GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

AIR/M/29
6 June 1991

Special Distribution

Agreement on Trade in Civil Aircraft

DRAFT MINUTES OF THE MEETING HELD IN THE CENTRE WILLIAM RAPPARD ON 21 MARCH 1991

Chairman: Mr. M. Lindström (Sweden)

1. Election of Officers

1. The Committee elected Mr. M. Lindström (Sweden) as Chairman of the Committee and Mr. Th. J.A.M. de Bruijn (Netherlands) as Vice-Chairman. It was noted again that there was no work on hand for the Technical Sub-Committee at the present time; the election of a Chairman of the Technical Sub-Committee would be postponed until that body was reconvened.

2. The Chairman expressed the Committee's appreciation for the excellent work done by the outgoing Chairman, Mr. Tadatsuma Koda, during his two successive terms of office.

2. Adoption of Agenda

3. The Chairman noted that in addition to the items listed in the proposed agenda circulated in GATT/AIR/3163, the European Communities had proposed two additional items for inclusion on the agenda of the present meeting. These had been circulated in GATT/AIR/3163/Add.1 and were as follows:

1. Questions relating to the matter referred by the United States to the Committee on Subsidies and Countervailing Measures and concerning the exchange rate mechanism operated by the Government of Germany in favour of its aircraft manufacturing industry; and

2. Proposed revision of the GATT Agreement on Trade in Civil Aircraft - request by the European Communities pursuant to Article 8.3 of the Agreement (AIR/W/79).

4. The Chairman suggested that these two items be inserted in the proposed agenda as the fifth and sixth items, respectively.

The agenda was adopted as amended.

3. Bilateral consultations on the review of Articles 4 and 6 (AIR/W/78)

5. The Chairman drew attention to the communication from Japan in document AIR/W/78 and asked the representative of Japan to introduce this item.

6. The representative of Japan said that his country understood that the United States and the Community had been negotiating bilaterally on subsidies for the aircraft industry and particularly on aid to the Airbus consortium. Japan had asked that the Aircraft Committee discuss the issue of bilateral consultations between the United States and the European Community on reviewing Article 4 and 6, out of concern that these two signatories intended to introduce at multilateral level the measures they had agreed upon. Should this be the case, it was Japan's view that both of these parties should keep this Committee informed of the situation in those bilateral negotiations, and that the issue should be discussed in a transparent manner, taking account of the different positions.

7. The representative of the EEC said that Japan's request had not come as a surprise. The Community considered it to be perfectly legitimate, and was prepared to provide complete transparency on this issue. These discussions and negotiations had been conducted between the two signatories over a period of three to four years - off and on - in a constructive spirit, and in the Community's view had succeeded in creating a much better

understanding of each party's preoccupations. With respect to a number of important issues, there had been success in narrowing down the divergencies between the two parties to a considerable extent. One issue on which the Community believed there was a common view was the need to establish new, clear, internationally binding disciplines in the civil aircraft sector, and the fact that it would not be sufficient to limit such agreement only to the United States and the Community, but that it would be indispensable to broaden it to include a much wider range of signatories. Regarding the "news reports" referred to in Japan's communication (AIR/W/78), he said that these were erroneous, to put it mildly. While a number of fruitful, constructive discussions had taken place between the parties during 1990, it was incorrect to say that a final stage had been reached and that an agreement was expected shortly. In fact, contacts since December of 1990 had not led the Community to believe that any rapid conclusion of the bilateral discussions was forthcoming. That was one of the reasons the Community had taken the step of formally proposing that the Committee undertake a revision of the Aircraft Agreement. It seemed to the Community that both parties shared the objective of adopting clearer and more precise international disciplines for this sector, and that both were concerned over present levels of government support, be it direct or indirect, provided in this sector. Both parties seemed to agree that precise disciplines should be introduced in this regard, and that there should be a prohibition on production support for future civil aircraft. This view was of very great importance given the fact that neither the Subsidies Agreement nor the Aircraft Agreement explicitly contained anything comparable to such a discipline. Progress in conceptual terms seemed to have been made with respect to the following: the desirability that governments accept a commitment to reduce the maximum allowed level of government support - percentage figures had been mentioned; the need to introduce qualitative commitments with respect, inter alia, to an obligation that governments not launch so-called "while elephants"; the need for a clearly stated obligation to provide government support in accordance with certain minimum guidelines with respect to the interest rate applicable; the necessity to foresee a certain period of time over which such government support would be reimbursed. In the Community's view, much progress had been made with respect to these basic concepts or building blocks; the main stumbling block, from the Community's perspective, had been not so much the definition of these concepts, but the difficulty of agreeing on figures. One area of disagreement had related to the question of whether governments should be obliged, through an international agreement, to require that government support be reimbursed in accordance with a certain mathematical formula, or whether governments would be free to determine not the period of time of reimbursement, but the modalities of that reimbursement. Other important issues discussed had related to indirect support. A constant factor in the Community's approach to this matter had been that it was indispensable that any new international agreement, be it bilateral or multilateral, be a balanced one and that disciplines be defined with respect not only to the form of direct support found, for example, in the Community, but with respect to the form of indirect support that was widespread in other signatories. In the Community's view, the tentative results on this issue had been far too general. The parties had also discussed a considerable number of

substantive disciplines, including the question of transparency. He said that the Community would be ready both in a bilateral and in a multilateral context to accept the basic principle that transparency would be provided to this Committee on the basis of a renewed or revised GATT Aircraft Agreement. The parties had been moving closer together on this difficult political question towards the end of their bilateral talks. In the Community's view, it would be essential to introduce the possibility for a signatory to derogate temporarily from its obligations should it find itself in exceptional and unforeseen circumstances which would threaten the survival of a significant part of its domestic civil aircraft industry. Much progress seemed to have been made in conceptual terms on this point, and this was one of the issues on which the bilateral discussions with the United States should provide much assistance to the proposed exercise of multilateral negotiations in the Aircraft Committee. This would also apply to the question of what had been referred to as the "escape clause". It was also useful to move closer together with respect to the basic concept that any new and international disciplines, be they bilateral or multilateral, should include a commitment that signatories not take unilateral trade action against each other. The Community was prepared to provide members of the Committee with more information regarding its position and to answer any questions Signatories might have.

