

GENERAL AGREEMENT ON TARIFFS AND TRADE

Agreement on Trade in Civil Aircraft

COMMITTEE ON TRADE IN CIVIL AIRCRAFT

Minutes of the Meeting held in the
Centre William Rappard on 8 October 1986

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

	<u>Page</u>
1. Accession of Spain and Portugal to the EEC -	1
(i) Authentic text in Spanish	1
(ii) Notifications under Article 1.2	2
2. Harmonized System - Conversion of Annex - Supplementary Report of the Technical Sub-Committee	2
3. Procedures for amendment of the Annex	4
4. Implementation of the New (1985) Annex	6
5. Matters under Articles 4 and 6	6
6. Matters under Article 8.3	9
7. Report to the CONTRACTING PARTIES	10
8. FAA Regulations - Action Notices	10
9. US Tax Reform Bill - Transition provisions for certain aircraft	11
10. Dates of next meetings	11
1. <u>Accession of Spain and Portugal to the EEC</u>	
(i) <u>Authentic text of the Agreement in Spanish</u>	
1. The <u>Chairman</u> noted that Spain had signed the Agreement on 6 June and Portugal on 13 June 1986. These acceptances were reflected in document AIR/12/Rev.3 and Corr.1.	

2. He recalled that at the last meeting he had said that "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 a view to arriving at an agreed authentic text at that meeting, or latest at the spring 1987 meeting. Final authentication of the Spanish text would take the form of a Committee decision. The authentic Spanish text would then be transmitted to the depositary (the Director-General) who would issue certified true copies, according to normal practice." He noted that to date the secretariat had not received any comments on the draft.

3. The representative of Japan said that she had no objections to the content of the Spanish text. However, a Committee decision was insufficient to authenticate the Spanish text as it would amend the last sentence of the Agreement (by inserting the words authentic text in Spanish done in Geneva on ... of 1986.) A Committee decision could only produce an official translation.

4. The representative of Spain said that his authorities required an authentic text in Spanish for official publication, within a reasonable period of time.

5. There followed a discussion on the procedure to make the Spanish text authentic without amending the Agreement. One suggestion was to delete the last sentence concerning the date; another suggestion was to authenticate through a Committee decision. Further consideration would be given to the legal aspects of the matter.

6. The Committee agreed that the text of the Agreement on Trade in Civil Aircraft in Spanish prepared by the GATT secretariat, dated April 1986 (to be circulated as AIR/61) was the correct translation of the Agreement on Trade in Civil Aircraft. This decision was without prejudice to the procedures for authentication of the text. This question would be taken up at the next meeting of the Committee. The Committee expressed the hope that the decision would enable the Spanish authorities to proceed with the official publication of the text.

(ii) Notifications under Article 1.2

7. The Chairman noted that the required notification concerning end-use systems had been made by the EEC on behalf of Spain and Portugal in document AIR/59. The secretariat had issued an up-dated status of notifications in document AIR/60. He pointed out that notifications by Spain and Portugal on entities operating military aircraft were still outstanding.

2. Harmonized System - Conversion of the Annex - Supplementary Report by the Technical Sub-Committee

8. The Chairman recalled that at the last meeting the Committee had had a first examination of the Technical Sub-Committee's Report (AIR/TSC/6), the results of which were contained in document AIR/W/57. It had been returned to the Technical Sub-Committee for supplementary work.

9. The Chairman of the Technical Sub-Committee (Mr. K. Sangway, United Kingdom) said that the Technical Sub-Committee held a short meeting on Monday, 6 October and Tuesday, 7 October 1986 and reached conclusions on the

outstanding points, with one exception. Specifically the Sub-Committee produced a revised headnote and a final text of the Annex, which was drawn up in terms of the CCCN (Revised) and the Harmonized System. This was contained in an unnumbered document before the Committee entitled "Supplementary Report of the Technical Sub-Committee" dated 7 October 1986. The one exception to the Agreement on this text related to Harmonized System item 8483.20 - bearing housings incorporating ball or roller bearings, together with a consequential amendment at 8483.90. One delegation had opposed inclusion for policy reasons since this item was not currently covered in their version of the Annex. Another delegation had insisted on inclusion since all other Signatories currently covered these products. This difference was to be resolved by the Committee before the final version of the revised Annex could be issued. Having completed the task under its present mandate, the Technical Sub-Committee remained at the disposal of the Committee to undertake any further work which might be thought appropriate.

