical Sub-Committee.

2. The Chairman expressed the Committee's appreciation for the work done by the outgoing Chairman of the Committee, Mr. B. Côté (Canada), who had served two terms.

2. Accession of Spain and Portugal to the EEC - Application of Aircraft Agreement as of 1 March 1986

3. The Chairman welcomed Spain and Portugal as new members of the Committee. He said that according to Articles 37 and 197 of the Treaty of Accession of Spain and Portugal to the European Communities, were applying as from 1 March 1986 the Common Customs Tariff (i.e. duty-free treatment) to the aircraft products in the Annex. He recalled that new Signatories were required to make two notifications; the first defining their entities operating military aircraft, the second on the end-use system. They should also supply the Committee with a list of persons available to serve on panels. The Committee looked forward to these notifications in due course.

4. The Chairman said that the secretariat had prepared a draft Spanish text of the Agreement and Annex, on the assumption that it would be desirable to have a translation of the original authentic English and French texts. As the draft stood it was merely a translation without any particular status, and therefore might not be used as a basis for interpretation of the Agreement. If it was made an authentic text, then it could be referred to for purposes of interpretation of the Agreement.

5. The representative of Spain confirmed that his authorities were applying the Agreement on Trade in Civil Aircraft as of 1 March 1986 under the provisions of Article 37 of the Accession Treaty. He said that Spain would sign the Agreement very soon, some delay having been caused by legislative

formalities. He stated that his authorities would appreciate having an authentic Spanish text of the Agreement. With respect to the notifications required, he said that the EEC Commission would submit the one on the end-use system for Spain as it had done for other member States; his authorities would transmit a notification regarding military entities and persons available to serve on panels. These formalities should be completed before the next meeting.

6. The representative of Portugal said that Portugal also applied the Agreement on Trade in Civil Aircraft as of 1 March 1986 under the provisions of Article 197 of the Accession Treaty. It was his authorities' intention to sign the Agreement very soon. The notifications would also be supplied; the one on end-use by the EEC Commission and the others by his delegation. He added that his authorities did not require an authentic Spanish text.

7. The representative of the EEC confirmed that the Commission would submit the end-use notifications for Spain and Portugal.

8. The Chairman said that the procedure for authenticating the Spanish text would be as follows: (1) Signatories should examine the draft Spanish text before them in capitals. (2) At the October 1986 meeting of the Committee they should indicate any disparities with the English and French texts that might need correction, with the view to arriving at an agreed authentic text at that meeting, or latest at the spring 1987 meeting. (3) Final authentication of the Spanish text would take the form of a Committee decision. The authentic Spanish text would then be transmitted to the

depository (the Director-General) who would issue certified true copies, according to normal practice. The matter would be put on the agenda of the next meeting.

3. Harmonized System - Conversion of Annex - Report of the Technical Sub-Committee (AIR/TSC/6)

9. The Chairman recalled that the Committee had in March 1984 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 (AIR/M/12, page 5). The question of methods of incorporation had been finalized at the Committee's thirteenth meeting (AIR/M/13, paragraph 9). The final report on conversion of the Annex into Harmonized System was before the Committee for consideration.

10. The Chairman of the Technical Sub-Committee (Mr. J. Sangway) said that with the issue of document AIR/TSC/6 on 11 March 1986 the Technical Sub-Committee had completed its work on transposing the Annexes to the Agreement on Trade in Civil Aircraft into the Harmonized System. It had also achieved its objective of making the report available to the Committee in ample time for it to be considered in capitals before this meeting. In arriving at the transposed Annex attached to AIR/TSC/6, the Technical Sub-Committee had held seven meetings over two and a half years and he thanked all delegations for their co-operation in achieving this result. He also wished to express his personal gratitude and that of the delegations to the secretariat for the way in which it had kept track of the changes made during the progress of the work and provided revised texts so quickly. Regarding the work, in paragraph 3 of AIR/TSC/6 the report drew attention to one remaining technical problem of coverage. He was pleased to say that this