8. The representative of the United States said that the representative of the EEC had covered some of the major issues that had been under discussion bilaterally. He recalled that the United States had made previous presentations to the Committee on this issue and thus would not repeat everything that had been covered. On many points the Community had outlined fairly where the negotiations stood; however, he wanted to remind Japan and all other signatories that the United States had regularly reported at each Committee meeting on the bilateral consultations. In fact, those bilateral consultations did not stand alone but were part of the multilateral process that had begun in the Committee in 1987. On occasion there had been extensive discussions in the Committee on the same issues, but when certain difficulties had become apparent, it had been thought more productive to consult bilaterally outside the Committee. The United States had been and remained open to such bilateral consultations with any signatory. The United States had concurred with the Community's view that production supports for future aircraft should be prohibited. However, the United States believed that production supports for aircraft were already prohibited by the Aircraft Agreement in Articles 6.1 and 6.2. The United States did not understand how one could reasonably expect to recoup the cost, including finance costs, of government support if one was not making enough money to pay for even the production of the aircraft. He referred the Committee to the extensive presentation on the US Government's interpretation of obligations under the Aircraft Agreement made in March 1987 (AIR/W/63 and AIR/M/20). On other matters regarding subsidies and government support, the United States had taken a similar view to the Community's to reduce - in the US view to eliminate - the subsidy element. This could be done either by eliminating all types of government support - which was the US preference - or by providing such support on the basis of full market terms and conditions. However, the very availability of support from the government, even at full market rates, implied a subsidy

if such support was not available in the market. Therefore, the US proposal had been to remove the subsidy element through some combination of the aforementioned means, and eventually to eliminate it entirely. On transparency, the US view had been that information provided by the parties should be made publicly available as well; this did not include proprietary information on government-to-industry transactions, but rather government participation in the support of the industry. Regarding so-called indirect supports, which the Community had argued was somehow associated with defence procurement or government procurement of aircraft, the United States had pointed out that the government-military business of the Airbus partners was, in absolute and percentage terms, greater than that of US civil aircraft companies McDonnell Douglas and Boeing combined. The United States had stated its willingness to accept any reasonable discipline that might be proposed in bilateral consultations and had thought that agreement had been reached in principle in that area. His delegation did not understand what the Community had meant regarding more specific disciplines in this area. Regarding press reports that the US purchase of large military aircraft had somehow benefited the civil aircraft producers, he asked whether the Community wanted to pursue discussion on this matter. His delegation was open to any questions on its position.

9. The representative of Sweden, speaking on behalf of Sweden and Norway, recalled that these countries had frequently stated that they welcomed initiatives on improved disciplines and transparency in trade in civil aircraft. As their aircraft industries were fairly small, they were particularly anxious to have reliable and functional multilateral rules and disciplines so as to ensure that markets functioned efficiently. They agreed with Japan on the importance of keeping the entire Committee informed on the bilateral negotiations between the United States and the Community, as the matters under discussion there concerned not only these two parties, but were also of great interest to other countries, particularly in view of the request for negotiations in accordance with Article 8.3 of the Agreement. Sweden and Norway welcomed the information provided by the Community and the United States, and had two additional questions. The first related to the specific percentage levels mentioned by the Community for non-actionable subsidies on research and development. According to press reports, some specific figures had been mentioned, and further details on these figures from both sides would be welcomed, given that these figures seemed to be different from what had been discussed in the Uruguay Round negotiations on the new Subsidies Code. Sweden and Norway would also welcome further detailed information on the suggested complementary rules - such as on reimbursement - relating to these levels, which had been referred to by the Community. The second question related to the Community's statement regarding a commitment not to take unilateral action. Would such a provision include matters such as both countervailing duties and anti-dumping duties?

10. The representative of the EEC, referring to the US question as to whether production support was or was not already prohibited under Article 6, said that this had been debated at length. One of the reasons the Community felt that it was necessary to spell out that it was, or should be, prohibited was that it believed there was insufficient clarity

regarding the interpretation of Articles 6.1 and 6.2 as they stood. However, what was important was that both the United States and the Community seemed to agree that there should be a clear-cut, unequivocal international commitment to refrain from such production support, and not the question of how to interpret Articles 6.1 and 6.2. Transparency was one important issue on which there had been and still was disagreement - the US idea that information should be made publicly available. In the vast majority of cases, the type of information referred to would be publicly available anyway, but the Community did not think that a principle should be established to do so, because in the GATT context this matter involved government obligations. What was important was that respective governments know what those obligations were, and that they be given a reasonable chance to establish whether other parties were living up to their international commitments.