10. The representative of the EEC invited the United States to withdraw its reservation on items 8483.20 and .90 - bearing housings incorporating ball or roller bearings, and parts thereof - because these products were in other Signatories' lists and therefore were bound in GATT Schedules. He insisted that in terms of a transposition of the Annex these products should be included. Furthermore, it would be very awkward to withdraw GATT bindings on these products. He therefore invited the United States to reflect on the matter, leaving the Harmonized System Annex unfinalized for the time being and reverting to the matter at the next meeting.

11. The representative of the United States said that the problem was not with bearing housings but housings containing ball bearings. His delegation was not questioning the fact that these products were used in civil aircraft; the United States would not be able to include them and the matter would not change by the next meeting. It was preferable to finish work on the Harmonized System Annex at this meeting.

12. The representatives of Sweden, Japan, Switzerland and Canada said they supported the inclusion of these two items in the Harmonized System Annex. They also expressed the hope that this matter could be resolved as soon as possible so that the legal procedures needed for the entry into force of the new Annex could be initiated.

13. After suspending the meeting for consultations the Chairman said that a possible solution could be to keep the two items in the Annex and attaching a footnote indicating that these two items "shall not be accorded duty-free treatment by the United States. The United States Government will review these items by 1991 and inform the Committee." This solution might raise some legal problems which would have to be examined carefully; it also did not preclude other solutions. Along with this footnote there could be a Committee decision recording the considerations that led to this approach and making it quite clear that this was a unique solution for a unique situation. He realized that Signatories would need some time to examine this proposal and suggested that it be reverted to at the next meeting.

14. The representative of the United States said that this was a helpful suggestion and that his authorities would examine its legal and precedential implications carefully.

15. The representative of the EEC thanked the Chairman for his proposal and said he would revert to it at the next meeting.

16. The representative of Japan said that her authorities would examine this proposal very carefully. She hoped that the next meeting would take place very soon so that the Harmonized System Annex could be finalized.

17. The Chairman invited delegations who might find legal problems with this solution to present alternative solutions so that the Committee could meet within the time-constraints for the procedural entry into force of the new Annex.

3. Procedures for the amendment of the Annex

18. The Chairman recalled that at the last meeting there had been discussion of the Japanese proposal (AIR/W/55) concerning the improvement of procedures. The secretariat had reported on the discussions in the Tariff Committee on the question of whether the Harmonized System would be implemented through a protocol procedure or a certification procedure. An informal paper by Japan, dated 2 October 1986, had been distributed which highlighted a time-constraint with respect to the completion of procedures and proposed an amendment to Article 2.1.1. The matter of procedures raised many interdependent questions: the first one to be addressed was the protocol or certification approach; the second one was related to timing. Once these two points were settled the Committee could discuss subsequent questions. On the question of protocol versus certification approach he invited the secretariat to report on the latest developments in the Tariff Committee on the matter of choice of procedures.

19. Mr. Kautzor-Schröder informed the Committee that the Tariff Committee had met the previous week, inter alia, on the question of a protocol versus certification approach. There was a consensus within the Tariff Committee for introducing the Harmonized System on 1 January 1988 via a protocol approach for those contracting parties concerned. There was in fact a draft protocol being examined with a view to finalizing it at an early stage.

20. The representative of Japan said that the issue was not restricted to a protocol versus certification approach but could include a Committee decision approach as described in her delegation's informal paper of 2 October 1986. Whichever approach was taken it was necessary to abide by the provisions of Article 9.5 of the Agreement which said that an amendment could not come into force for any Signatory until it had been accepted by that Signatory. If the Committee preferred a protocol approach, this was acceptable to her delegation.