problem had been resolved without reference to the Customs Co-operation Council and that only the item 7326.20 would be included in the Annex with its text. A note confirming this would be circulated to delegations shortly. The report also mentioned items which had reservations on them either for policy reasons or because there were doubts whether such items would ever be incorporated in a civil aircraft under the terms of the Agreement despite their being covered under the current Annexes to the Agreement. He looked to the Committee to give the Technical Sub-Committee instructions on these problems. Paragraph 5 of the Report drew attention to the problems for Signatories, and potential signatories who would not adopt the Harmonized System either immediately or indeed at all. They would nevertheless have to adapt to the revised version of the CCCN aligned on the Harmonized System at 4-digit level. A draft revised CCCN list had been circulated to the Technical Sub-Committee and he would welcome the Committee's instructions to examine this draft and refine it to complement the Harmonized System Annex. The report also noted in paragraph 6 the need to revise the Headnote to the Annex to reflect the consequences of the change to the Harmonized System, and requested instructions to proceed with this revision. Finally he emphasized the need to provide a fully revised Product Coverage Annex, including the Headnote in CCCN version, which could be made available as soon as practicable. The introduction of the Harmonized System was planned for 1 January 1988. Time was now getting short. International airlines and aircraft repairers and manufacturers carried massive parts inventories and would need ample time to convert their existing computer systems to the new nomenclature and to assess the operational implications. They would be needing advice and information from their governments to do this and he hoped that the Committee would recognize the desirability of completing this work as soon as possible to meet this need and therefore instruct the Technical Sub-Committee accordingly.

11. The representative of Japan said that the questions of a CCCN list to match the Harmonized System Annex and of the Headnote, raised in paragraphs 5 and 6 of AIR/TSC/6, should be referred to the Technical Sub-Committee for further work. The whole matter should be dealt with on a priority basis as the Harmonized System nomenclature was due to be implemented on 1 January 1988. He expressed the hope that delegations who had reservations on some items would be in a position to withdraw them.

12. The representative of the United States said that the outstanding questions could probably be concluded very quickly. He agreed to refer the matter of the Headnote to the Technical Sub-Committee, as well as the question of a matching CCCN list. This list should maintain the Harmonized System descriptors, which give automatic concordance at the 4-digit level.

13. The representative of Canada, referring to the items where doubt still existed as to their use in civil aircraft, cautioned that GATT tariff bindings existed in most cases. Maintaining these items, even if they were not used in civil aircraft, would only mean a few empty tariff lines for some time. This was easier to do than to reintroduce a binding if it was later found that the product was used in civil aircraft.

14. The representative of Sweden, speaking also for Norway, supported the Canadian view. It was important to come to an agreement rapidly and the aim should be maximum freedom of trade in civil aircraft. Norway and Sweden therefore favoured a broader coverage and felt it was preferable to include some items already covered, regardless of whether they were used or not in civil aircraft. These were minor points; the important objective was to

finalize the report. She thanked the Technical Sub-Committee for having completed an excellent job.

15. The representative of Switzerland supported the views expressed by Canada and the two Nordic countries. He was in favour of a generous translation into the Harmonized System, even if some tariff lines covered products not currently used in civil aircraft; it would be better to keep them in rather than reintroduce them later with the difficulties that this represented.

16. The representative of the EEC was also in favour of concluding the Annex in Harmonized System quickly; every effort should be made to resolve the remaining divergencies.

17. The Committee then went through each of the items in AIR/TSC/6 which needed to be resolved. There followed an exchange of views on technical aspects of certain items and on the reasons for the US reservations on ball bearings. The Chairman suspended discussion to allow time for informal consultations.

18. After these consultations the EEC proposed that the following products, for which there were still doubts as to their use in civil aircraft, namely: Harmonized System positions 8527.11, .19, .31, .32, .39, 9015.10, .30 and .90 could be provisionally eliminated on the understanding that should these products become of use in civil aircraft, Signatories would agree to include them in the next extension of the Annex. The following Harmonized System items would be kept because their use in civil aircraft was demonstrable: 9025.20, .80 and .90. Evidence of their use would be furnished between now

and the next meeting of the Committee. In the meantime the United States could reconsider its position concerning ball bearings (Harmonized System positions 8483.20 and .90).

19. The representative of Switzerland said this proposal was reasonable and supported it. The representative of the United States said this was a productive proposal. He recalled that his delegation had problems on certain items (barometers and pyrometers), but that if evidence was produced that these were used in civil aircraft his delegation would agree to keep the items. Regarding ball bearings, he said his delegation would check thoroughly into the reasons for the reservations. He could not change the United States' position at the present meeting but was prepared to address the issue definitively at the October meeting.

20. The representative of Canada said that he supported the EEC proposal. Regarding the items that were provisionally eliminated, he suggested that Signatories could nevertheless consider including them in their domestic legislation for duty-free treatment.

21. The representative of the United States said that the US could include such items in its domestic legislation provided it had evidence that they were used in civil aircraft.

22. The Chairman summarized the agreement reached so far on the outstanding items in AIR/TSC/6: Harmonized System position 7324.90, the text was changed to read "Other sanitary ware, of iron or steel". Position 7326.20 the text was to read "Articles or iron or steel wire". Position 7326.90 was deleted.