11. He said that the United States had suggested that there was a potential for higher indirect support in the Community than in the United States, but this was not the case. Nevertheless, what was important was that the United States and the Community, and hopefully other participants, agreed that it was essential that stringent disciplines be adopted with respect both to direct and indirect support. The Community would be willing to envisage going much further in terms of precision of the commitment in the important area of indirect support, as what had been discussed with the United States had been of the nature of a generally-worded commitment. Regarding Sweden's reference to figures in the press on the proposed ceiling on so-called "actionable subsidies", he said that what had been discussed bilaterally with the United States in this respect had in conceptual terms been examined in the Uruguay Round Subsidies Code negotiations in a more far-reaching manner than what was being suggested for the aircraft sector. Quite simply, the Community believed that there should be a commitment to refrain from granting government support over and above a certain level. This was not the same concept as had been proposed in the Subsidies Code negotiations. Regarding a percentage figure, he said that the Community had looked very carefully at what it had been doing itself, in order to establish the parameters of what it could agree to. Looking at the recent levels of government supports in the Community in this sector, it had decided that it could envisage a commitment to reduce such supports, depending on the definition of support and, of course, depending on the exact basis to be used. Such a reduction could amount to between one-third and one-half of current levels. This would mean a reduction, down to 45 per cent, of government support expressed as a maximum percentage of development costs - according to a definition which would have to be agreed upon - for new civil aircraft. This indicated the dimension of the potential commitment the Community had been considering, which would constitute a very significant sacrifice. With respect to the terms and conditions, the key issue in the Community's view had been, was and would be whether one adopted, in addition to the quantitative discipline, a discipline relating to the quality of government support. The Community's position had been that it was willing to envisage a discipline which would oblige signatories - under the ceiling under which they could grant government support - to grant it against payment of a certain rate of interest which,

of course, would have to be negotiated. This had been one of the stumbling blocks with the United States, because the Community simply had not at the time been able to agree on the percentage figure, or the concept or reference which should be employed for the purpose of establishing that percentage.

12. Regarding Sweden's question as to whether the proposed commitment not to take unilateral action would cover anti-dumping and anti-subsidy action, the answer was yes and no. Yes, in the sense that the Community believed that neither party should self-initiate anti-dumping or anti-dumping subsidy action. The Community would not necessarily reject the notion of a total ban on anti-dumping and anti-subsidy action in this field, if binding multilateral rules for all aircraft producers could be agreed upon. Of course, such a commitment would propose significant legal difficulties of the same type as those which had made it difficult or impossible for the United States to accept a similar commitment in the context of the bilateral discussions, i.e. it was difficult to prevent private parties from taking action open to them under national law.

13. The representative of the United States said that on the anti-dumping question, the United States had understood that with respect to a private action by a private company against actions by an exporting company, government was not involved except in the rôle of adjudicator; therefore, the United States had had no intention in its proposals to have that covered in the bilateral discussions. Regarding countervailing duty, both parties had recognized that as long as there was a significant possibility of subsidy on either side, private parties should not be constrained in their ability to file for relief in the form of countervailing duties against such subsidies. He said that the percentage reductions mentioned by the Community brought into focus the difference in perspective of the United States and the Community on this matter. The United States viewed the sacrifice not as that of the government in reducing subsidies, but as that of the taxpayers and other industries which had to pay for the subsidies.

14. The Chairman said that the two parties seemed to have informed the Committee rather extensively on the contents of their bilateral consultations and had been willing to answer questions from signatories. In his view, this process had provided some of the transparency which was one of the objectives of work in this Committee. He noted that the two signatories had offered to provide additional information if so requested.

15. The Committee took note of the statements.

4. Proposed revision of the GATT Agreement on Trade in Civil Aircraft - Request by the European Communities pursuant to Article 8.3 of the Agreement (AIR/W/79)

16. The Chairman recalled that Article 8.3 provided that "Signatories shall undertake further negotiations, with a view to broadening and improving this Agreement on the basis of mutual reciprocity". The history of implementation of Article 8.3 was that in July 1982, the Committee had

begun a process of examining proposals to broaden and improve the Agreement. This process had culminated in the extension of the Annex on product coverage to the Agreement, and in the 1986 Protocol to the Agreement. Also, in 1986 and 1987 this issue had been on the agenda.

17. The representative of the EEC said that as had been seen over the past several years, there was considerable scope for trade conflict in the civil aircraft sector. It had been the Community's hope, in 1979, that it would be possible to contain such potential disputes through the adoption of the Aircraft Agreement, but this seemed not to have been possible. In 1987 there had been disagreement as to the interpretation of certain important parts of the Agreement. Furthermore, there had been an unfortunate lack of precision and clarity with respect to other parts of it, which had led to yet further disagreement on interpretation. This had appeared most clearly with respect to three provisions to which the Community had referred in AIR/W/79, i.e. Article 3, Article 6 and certain provisions of Article 8 - in particular Articles 8.7 and 8.8. With regard to the bilateral negotiations that the Community had been conducting with the United States over the past few years, a point had been reached where the Community thought that the time had come to bring this matter before a much wider audience. While much conceptual progress had been made in these negotiations, the parties had seemed unable to get beyond the remaining hurdles, most of which related to the question of what figures to put into the concepts. In any event, the Community had felt it necessary, before taking the matter any further bilaterally, to bring such negotiations into a multilateral forum, as the Community had always believed that the interests of international trade could not be satisfactorily served by a bilateral agreement only, and that it would be necessary to introduce new disciplines in the Aircraft Agreement. In the Community's view, such negotiations could and should be undertaken at this particular time, in part, because the outlook currently for the civil aircraft sector was encouraging. However, European aircraft producers were in a somewhat less advantageous situation, as they had to contend with an extremely significant devaluation of the dollar, which was the only currency used in the aircraft industry. Politically, it was better to try to negotiate something in positive circumstances rather than in a crisis situation. Also, negotiations on government subsidies were taking place in the Subsidies Committee, and there was clearly a relationship between what was going on there and the type of régime the Community would like to see pertain in the aircraft sector. In the Community's view, it should be clearly established that the rules to be agreed upon in the Aircraft Committee - in what the Community hoped would become the revised GATT Aircraft Agreement - would supercede all other Agreements, including the future Subsidies Code, for the aircraft sector. The Community believed that the current GATT Aircraft Agreement constituted a lex specialis for this sector, but there had been some disagreement about this, which the Community felt should be eliminated for the future. As the negotiations on the future shape of the new Subsidies Code were, and would be, underway over the next months, the Community believed that this was the time to begin negotiations and to finalize a new GATT Aircraft Agreement, with respect not only to subsidies, but also to the other issues such as Article 4 and the dispute settlement procedural aspects of Article 8.