21. The Chairman said that it would be desirable for the Aircraft Committee to use a similar approach to that of the Tariff Committee with regard to introducing the Harmonized System. He noted that there was no dissent in the Committee for a protocol approach and concluded that the Committee agreed to draw up a protocol to introduce the Harmonized System Annex. He then invited comments on the question of timing for the protocol.

22. The representative of Japan drew attention to the time-constraints of the Japanese internal procedures described in her delegation's paper of 2 October 1986. Japan's acceptance of the amendment was subject to prior

approval by the Diet. In order to give effect to this amendment as of 1 January 1988 the administrative branch would have to submit it for approval at the Diet's next session which was to begin in December 1986. This deadline made it necessary to finalize the protocol of amendment at this meeting of the Committee so as to obtain a certified copy of the protocol by December 1986 at the latest. She requested the understanding and co-operation of other Signatories on this matter.

23. The Chairman noted that a further meeting of the Committee before December would be needed to meet this timing requirement.

24. The representative of the EEC said that there might be difficulties to call for a normal Committee meeting before the end of the year, however, an ad-hoc meeting with only this item on the agenda might be feasible.

25. The representative of the United States said that his delegation was prepared to co-operate to expedite this matter in order to help the Japanese delegation meet its internal time-constraints. He could agree in principle to a further meeting of the Committee this year, but did not want to agree to a closed agenda.

26. The Chairman said that the Committee should prepare the procedures pending final agreement on two items in the Annex. It had agreed on a protocol approach, and was aware of the time-constraints of the Japanese delegation. To carry the work forward he invited the Committee to discuss some aspects of a draft protocol, on the assumption that there would be an agreed Annex.

27. The representative of Japan referred again to her delegation's informal paper of 2 October 1986, and explained that as the Headnote of the Annex would be amended her authorities thought it was appropriate to make the parallel amendment to Article 2.1 of the Agreement.

28. The representative of Sweden said that the present wording of Article 2.1.1 covered the amended Annex. Article 2.1.1 referred to tariff headings listed in the Annex, it did not really matter what terminology was used for the different tariff lines in the Annex.

29. The representatives of the EEC agreed with the representative of Sweden and said that there was no need to change Article 2.1.1.

30. The representative of Japan noted that the Nordic countries and the EEC were of the view that the term "respective tariff headings" would mean both the HS and CCCN revised codes or item numbers. This was acceptable to her delegation - the proposal was therefore withdrawn.

31. The Chairman turned to subsequent questions regarding procedures and invited the Committee to consider whether the protocol should have a common date of entry into force of all Signatories or for some Signatories only (i.e. a key country provision).

32. Several representatives said that they would need to reflect on the matter of a key-country approach before having a definitive position.

33. The Chairman pointed out that this matter should be decided without delay if the Committee was to meet the time-constraints explained by Japan.

34. The representative of the EEC said that a key-country approach would be acceptable.

35. After some discussion the Chairman noted that the Committee was moving towards a key-country approach, but that several points were still to be decided. He suggested that some informal meetings would have to be called to work on a draft protocol before reconvening the Committee to finalize the Annex and approve the draft protocol. The Committee should aim to hold a formal meeting between 24 November and 5 December 1986. In the meantime he would arrange with the secretariat for informal consultations on the draft protocol.

4. Implementation of the New (1985) Annex

36. The Chairman said that at the last meeting it had been agreed to revert to the discussion on the binding of aircraft concessions of the 1985 Annex in Signatories' respective GATT schedules.

37. The representative of Japan said that some progress had been made with respect to Japan's position on this matter. His authorities had now come to the conclusion that Japan would incorporate its aircraft concessions via the Sixth Certification; this would be done by means of "the Nordic style" without prejudice to Japan's interpretation of Headnote 8 in Japan's Schedule. He pointed out that his authorities had made great efforts in this matter and had taken into account the significance of harmony with other Signatories.