Positions 8483.20 and .90, the US was to review its position and would give a definitive reply at the October meeting of the Committee. The following positions were provisionally eliminated with the understanding that should any of these products become of use in civil aircraft, Signatories would accept to include them in the next extension of the Annex: 8527.11, .19, .31, .32, .39, 9015.10, .30 and .90. The following positions would remain and evidence of their use in civil aircraft would be supplied between now and the next meeting: 9025.20, .80 and .90.

4. Implementation of the new Annex

23. The Chairman recalled that 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 (TAR/M/14) 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 Signatories' Schedules. Since the last meeting the secretariat had received five new submissions for the Sixth Certification: from Austria, Switzerland, Norway, the EEC and the United States. Sweden had already submitted its bindings.

24. The representative of Japan reconfirmed his authorities' position as it was explained in paragraph 16 of the Minutes of the last meeting (AIR/M/16). His authorities interpreted Headnote 8 to the Japanese Schedule in the Geneva (1979) Protocol as covering the new concessions in the Annex which entered into force on 1 January 1985. Japan would bind its aircraft concessions in its GATT Schedule on an item-by-item basis when it introduced the Harmonized

System Nomenclature on 1 January 1988. In doing so it would take into account other Signatories' comments regarding transparency. In the meantime Japan was not planning to include the aircraft concessions of the new Annex in the Sixth Certification.

25. The representative of the EEC recalled the point of view expressed by the Commission on the previous day in the Tariff Committee; it could not agree with Japan's interpretation. Article II of GATT was explicit - contracting parties had to insert tariff concessions in their GATT Schedules. Article 2.1.3 of the Aircraft Agreement provided for the same thing. It was impossible not to bind the new aircraft concessions. GATT Schedules provided the only legal basis clearly reflecting contracting parties' obligations. He asked whether Japan intended to bind the concessions in the new Annex and if not, what prevented it from doing so. He could not accept that Headnote 8 in the Geneva (1979) Protocol could cover future amendments, let alone amendments which came into force in January 1985, i.e. five years later.

26. The representative of Japan said that the Japanese legal authorities gave the same interpretation to Headnote 8 as they did to the phrase in Article 2.1.1 "... to eliminate by 1 January 1980, or by the date of entry into force of this Agreement ..." which was intended to cover subsequent amendments but failed to mention them explicitly. The situation was very similar to that of Headnote 8 and if it was acceptable for the interpretation of the date in Article 2.1.1, it should also be acceptable with regard to Headnote 8 in Japan's Schedule. Furthermore, he pointed out that the Harmonized System would enter into force on 1 January 1988 which was about the same time as the Sixth Certification would enter into force.

27. The representative of the EEC said that Article II of the GATT obliged all contracting parties to bind all their tariff concessions in their respective schedules and to list them item by item. It was quite clear that this provision applied to the extension of the Annex.

28. The representative of Japan asked the secretariat to repeat its interpretation of Japan's position it had given in the Tariff Committee the previous day.

29. The representative of the secretariat (Mr. Kautzor-Schröder) said that at the last meeting of the Aircraft Committee the secretariat had been asked to give an advisory opinion. The secretariat had examined the question, with the help of the legal services and had come to the following view. Article 2.1.1 of the Aircraft Agreement stated that Signatories agree to eliminate by 1 January 1980, or by the date of entry into force of the Agreement, all customs duties on products listed in the Annex. In Article 2.1.3, the Signatories had agreed to incorporate in their respective GATT Schedules by 1 January 1980, or by the date of entry into force of the Agreement, duty-free or duty-exempt treatment for all products contained in the Annex. Neither of the two provisions just mentioned made any reference to amendments to the Annex. This was probably an oversight by the drafters. In the secretariat's view, Article 2 applied not only to the original Annex, but also to subsequent amendments to it. There was nothing in the Agreement that could imply that amendments to the Annex would be treated differently to the original Annex. As concerned the question raised in connection with the situation of Japan vis-à-vis the new Annex, he recalled that the Japanese delegation on 18 May 1984, in document AIR/46, had notified the Committee