There had been no revision of these aspects of the Agreement since 1979, and such a review should begin very soon and should be conducted expeditiously so that agreement could be reached, hopefully, before the end of the Uruguay Round. The Community would encourage all countries which were current or potential aircraft producers to become signatories to such a revised Agreement.

18. The representative of Japan said that as the Community's communication in AIR/W/79 had been circulated only recently, his delegation had not had time to study it in depth and thus would make only very preliminary comments on it. Japan appreciated the Community's efforts to improve the Aircraft Agreement. These efforts were in line with the spirit of the Agreement as stated in its Preamble, i.e. "to eliminate adverse effects on trade in civil aircraft resulting from government support in civil aircraft development, production and marketing ...". The Japanese Government was prepared to share in these efforts to improve the Agreement and was ready to contribute to this multilateral negotiation. However, the Preamble also stated that "...many Signatories view the aircraft sector as a particularly important component of economic and industrial policy". The size and the level of each country's aircraft industry were quite different; the schemes of support of these industries were very different. If the Agreement was revised without taking these characteristics into account, it would surely result in an unfair situation, in that while some subsidies systems would be kept as they were, others would be forced to change very drastically. Therefore, signatories should be very careful to ensure that every subsidy system in every country could be dealt with in a fair manner. In Japan's view, both direct and indirect supports should be discussed - for example, the benefit to the aircraft industry provided through military projects. An indispensable first step in any negotiations to improve the Aircraft Agreement would be to establish a method to assess the different support systems in an equitable manner and to reach a common understanding on how to compare the benefits under the different régimes.

19. The representative of Sweden, on behalf of Sweden and Norway, said that these countries had not yet been able to make a full analysis of the Community's proposal in AIR/W/79. However, they were willing to approach the suggestion with an open mind and felt the proposal had several merits. As had been pointed out, Article 8.3 clearly put an obligation on signatories to undertake further negotiations. Sweden and Norway clearly preferred that the aim of improving the Agreement be reached within the framework of a multilateral, rather than a bilateral, process. The Aircraft Agreement was a positive example of a sectoral agreement which had succeeded in providing more liberal rules within a particular sector than the General Agreement provided, and Sweden and Norway were willing to discuss additional rules that brought signatories further along the same route. These countries had long been of the opinion that Article 4 was vague and thus difficult to interpret; they were willing to discuss this Article and looked forward to further input from the Community as indicated in its document. Strengthening of the GATT subsidy disciplines was an important overall goal for the Nordic countries in the Uruguay Round and they were willing to consider whether Article 6 of the Aircraft Agreement

could be improved. The Community's suggestions on Article 6 were interesting and merited further study both in relation to signatories' national conditions and in relation to the ongoing Uruguay Round negotiations on the Subsidies Code. The same was true for the suggested new provisions on information and verification of compliance with the disciplines. The proposal on rules allowing signatories to derogate temporarily from the new disciplines needed very careful reflection, as no loopholes to the Agreement should be created.

20. The representative of the EEC expressed his delegation's appreciation for responses from those signatories which had spoken. The Community fully understood Japan's wish to be able to compare the benefits under the different régimes in the aircraft sector. This was the kind of exercise in which each signatory would no doubt want to engage in order to see what it would gain from a future revised agreement. The Community was completely open to discuss this type of issue as well as any other issue that any other participant wanted to raise. Regarding the draft interpretative note to Article 4 referred to in AIR/W/79, the Community would provide this to the Committee for its next meeting, at which the Community hoped it would be possible to start the process of substantive negotiations. Referring to the Nordic countries' concern regarding the suggested possibility for signatories to derogate temporarily from whatever new disciplines were agreed upon, he said that any such derogation clause would have to be very carefully circumscribed so as not to create a loophole; at the same time, the Community believed it necessary to have such a derogation clause, taking into account the very wide ramifications of this industry and its place in each signatory's national economy, not to mention its relevant source in the context of national security and defence. Regarding paragraph 10 in AIR/W/79, which referred to the relationship between the proposed new Aircraft Agreement and other agreements, in particular the Subsidies Code, the Community was very much concerned with the absence of agreement between some signatories concerning the status of the present Aircraft Agreement, and would want to make it absolutely clear in a revised Aircraft Agreement that this would be the Agreement to which signatories would refer in the case of disputes arising between them in the civil aircraft sector. In the Community's view, this was the only way to avoid the type of procedural disagreements that had been seen in the past and which were currently resurfacing. His delegation had spoken at considerable length about this matter in other meetings of the Committee, and would have to do so again at the present meeting, but this point had to be set straight. The intent of this proposal was not to detract from the necessity perceived by other parties to introduce new improved, more precise disciplines on government support in this sector. However, because of the special characteristics of the aircraft sector, this should be done for that sector in a special and specific agreement such as the new GATT Aircraft Agreement. This should be the Agreement which interpreted, with respect to subsidies, Articles VI and XVI of the GATT and which laid down procedures for dispute settlement in the aircraft sector.