38. The representative of the EEC asked when the Japanese submission to the Sixth Certification would be made.

39. The representative of Japan said they were in preparation and would be submitted very shortly.

5. Matters under Articles 4 and 6

40. The Chairman said that at the April meeting he had informed the Committee about informal talks between delegations of the Federal Republic of Germany, France, the United Kingdom and the United States on matters of civil aircraft. The discussions had covered 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 airline and the selection of component vendors by airframe manufacturers. He had been informed that the talks had been concluded on 25 and 26 June 1986. They had contributed to a better understanding of the way in which the civil aircraft industry operated in each of the countries and the positions of each of the governments. There had been a good exchange of information and while differences of view remained, some progress had been made on questions relating to government inducements, procurement decisions of national airlines and the selection of component vendors. With respect to the question of government supports, there had been an extensive and frank discussion between the delegations as to the support provided to the aerospace industry in the respective countries

and how such supports related to the provisions of the GATT Aircraft Agreement. With regard to the issue of inducements, concerns had been expressed in particular over linkage between the sale of civil aircraft, engines and parts. Those concerns included, inter alia, rights and restrictions of the airline industries, defence and national security programmes, general economic programmes and development assistance programmes. It had been recognized that it would be difficult to identify an exhaustive list of possible linkages. Therefore it had been suggested that if a problem arose on a reciprocal basis, officials of governments would in the first instance contact the responsible officials in the relevant embassies, who would undertake to investigate the allegations, to provide information and to seek to resolve the problem on a timely basis. All delegations had reaffirmed their government's commitment to the successful operation of the GATT Aircraft Agreement.

41. The representative of the United States thanked the Chairman for his report of the informal discussions between the United States and the Airbus Consortium governments. He believed that the Committee itself should consider the same issues further. The key issue to the United States in those informal discussions was agreed interpretation of mutual obligations under the Agreement. His delegation realized that little progress was being made within the Committee on reaching a common understanding, particularly on matters under Articles 4 and 6. He recalled that at both informal and formal meetings of the Committee a year ago his delegation had been unable to obtain a discussion of the individual items on an illustrative list of examples of prohibited inducements. Similarly his delegation felt that little progress had been made in resolving differences of interpretation of Article 6.

42. The four areas of the Agreement addressed during the informal discussions deserved further consideration in the Committee, as they concerned all Signatories to the Agreement. These areas included: inducements, various kinds of governmental intervention and pressures on airline equipment choice and aircraft manufacture vendor selection, as well as transparency and discipline over government supports. The views of his authorities on these matters were reflected in the minutes of previous meetings. His delegation felt it was essential to have a more frank and productive discussion with the Committee. His aim was to reach agreement on interpretative or explanatory notes which would clarify Signatories' mutual obligations. Such an agreement reached on an accelerated basis was essential. He would not at this meeting suggest any modalities for establishing this interpretation but sought the Committee's views in that regard. Some additional informal consultations with Signatories would aid the process. Modalities aside, and time permitting he hoped to engage the members of the Committee on the substance of the issues, i.e. an agreed interpretation of Articles 4 and 6. He hoped that other members of the Committee would explore this idea.

43. The representative of the EEC said that it would adopt a very prudent attitude to the US suggestion that the Committee come to an agreed interpretation, possibly a more constraining formulation of Articles 4 and 6. He recalled that the Aircraft Agreement was a special agreement dealing with a special industry - this was recognized in the preamble. It might be imprudent to introduce new problems that could affect the delicate balance of this Agreement, especially at a time when the GATT programme was so full of

other important problems. The operation of the Agreement was relatively new; the Preamble itself recognized the legitimacy and desirability of development of the aircraft industry. Developments in market shares since the entry into force of the Agreement in 1980 did not point to any breach of the basic provisions of the Code. The Community's reticence to an agreed interpretation was based on the fact that one Signatory only, which controlled at least half of the world market for civil aircraft, was insisting on tighter disciplines. He noted that the United States had not made any concrete proposals. The Community for its part would have to think very carefully on the principle of reinforcing disciplines, or even opening discussions on the matter, and weigh it against the possibility of creating an imbalance in the Agreement.

44. The representative of Canada said that his delegation was prepared, as it had stated before, to participate in discussions on inducements with a view to clarifying present practices and developing improved disciplines in these practices.