that the Japanese Government had received the approval of the Diet so that Japan was in a position to implement the new Annex by 1 January 1985. It therefore appeared that Japan had fulfilled its obligation under Article 2.1.1 of the Agreement. On the further question of incorporation of the new Annex into the Japanese GATT Schedule, the legal authorities of Japan had taken the view (AIR/M/16, paragraph 16) that the wording contained in Headnote 8 to the GATT Schedule of Japan, i.e. "... which is effective on the date of entry into force of that Agreement" was to be given the same interpretation as the wording in Article 2 (i.e. "... by the date of entry into force of this Agreement ..."), and that Headnote 8 consequently covered not only the original but also the new (and indeed any future enlarged) Annex. This literal interpretation of the provisions has led the Japanese authorities to the conclusion that the date of 1 January 1980 in Article 2 was to be interpreted as 1 January 1985 as regarded the new Annex. This interpretation appeared to the secretariat to be very doubtful. While recognizing that a final interpretation of Code provisions could only be given by the Signatories, the secretariat recommended that Japan, as well as all other Signatories who had not already done so, submit as soon as possible their aircraft concessions resulting from the new Annex, on an item-by-item basis, for inclusion in the Sixth Certification of Schedules. An invitation to do so had been extended as early as January 1985 in GATT/AIR/2096. In this context, reference was also made to Article II of the GATT which governed GATT schedules of concessions and which referred to "products described" in these schedules. This meant, in the view of the secretariat, that a schedule had to spell out a concession in detail, i.e. its tariff number, product description, duty rate and other relevant information.

30. The representative of Japan said that he had taken note of the secretariat's view and in particular had noted that the absence of reference to amendments in Article 2 had probably been an oversight by the drafters but that nothing in the Agreement could imply that amendments to the Annex would be treated differently to the original Annex. He had also noted the secretariat's recommendation that Japan submit its aircraft concessions for inclusion in the Sixth Certification. He confirmed his authorities' intention to incorporate the aircraft concessions on an item-by-item basis at the time of entry into force of the Harmonized System. In the meantime he would convey the secretariat's view and the concerns of the EEC to his authorities. He expressed the hope that Japan would be able to make a definitive comment on the matter at the next meeting.

The Chairman said that the matter would be reverted to.

5. Export Credits for Civil Aircraft

31. The Chairman recalled that at the last meeting the Committee had been informed of the progress within the OECD on an Understanding regarding Export Credits for Civil Aircraft and invited the Signatories to report on the latest developments.

32. The representative of Sweden said that as the OECD Chairman for that Group was Swedish, she would report on the latest understanding. She said that export credit disciplines in support of civil aircraft sales had been established for both large and small civil aircraft. In July 1985, the "Understanding on Guidelines for Officially Supported Export Credits for Large Civil Aircraft", known as the Large Aircraft Sector Understanding,

provided four parameters to official export credit financing for transport aircraft: (1) a mutual commitment to avoid the distortions of competition in all markets; (2) twelve-year financing as an option; (3) market related interest rates to be adjusted automatically; and (4) a prohibition on mixed credit financing. In March 1986 the OECD had concluded an Understanding on Official Export Credits for Small and Medium-Sized Aircraft, superceding what had been called the "Standstill". The Agreement provided for an interest rate system based on Arrangement rates. Aircraft were classified by capacity and engine-type. Repayment terms were keyed to classification. Finally, mixed credit/tied aid credit was prohibited. These complementary agreements effectively reduced the subsidy element inherent in official export credit financing, and in some cases, the subsidy was eliminated altogether.

6. Matters related to Articles 4 and 6

33. The Chairman said that he had been informed by the delegations of the Federal Republic of Germany, France, the United Kingdom and the United States that representatives of these Governments had met on 20 and 21 March 1986 in Geneva to open informal talks concerning matters of civil aircraft industry. They discussed the competitive environment in the civil aircraft industry, government support of that industry, government inducements and other influences on the sale of aircraft, procurement decisions of national airlines and the selection of component vendors by airframe manufacturers. He had been told that in an open and frank discussion, progress had been made on some of the issues. Further discussions were scheduled for June. The Committee would be kept informed.

34. The representative of Sweden, speaking also on behalf of Norway, said that since the discussions held on the subject of inducements at the last meeting, the interests of Swedish companies concerned had been further investigated. What had been found did not enable her authorities to take a definitive position as to how to deal with the matter from a practical point of view, but rather confirmed many of the arguments put forward by other delegations at the last meeting. It was obvious that various kinds of inducements did occur in aircraft transactions. It was also obvious that such inducements could be a serious threat to free competition and free trade. It was therefore quite clear that some kind of action to come to grips with these problems would be desirable from the Nordic Signatories' point of view, particularly since these problems did not seem to be explicitly covered elsewhere in the GATT, although more or less related to other GATT provisions. However, it was not easy at this stage to say what would be the most appropriate solution. The United States had suggested an illustrative list. There might be some disadvantages to that (as pointed out by the European Communities). She felt however that it was too early to prejudge the shape and construction of a possible future agreement or understanding of the interpretation of Article 4.4. Acute problems could always be dealt with through consultations under Article 8. But if some more elaborate framework within the Agreement was needed, then one should start with an inventory of the actual problems in this area and the reasons why Article 4.4 of the Agreement did not seem to be implemented. The list put forward by the United States was, in the Nordic countries' view, a very good starting point. It would be very interesting to have a more elaborate background description of the problems encountered in this area. She did understand that this was a sensitive task but nonetheless necessary for