21. The representative of the United States said that the Community's proposal was indeed ambitious. Was the timing suggested by the Community to complete this work prior to completion of the Uruguay Round Subsidies Code negotiations? If so, this would require a great deal of resources on the part of the governments represented. He asked the Community why it thought that - given the fact that in the bilateral negotiations, the United States had found the Community's most recent proposals completely unacceptable, and that no live proposals were on the table - agreement could be reached within the stated time-frame.

22. The representative of the EEC said that it was indeed the Community's ambition to conduct and to conclude these negotiations before the end of the Uruguay Round, and that it did not see this as an impossible task, or one requiring enormous resources from governments. The Community believed in free, frank and open discussion and, even had it not been for the deadlock in the bilateral negotiations, would have thought the time ripe to start these multilateral negotiations in the Aircraft Committee. It would not have been fair to present the other signatories with a "fait accompli" in terms of drafting, and since there were other country situations represented in this Committee, the Community hoped that bringing fresh new perspectives into this negotiation would improve the chances of overcoming past obstacles. The bilateral divergencies between the United States and the Community were, in the Community's view, of a quantitative character, in terms of the figures, and input from other signatories might help to find solutions there.

23. The representative of the United States said that his delegation favoured discussing issues such as Articles 4 and 6 within the Committee, and since 1984 had vigorously pursued this. The United States had suggested previously the possibility of renegotiation of certain elements under Article 8.3, and had also suggested some technical changes; another delegation had talked about the possible expansion of the coverage of tariff treatment. The United States had viewed the current process which had begun in the spring of 1987 as a multilateral process. He asked how signatories could proceed to a major renegotiation of the Aircraft Agreement when they did not even know what their base was. If current obligations were viewed by the EEC as vague and unclear, perhaps these - where possible and where renegotiation was not necessary - should first be clarified, particularly Article 4 and, for example, the concept of inducements.

24. The representative of the EEC said that the Community had a very open mind on this question. The Community had focused on Articles 4, 6 and parts of 8 precisely because those provisions referred to subject matter which in the Community's view was inadequately addressed. The existing Aircraft Agreement was in several respects a good one which had stood the test of time. It might not be necessary to rewrite Article 4, but rather to agree on a much more detailed interpretation of this provision, and the Community would shortly provide the Committee with a draft text on this matter. Article 6 was a different matter, in that it had a much broader scope than its relative brevity would indicate. Article 6.1 stated unambiguously that the provisions of the Subsidies Code applied to the aircraft sector. However, that Code was not itself a model of clarity.

A proposal to renegotiate Article 6 should not be interpreted by anyone as implying that the Community wanted to get rid of its obligations arising under the current Subsidies Code, but that those obligations should be made much clearer, for example, by defining certain specific reference points which could be expressed as percentages. Regarding Article 8.8, one basic flaw was that it left open the possibility of forum shopping. It was important to clarify that all civil aircraft sector disputes should be referred to the Aircraft Committee for resolution; this would clarify, if need be, the question of the lex specialis.

25. The representative of the United States said that his delegation had only recently received the Community's proposal in AIR/W/79 and would have to take it under advisement and respond to it at some later time. He said, as a personal view, that it seemed that the parties were in need of some confidence-building measures in order to be able to reach agreement on anything. The United States would like to make the Aircraft Agreement more viable in terms of dealing with current problems. Article 4 probably did not require renegotiation, but rather clarification of interpretation; perhaps an interpretative note might be a place to start, and the United States looked forward to receiving the Community's submission. Regarding the Community's suggestions on Article 8.3, he said that the United States had not at all agreed to bring wholesale into any negotiations in this Committee the positions that had been discussed bilaterally as interim proposals. Moreover, there was currently no derogation clause in the Aircraft Agreement or in the Subsidies Code, and the United States might not want to introduce that principle in the Aircraft Committee.

26. The representative of Canada said that his delegation had only recently received the Community's proposal and therefore was not in a position at the present meeting to take a position on it. The clarifications offered by the Community at this meeting would be taken into consideration in Canada's review of this document.

27. The representative of the EEC said that the Community was not trying to bring, either wholesale or piecemeal, the achievements of the bilateral negotiations into this Committee. The Community merely wanted to build on the experience achieved bilaterally. Regarding Article 8.3, his delegation hoped that other signatories would undertake the necessary review of this request domestically, and that it would be possible, on a consensus basis, for the Chairman to convene another meeting of this Committee within a few weeks in order to start what the Community hoped would be substantive negotiations on all issues that any participant wished to put on the table.

28. The Chairman said that the Community had introduced an important initiative, and that the comments made had increased Signatories' understanding of the thinking behind this initiative. Several Signatories had noted that the proposal had been circulated only very recently, and had expressed their desire to have more time to reflect carefully on it. One delegation had pointed to the considerable effort involved in a renegotiation of this scope and had also referred to the need to clarify current obligations under the Agreement, particularly Article 4. It thus

did not seem appropriate for the Committee to take any position on the proposal at the present meeting. The start-up of a multilateral negotiation of this type was a serious matter which raised a number of practical questions. He therefore proposed that the Committee agree that he, as Chairman, hold informal consultations at the earliest date possible on the best way to proceed with this matter. Those consultations would be open to all interested Signatories.