45. The representative of Sweden confirmed what she had said at the last meeting, namely that her delegation was prepared to take part in discussions on these subjects and hoped they would be included in further negotiations under Article 8.3.

46. The representative of the United States said that an agreed interpretation of Articles 4 and 6 remained a key issue to his delegation. He saw no paradox in the fact that a Signatory with a large share of the market should be seeking to have more discipline rather than less. The delegation of the United States believed that the intent of Article 4 was to remove Signatory governments from the commercial decision-making process. Airlines, whether government-owned or private, should be free to make purchase decisions on the basis of commercial and technological factors. It was in the best interest of all manufacturers and airlines that Signatories not require airlines, aircraft manufacturers, or other entities to procure civil aircraft parts or components from any particular source. This was the intent of Article 4.2. Article 4.3 of the Agreement was closely linked to Article 4.2 and provided for the purchase of products covered by the Agreement on a competitive price, quality and delivery basis, though qualified firms had the right of access to business opportunities on a competitive basis. There was little difference of interpretation on these matters, but explanatory notes in the minutes of the meetings would enhance the understanding both of future Signatories to the Agreement and of future members of delegations. An explanatory note to Article 4.4 was critical to ensure mutual understanding of the phrase "Signatories agree to 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." This was intended to discipline the manner in which Signatory governments could support their firms during marketing campaigns. Thus governments would refrain from providing incentives to "sweeten" the competition, of the sort that only they can provide. All Signatories to the Agreement shared a common interest in ensuring that aircraft procurement decisions, whether by airlines or manufacturers, were made on a technical and commercial basis. Resolving the differences in understanding through interpretative language would strengthen the GATT Agreement on Trade in Civil Aircraft.

47. An interpretative note to Article 6 of the Agreement should also be considered. All Signatories shared a common interest in ensuring that government supports for civil aircraft programmes did not cause trade distortions or worsen the trade tensions among non-Signatories. Her delegation therefore recommended that an interpretative note become part of the Minutes of this Committee. The concept of interpretative language did not require formal amendment of the Agreement. The US delegation did not have any language to propose at this point but was interested in opening the discussion on the matter.

6. Matters under Article 8.3

48. The Chairman asked whether any ideas had been developed since the last meeting on further negotiations under Article 8.3 for improvement of the Agreement.

49. The representative of Sweden referred to the US proposal to include in the Agreement a reference to the OECD agreements on export credits. The Nordic delegations had no objections to this proposal in substance, but were not convinced that the reference was really needed. An important area of work under Article 8.3, in the Nordic delegations' view, would be to seek improved transparency, particularly in the field of government supports. A closer study of the effects of government supports would be called for. Some clarification of the relationship between the Code on Technical Barriers and the Aircraft Agreement could usefully be made, particularly as the Aircraft Agreement covered operating and maintenance procedures which were services. This item could be put on the agenda for the next meeting.

50. The representative of Canada said that his delegation supported work to broaden and improve the Agreement and suggested that the issue could be addressed more thoroughly at the next meeting.

51. The representative of the EEC recalled that delegations had been invited to reflect on the possibility of modification or improvement of the Agreement. For its part the Commission had reflected and had come to the conclusion that it was not requesting any modification of the Agreement at this stage.

52. The representative of the United States said that he had proposed at least a year ago that some preliminary work be done on the review of the Agreement.

53. There followed a discussion on whether the Technical Sub-Committee should be asked to do exploratory work on possible areas for improvement of the Agreement.

54. The Chairman summarized the discussion by noting that there was a predominant feeling in the Committee that issues and proposals needed to be more precise before being referred to the Technical Sub-Committee. The matter would be reverted to at the next meeting. In the meantime he invited all delegations to formulate specific proposals which should be circulated not later than February 1987 in order to be examined at the April 1987 meeting of the Committee.

7. Report to the CONTRACTING PARTIES

55. 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.