further discussions. This done, one could see what the next step could be - some kind of illustrative list, an interpretative statement, or perhaps a set of recommendations or guidelines. She welcomed the United States' initiative to bring these problems to the Committee's attention and expressed her delegation's interest in participating in further work in this area.

35. The representative of the United States said that in his delegation's view this was indeed a problem common to all and suggested that it be reverted to at the next meeting. He did point out that his delegation had asked all countries supporting their aircraft industries to notify these supports under the Subsidies Code.

36. The Chairman said the matter would be reverted to.

7. Matters under Article 8.3 (AIR/W/54)

37. The Chairman said that the secretariat had prepared a reference list of past proposals (AIR/W/54) for improvement of the Agreement. It had been suggested at the last meeting that these could be drawn upon for future reflection. There had been proposals concerning Articles 1, 3 and 6.

38. The representative of the United States pointed out that the title of Article 6 of the Agreement specifically referred to export credits, but there was nothing in the text on export credits. It would be important, in his delegation's view, to reference more directly in the Aircraft Agreement the recent OECD Agreements on the subject. This was one area which should be addressed in preparatory work on Article 8.3.

39. The representative of Canada said that his delegation was in favour of further work either under Article 8.3 or within the next round of trade negotiations. He drew attention to a Canadian paper (AIR/W/36) which contained some views on broadening the coverage of the Agreement.

40. The Chairman said that this item would be put on the agenda for the next meeting. Meantime he invited representatives to consider the matter and make available any new thoughts before the next meeting.

8. Procedures for amendments of the Annex (AIR/W/55)

41. The Chairman said that at the last two meetings of the Committee the question of improvement of procedures for amendment of the Annex (AIR/41) had been briefly discussed. There was now a proposal from the Japanese delegation (AIR/W/55) before the Committee; he reminded Signatories that the matter should be considered well ahead of the next modification of the Annex - which would presumably be the conversion of the Annex into Harmonized System.

42. The representative of Japan said that document AIR/W/52 consisted of two alternative proposals. He did not expect any detailed discussion at this meeting but invited Signatories to study the paper with a view to discussing it at the October meeting of the Committee. He recalled the terms of Article 9.5 which specified that an amendment shall not come into force for any Signatory until it has been accepted by such Signatory. The Committee had adopted a procedure of modification and rectification (AIR/41). However, in the view of his authorities this procedure presented a problem insofar as it did not make a distinction between amendments and

rectifications and did not contain any explicit acceptance provision. Hence the Japanese alternative proposals, the first one which would be based on a Committee decision and the second one on a protocol or legal instrument approach. Either solution was acceptable to his authorities. He recalled that the Tariff Committee was also discussing the question of legal procedures for adoption of the Harmonized System and asked the secretariat to inform the Committee on the proceedings in the Tariff Committee regarding legal acceptance.

43. The representative of the United States said that his delegation had not had time to examine this paper but that it seemed to raise important issues that needed careful thought.

44. The representative of the EEC said that the Commission would examine the proposals very carefully in order to have a position by the next meeting.

45. The representative of the secretariat (Mr. Kautzor-Schröder) said that the question of implementation of the Harmonized System was being actively discussed in the Tariff Committee since nearly two years. In this context it was relevant to look at three working papers which covered the points raised by Japan, namely TAR/W/51 which was a note by Japan, and TAR/W/55 and addendum 1 which was a secretariat note in response to the note by Japan. The question of whether the Harmonized System should be implemented through a protocol procedure or a certification procedure had been discussed the previous day in the Tariff Committee. Most members of that Committee favoured a protocol approach, without the pre-1959 unanimous acceptance requirement, but with a provision, as might be desirable for the Aircraft

Annex for instance, for a common date of entry into force for all Signatories. Other members of the Tariff Committee were still reflecting, and more definitive views were expected at the early July 1986 meeting.

46. The Chairman said that the matter would be put on the agenda for the next meeting.

9. Dates of next meetings

47. The dates for the next meetings were set for Wednesday, 8 October 1986 and for the week of 23 March 1987, tentatively Wednesday, 25 March.