29. The Committee so agreed.

5. United States' Customs Directive regarding the implementation of the Harmonized System

30. The representative of the EEC said that this item concerned the United States' Customs Directive No. 3590.01 of 1 May 1989 regarding the standardization of information in invoices for imports into the United States. Article 2 of the Aircraft Agreement provided for duty-free treatment for civil aircraft and related parts and components, and that Signatories to the Agreement would adopt a customs system aimed at ensuring free trade in these goods. The US customs system was not based on an end-use system, and required far more detailed information than did the European system, because in the United States the point of entry was the sole opportunity for any verification of the purpose for which the product was being imported. The Community recognized that the US system was of necessity more rigorous than the Community's. However, regarding Chapter 84 of the Harmonized System which covered aircraft, aircraft parts, hydraulic systems and hydropneumatic systems, the Community had certain concerns as to the potential risk of non-tariff barriers should the Directive be applied very strictly. This could be damaging to the aircraft industries of countries exporting such goods to the United States. The amount of trade which could be affected was not insignificant: in 1989, US imports of civil aircraft parts amounted to roughly US$3 billion of which US$2 billion were from the Community, and these figures were expected to increase. The Community had raised this matter at the present meeting because since 4 March 1991 there had been reports that the United States was applying the Directive more strictly and not on products under Chapter 84 but rather on those under Chapter 88, particularly aircraft parts under heading 88.03, which seemed paradoxical because the Directive was far less rigorous for this heading than for Chapter 84. Thus, the possibility remained that the United States might one day apply this Directive to products for which the requirements were far more detailed. The Community hoped that measures would be taken to avoid this outcome and reserved its right to revert to this item at a future meeting.

31. The representative of the United States said that his authorities regarded all of its obligations under the Aircraft Agreement very seriously and intended to meet all of them, specifically those under Article 2. This was the first time that the United States had any knowledge of concerns regarding Customs Directive 3590.01. This Directive was a general one and was not strictly directed to aircraft imports, but to imports in general; he recalled that the Harmonized System, as implemented

by the United States, had at least 5,000 headings, 8,000 8-digit item numbers and 10,000 10-digit item numbers. Thus, the United States needed to know quite accurately what the product was to ensure its correct classification and correct duty or duty-free treatment. The operative part of this Directive referred to the name of the seller, name of the purchaser, description of merchandise, quality or grade of the item, the quantity and the charges or value of the item. This was normal information required for customs purposes, and it was not the intent of his Government to request this information with the purpose of creating any kind of trade barrier. The purpose of the Directive was to get complete and accurate invoices and to advise the parties importing goods into the United States of the need for such descriptions in order to see that the products were properly classified. He noted that once a description of an article had been prepared, this description could be used indefinitely as long as the article did not change. Thus, it was a one-time inconvenience to the importer. Moreover, the US Customs Service was exploring abbreviated procedures to facilitate the entry of goods by parties who repeatedly entered the same types of goods into the United States. Preliminary classification and binding legal rulings allowed for invoicing descriptions to be reduced to a minimum. His delegation and the US Customs Service stood prepared to consult on any problems anyone had with this Directive or with matters related to Article 2. However, to date no importers had brought any specific problem to his attention. On the other hand, the Customs Service had signalled that it believed certain goods to have been classified incorrectly, and that heading 88.03 which covered miscellaneous aircraft goods, had been an easy basket heading for importers to use rather than classifying those items correctly. Not all items used in aircraft were given duty-free treatment in the United States, nor was the United States obligated to do so under the Agreement. Thus, it was important that all items be properly classified, and in this regard he cited the example of ballbearings. The imported goods in question were used by US citizens or corporate citizens either in the maintenance of aircraft currently operating in the United States or in the manufacture and assembly of aircraft, and the US Government had no desire to impede that process.

32. The representative of the EEC said that it was easier for aircraft-related goods of US origin to enter the Community's market than vice versa. This was because the Community had an end-use system in place. US exporters also benefited from a suspension of duties on almost all of the items on which consensus on this had not yet been reached in the Committee. This was not the case on the US side, where a law governed the tariff to be applied on such products, and this law required a certificate and accompanying documentation, as established by the Secretary of the Treasury. As from 4 March 1991, it appeared that US customs agents had been applying these measures to products under tariff heading 88.03. The Community was asking the United States to verify exactly how this tariff heading was to be treated, as well as tariff heading 84.71 which covered fly-by-wire computers.

33. The Chairman noted the willingness on the part of the United States to consult with any interested Signatory and to provide further information on this matter.

34 The Committee took note of the statements.

6. Status of Signatories

35. The Chairman recalled that at its meeting in October 1989, the Committee had welcomed Egypt as a new full member of the Committee, and that the secretariat had invited Egypt in writing to make the two notifications required of new Signatories: the first, defining entities operating military aircraft, and the second on the country's end-use system. These notifications had not as yet been received from Egypt. He also noted that Egypt, Romania and Greece had not yet accepted the Protocol (1986) to the Agreement on Trade in Civil Aircraft, and that Greece had not yet ratified the Agreement.

36. The Committee took note of this information.

7. Questions relating to the matter referred by the United States to the Committee on Subsidies and Countervailing Measures and concerning the exchange rate mechanism operated by the Government of Germany in favour of its aircraft manufacturing industry

37. The Chairman recalled that this item had been requested for inclusion on the agenda of the present meeting by the European Communities.