56. The Committee adopted its Sixth Report to the CONTRACTING PARTIES contained in document L/6056.

8. FAA Regulations - Action Notices

57. The representative of the EEC said that the United States Federal Aviation Administration (FAA) had announced that it would give a stricter interpretation to certain of its regulations. For US-registered aircraft it would limit FAA-certified foreign repair stations to emergency work. It would also be more restrictive in renewing FAA certification of foreign repair stations and finally, it would use more rigorous procedures with respect to FAA certification of components and parts from foreign sources. These new regulations would apply not only to servicing and maintenance companies and to the exchange of such maintenance services between air carriers, but also apply to non-US aircraft manufacturers when the aircraft was registered in the United States. The EEC was well aware of the legitimate security concerns involved. However, these measures were a step backwards in terms of the internationalization of civil aircraft and in terms of the Aircraft Agreement. They increased the entry cost into the United States of all new aircraft and set obstacles in the way of servicing of the aircraft by foreign manufacturers. The EEC was of the view that these measures were contrary to Article 3.1 of the Agreement.

58. The representative of Sweden said that the Nordic delegations had similar concerns with regard to the new FAA regulations. She did not question the right of the United States to impose measures to ensure the safety of civil aviation but wondered whether the effect of these measures were compatible with the Agreement.

59. The representative of the United States said that he had taken good note of the comments by the EEC and the Nordic delegations. He confirmed that the FAA had developed these action notices for safety, in the wake of a national inspection programme that had revealed that some US air carriers were using products maintained or altered contrary to current FAA rules. Two major areas of concern related to FAA-certified foreign repair stations performing work outside the scope of their authority, and FAA-certified domestic repair stations' and air carriers' use of improperly documented components and parts from foreign sources. The objective of the action notices was to improve implementation of current FAA rules in these areas and to permit the most effective use of the FAA's limited surveillance resources. He added that the FAA and other agencies of the US Government had met several times with representatives of European governments to listen to their concerns. On 10 October there should be further discussion between the FAA and designated regulators of foreign countries of the contents of the draft final notices. He reiterated that the FAA action notices were not intended to broaden or narrow the current longstanding rules relating to foreign repair stations and the use of foreign source components and parts.

60. The representative of the EEC said that the FAA draft action notices would have considerable economic impact on US registered aircraft. He would

await the results of the 10 October meeting, but reserved his rights to revert to the matter.

61. The observer for Israel said that the issue of the FAA action notices was very important for Israel who operated a large and competitive aircraft maintenance and repair industry. His authorities shared the same safety concerns as the FAA and was interested in participating in the FAA consultations. He hoped that the final action notice would not be discriminatory and would give equal treatment to all countries.

62. The representative of Japan said that there was considerable interest in this matter in her capital.

63. The Chairman said there was general concern over this matter; the Committee would look forward to the results of the 10 October consultations, and might revert to the matter if necessary.

9. US Tax Reform Bill - Transitional provisions for certain aircraft

64. The representative of the EEC referred to the United States Tax Reform Bill adopted on 16 September 1986. The Bill abolished the Investment Tax Credit and Accelerated Depreciation Provision, with one exception in the transitional rules: certain aircraft with nineteen or fewer passenger seats made in Kansas, Florida, Georgia or Texas provided they were in stock or in the course of production with firm orders. This measure was transitional and therefore limited in time, but also in space for the four states concerned and covered nearly all the producers of this category of aircraft. The exemption gave US manufacturers a substantial marketing advantage over foreign suppliers. One of the consequences would be that potential buyers would anticipate their purchases to benefit from these transitional rules. The measure was also contrary to Article III:4 of the GATT in that it failed to provide for treatment no less favourable than that accorded to like products of national origin. The measure was also contrary to Article 4 of the Aircraft Agreement, which provided that Signatories avoid discriminating against suppliers from any Signatory. The EEC therefore asked the United States to seek retroactive rectification of this discriminatory provision.

65. The representative of the United States said that he had noted this statement. He pointed out that the transitional measures were not law yet and that other proposals were being discussed. It was not clear at this stage what the final rules would be. He would report these comments to his capital.

10. Dates of next meetings

66. The dates for the next meetings were set for Wednesday, 25 March 1987 and tentatively for the week of 19 October 1987. In addition a special meeting would be called between 24 November and 5 December 1986 to finalize a Protocol Introducing the Harmonized System Annex.