38. The representative of the EEC said that his delegation was raising the matter of the United States' complaint in the Subsidies Committee and its request for a panel under Article 17 of the Subsidies Code because the Community considered that dispute settlement on a dispute relating to the aircraft sector should be conducted under the auspices of, and with reference to, the procedures laid down in the Aircraft Agreement. However, this complaint had been brought by the United States to the Subsidies Committee on 14 February 1991. Three weeks later, the Chairwoman of the Subsidies Committee had decided - and the Community had not opposed - the establishment of a panel under the Code to review the matters to which reference had been made by the United States. The Community had expected that the terms of reference of that panel would fully reflect the view held by the Community - and, his delegation believed, by other Signatories - that the applicable law was not only that of the Subsidies Code, to which cross-reference was made in Article 6.1 of the Aircraft Agreement, but that of the Aircraft Agreement itself, including Articles 6.1 and 6.2 with regard to government support issues. He reiterated that the Community considered that the Aircraft Agreement constituted the basis for conduct of international trade in this sector, and that dispute settlement should therefore be undertaken under its provisions. This was, of course, without prejudice to the rights and obligations arising out of the GATT, or under instruments multilaterally

negotiated under the GATT, including the Subsidies Agreement. The Community was not trying to deprive any other Signatory of its rights arising under the Tokyo Round Agreements, including the Subsidies Agreement; however, it could not accept that its own rights arising, inter alia, under the Aircraft Agreement be ignored. Any matter such as the case brought before the Subsidies committee by the United States would have to be examined in the light of the applications arising under the Aircraft Agreement as well, in order not to deprive the Community of its rights arising under the Aircraft Agreement and not to ignore the existence of the Aircraft Agreement. In the Community's view, the latter was the lex specialis for this sector. The Preamble of this Agreement identified the desire to achieve maximum freedom of trade in this sector, to recognize the rights and obligations under the GATT and under other multilateral agreements, and the need to provide for international dispute settlement procedures, "with a view to ensuring fair, prompt and effective enforcement of the provisions of this Agreement and to maintain the balance of rights and obligations among them". The Preamble also stated the desire "to establish an international framework governing conduct of trade in civil aircraft". In the Community's view - taking into account the objectives as stated in the Preamble, the negotiating history and the substantive contents of the Aircraft Agreement - there was no doubt that this Agreement had been intended to constitute the international framework for conduct of trade in civil aircraft. There was no doubt that it had been intended, with respect to the question of government supports, to provide a comprehensive body of disciplines in Article 6, not only by incorporating by reference the provisions of the Subsidies Agreement, but by adding a number of further commitments and qualifications. He recalled that the Community had not opposed the establishment of the panel in the Subsidies Committee in the expectation that the terms of reference would clearly reflect the applicability not only of the Subsidies Agreement, but also of the substantive, relevant provisions of the Aircraft Agreement. The Community was disappointed that its suggestions regarding such terms of reference had been rejected by the United States, in terms which seemed to indicate that in the US view, the Aircraft Agreement was not relevant in this context. He recalled that the Aircraft Agreement explicitly provided in Article 8.8 the competence for this Committee to examine the totality of the various aspects of a dispute, even those related to issues arising under other instruments, including, in particular, the Subsidies Agreement. Thus, terms of reference referring exclusively to the Subsidies Code would limit the panel to drawing what could only be isolated, partial and, as a consequence, probably erroneous conclusions regarding the rights and obligations of the parties to this dispute. The Community's objectives were (1) to preserve and defend the totality of the Community's rights under all Agreements negotiated under the auspices of the GATT to which it was a party, and (2) to reduce trade tensions by using multilateral dispute settlement expeditiously and efficiently, but also fairly and equitably. A commonsense solution to these important procedural differences which would not prejudice any Signatory's rights or interests would be to pursue the matter referred by the United States to the Subsidies Committee under the procedures of Article 8 of the Aircraft Agreement. Article 8.8 expressly provided for a procedure established by reference to Articles XXII and XXIII of the General Agreement. Thus, all that was

necessary was the agreement of the parties concerned for dispute settlement to proceed on what would be both a legal and a commonsense basis. The Community would immediately agree to the establishment of a panel under the auspices of the Aircraft Committee, which would have the mandate of examining this dispute in the light of obligations arising under Article 6, including obligations arising under the Subsidies Code.

39. The representative of the United States said that he would not repeat all the arguments that had been made at the Aircraft Committee meeting of 31 January 1990 or at the Subsidies Committee meeting of 6 March 1991. He made reference to the Minutes of recent meetings of the two Committees (SCM/M/45 and 49, and AIR/M/28). The United States believed that the lex specialis for the kind of subsidy in the case at hand was the Subsidies Code; it was a relatively small amount of subsidy in terms of the roughly US$20 billion in current dollar value of subsidies to Airbus by US estimates, and the United States was concerned with the exchange rate aspect of this subsidy. The United States believed that the Tokyo Round Agreements existed independently under GATT law, and their respective obligations existed independently as well. The United States had a right to choose its forum under precedent of the GATT and under international law, as long as there was some applicability of the forum, and the Subsidies Committee had decided that there was some applicability of the Subsidies Code to the issue under dispute. Regarding the Community's reference to Article 8.8 of the Aircraft Agreement, this Article spoke of any dispute related to a matter covered by this Agreement but not covered by any other Agreement. The United States believed this matter was covered by another Agreement. As to the relationship between the Aircraft Agreement and the Subsidies Code, his delegation had cited the Committee decision of 1982 in which it had ruled that the Subsidies Code applied to trade in civil aircraft (AIR/M/28, paragraph 16). At the present time, the United States would unequivocably not agree to bring this matter to the Aircraft Agreement. Regarding the description of the main features of the exchange rate scheme introduced by the German Government for certain large civil aircraft (AIR/W/76), he asked whether the Community intended to provide such information under the Subsidies Code as well, as had been requested by the United States under Article 7 of the Code. Also, it was not clear in this description what had happened to pre-existing programmes during 1989 and 1990. His delegation wanted to know for the record if there had been any benefits and the quantity of those benefits under this programme. What monies or benefits, in the accounting sense, had been transferred under the programme for 1990 and for which programmes? How many aircraft had been covered and had any such benefits been advanced in 1989 as well? The United States understood from informal consultations that this programme currently applied not only to the manufacture of aircraft by Deutsche Airbus, but to suppliers as well, and that these benefits would be passed through. The United States had also noted in AIR/W/76 that these benefits were linked to the dollar exchange rate floor of DM 1.60 to the dollar. Was this the case? What calculation would take place, as in 1990, when the Deutschemark fell below or went above that level regarding benefits transferred under this programme?

40. The representative of the EEC said that Article 8.8 referred to procedures which could be applied for the settlement of any dispute related to a matter covered by this Agreement and by another instrument multilaterally negotiated under the auspices of the GATT should the parties to the dispute so agree. The Community failed to understand why the United States seemed to be unwilling to agree to the application of this possibility. Regarding the United States' specific questions on the exchange rate scheme, the Community would provide the United States and the Committee with more information on the system if and when this matter was referred to the Aircraft Committee for dispute settlement. In the Community's view, this case did not involve a subsidy; therefore, the Community had no obligation to notify the content or the features of this system to the Subsidies Committee. He reiterated the Community's disappointment over the formal US rejection of the Community's proposal to solve this dispute under Article 8.8 of the Aircraft Agreement. In such regrettable circumstances, the absolute minimum would be for the Panel established under the Subsidies Code to examine the US complaint on the basis of terms of reference which referred both to the Subsidies Code and to the Aircraft Agreement. The Community urged the United States to reconsider its rejection of the Community's proposal for such terms of reference. Should that not be possible, the Community feared that the Panel would be conducting its work on an inadequate legal basis, and that this would be likely to lead it to reach incomplete and consequently flawed conclusions. This would be in no-one's interest. That was why the Community had raised the matter at the present meeting. A similar issue regarding potentially parallel competence between the two Committees had been raised recently in the GATT Council by Brazil. The Community reserved its rights, should it prove impossible to resolve the question of the terms of reference, to bring the matter back to the Committee and to the Subsidies Committee in order to clarify the legal situation.

41. The representative of the United States said that the Community had not answered his delegation's question as to whether the Community intended to provide a description of the exchange rate scheme to the Subsidies Committee pursuant to the US request under Article 7 of the Subsidies Code. He noted that the provision of such information was mandatory under Article 7 of that Code.

42. The representative of the EEC said that this was a question which the Community would and should respond to when put to the Community in the Subsidies Committee. His delegation did not see what relevance this had in the context of the work of the Aircraft Committee.

43. The representative of the United States said that he took this response as a "no". Regarding Article 8.8, he reiterated that since the Subsidies Code did exist, and since the matter at hand did fall under its purview, the mandatory part of Article 8.8 did not apply to this case. He said that it would no doubt raise trade tensions in the Subsidies Committee, in the Aircraft Committee and in the GATT in general, should the Community refuse to accept the competence of the Subsidies Code except with terms of reference that were other than the standard terms of reference that the Subsidies Code used for almost every case.

44. The representative of Brazil, speaking as an observer, said that regarding his country's request in the Council for a particular dispute settlement procedure, Brazil had not denied the competence of the Subsidies Code to examine disputes related to subsidies matters. There had already been a Panel in the Subsidies Committee on the dispute in question. Brazil had simply raised a matter in the Council which pertained to the application of the principle of m.f.n. which was a matter of the basic competence of GATT itself. Brazil rejected any insinuation that this was a matter of forum shopping.

45. The representative of the EEC said that the Community had not accused Brazil of forum shopping. Brazil's request had been supported by the Community and was perfectly justified. The parallel that the Community had been drawing was that it was not only in this particular case that it was possible for a given subject matter to be covered simultaneously by two or more GATT instruments, including the General Agreement itself. This was not the first case and would not be the last case of this type. It was not a question of a conflict between the obligations arising under the two Agreements, but rather a question of the substantive obligations for the aircraft sector arising out of both the Subsidies Agreement and the Aircraft Agreement. The point the Community was trying to make was that it would be deprived of its rights under the Aircraft Agreement if the subsidy-related provisions of the Aircraft Agreement were not examined by a panel established under whichever of the two Committees had been chosen to deal with a subsidy issue. The Community had not heard any convincing reason for the rejection of its proposal.

46. The representative of the United States said that his delegation did not find the Community's argument at all compelling. The US refusal to bring its complaint to the Aircraft Committee under Article 8.8 did not deny the Community its rights - should it feel that the United States was not observing its obligations under the Aircraft Agreement - to initiate a dispute within the Aircraft Committee.

47. The Chairman noted that the Community had reserved its right to raise this matter again in the Committee, and said that he would inform the Chairwoman of the Subsidies Committee of the discussion that had taken place at the present meeting.

48. The Committee took note of the statements.

8. Date of next meeting

49. The Chairman proposed that in the light of the consultations he intended to hold under item 4 of the agenda, the date of the next meeting be decided subsequent to those consultations and subject to the agreement of the Signatories.

50. The Committee so agreed.