

GENERAL AGREEMENT ON

RESTRICTED

AIR/M/30

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TARIFFS AND TRADE

Agreement on Trade in Civil Aircraft

MINUTES OF THE MEETING HELD IN THE
CENTRE WILLIAM RAPPARD ON
19 APRIL 1991

Chairman: Mr. M. Lindström (Sweden)

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1. The Chairman noted that, as indicated in GATT/AIR/3174, the present meeting had been called following the receipt of a communication from the European Communities (AIR/W/81). A communication concerning this meeting had also been received from the United States (AIR/W/82).
2. Regarding the scheduling of requested meetings, he noted that with the exception of what was provided for in Article 8.7 of the Aircraft Agreement, there was no specific legal provision which dealt with this issue. The general practice of the GATT Code Committees had been to follow the ten-day rule of the Council, according to which an airgram convening a meeting and including a proposed agenda was circulated to contracting parties no later than ten days prior to the date of the meeting. The ten-day limit was intended to allow delegations sufficient time to prepare for the meeting. However, in the case of the present meeting this rule had not been observed, as the airgram had been circulated only on 15 April 1991. He stressed that the scheduling of the present meeting had been possible only because of the co-operation of all Signatories, and that it was not to be taken as setting a precedent of any kind in the Committee. In order to ensure that the Committee's work was conducted in an equitable and efficient manner, he asked that in future, Signatories wishing to have the Committee convened should make their request two weeks prior to the date for which the meeting was requested.
3. The Committee took note of the statement.

1. Application of the Aircraft Agreement to the complaint presented by the United States to the Committee on Subsidies and Countervailing Measures relative to the exchange rate scheme provided for by the German Government to its civil aircraft industry (AIR/W/81)

4. The Chairman recalled that the matter of the German Government's exchange rate scheme for its civil aircraft industry had initially been raised by the United States in the Subsidies Committee in January 1990 and shortly thereafter by the EEC in the Civil Aircraft Committee. The issue had been discussed at great length at the Aircraft Committee meetings of 31 January 1990 (AIR/M/28) and 21 March 1991 (AIR/M/29), and had also been extensively discussed in recent meetings of the Subsidies Committee, as well as in informal consultations under the auspices of the Chairperson of that Committee.

5. The representative of the EEC recalled that his authorities had asked for a joint meeting of the Subsidies Committee and the Aircraft Committee. In the Community's view, this joint meeting would have been a more appropriate forum in which to discuss the issue under consideration. While such a meeting had not been possible, he nevertheless appreciated the fact that meetings of both these Committees had been organized separately at such short notice. The Community had felt compelled to request convening this Committee, not for any procedural or legalistic reason, but because it felt that it had been deprived of its rights under the Civil Aircraft Agreement.

6. He said that apart from the legal and procedural aspects of the dispute settlement process in the GATT, there was the question of good faith on the part of the parties involved. The United States had insisted on handling its complaint under the Subsidies Code, and the Community had neither denied the United States its rights under that Code, nor tried to escape its own obligations under the Code. However, the Community remained convinced that the Aircraft Agreement contained dispute settlement mechanisms which took into account not only factors specific to the aircraft sector but also all the various provisions of the Subsidies Code. His delegation felt that for the United States to deny the responsibility of the Aircraft Committee to settle a dispute which related specifically to trade in civil aircraft was to set a dangerous precedent, with respect to both the aircraft sector and the future operation of the dispute settlement process in the GATT.

7. Regarding the legal and procedural issues arising from the matter under consideration, in the Community's view the Aircraft Agreement constituted the basis for the conduct of international trade in the civil aircraft sector. Consequently, disputes arising in this context should be settled using the provisions of the Aircraft Agreement. This would of course be done without prejudice to the rights and obligations arising under the General Agreement or under other instruments multilaterally negotiated under the auspices of the General Agreement, including the Subsidies Code. It was true that the obligations under the Subsidies Code

were relevant to the aircraft sector, and reference had been made to that in Article 6 of the Aircraft Agreement. However, the Aircraft Agreement had also created specific rules for the aircraft sector, which unfortunately had been ignored to date. Signatories had made clear in the Preamble to the Agreement that they intended the Aircraft Agreement to constitute the international framework for the conduct of trade in the aircraft area. It had thus come as a surprise to his delegation that the United States found the provisions of this Agreement to be irrelevant in the context of the present dispute. He reiterated the fact that the Community, unlike the United States, had adopted a flexible approach to this dispute. His authorities had neither asked that a panel be constituted only under the Aircraft Agreement nor had they blocked the establishment of a panel under the Subsidies Code. However, his authorities had assumed that the terms of reference of the Subsidies Code panel would also take into account all the relevant provisions of the GATT, including the Agreement for the aircraft sector. Unfortunately, this had not been the case, and the Panel had thus been set up on a very restrictive and incomplete basis. As a result, the Community felt obliged to reserve its position with respect to the outcome of the Panel proceedings.

8. Regarding the purpose and the future of the Aircraft Agreement, the Community failed to see the point of having specific rules for the aircraft sector if they were not applied when appropriate. Consequently, his authorities had felt it necessary to put forward a very detailed proposal for a comprehensive revision of that Agreement. He hoped that such an Agreement would in future prevent similar disputes from appearing before the Committee. Following the suggestion made by several Signatories at the Committee's most recent meeting, his delegation would submit a detailed proposal for an interpretative note to Article 4 of the present Agreement, which would facilitate examination of the other aspects of the Community's proposal.

9. In closing, the representative of the EEC again expressed the Community's concern regarding this case and stressed that it was dangerous for the aircraft sector, for future trade relations in this sector and for the dispute settlement mechanism of the GATT in general. In his delegation's opinion, the rôle of the Committee had been reduced. While his authorities expected to return to the Committee in relation to this particular dispute, it was their hope that their proposal for a multilateral agreement - which would constitute the sole forum for the conduct of disputes related to international trade in civil aircraft - would be considered urgently by the Committee. The Community looked forward to hearing the results of the bilateral consultations which the Chairman had undertaken in this regard, and to positive reactions from other Signatories regarding the Community's proposal.

10. The representative of the United States, referring to the Chairman's statement on the timing of meetings, said that the United States thought that proposal to be excellent and hoped that all members of the Committee would follow it in future. Proper notice enabled all Signatories to

conduct their work more constructively. In this case the United States would not, as it had indicated it might do in its communication (AIR/W/82), challenge the show notice of this meeting. Regarding the Community's statement, he said that it was not abnormal in litigation, whether it be domestic litigation or international dispute settlement litigation, that the parties had different views on the state of the world and on how best to protect their rights. Nor was it unusual to see the responding party seek to shape the complaint of the complaining party in a way that it found more convenient. In the US view, the case at hand involved subsidies - subsidization by the German Government. It was a case that happened to involve aircraft, but it was a subsidies case, and that was why the United States had brought the matter to the Subsidies Committee; the United States was certain that the Panel and the Committee would properly exercise their authority in that regard. The lex specialis was the Subsidies Committee and the principles of subsidies, as a legal matter. There was no derogation in the Aircraft Agreement which exempted the matters the United States was bringing as subsidies, from the scope of the authority of the Subsidies Code. Thus, it was clear that the Subsidies Committee had jurisdiction over the dispute as raised by the United States. The statements made by the Community both at the present meeting and in the Subsidies Committee, that should the Panel rule in a way that was not satisfactory to the Community, the Community reserved the right not to follow the Panel's rulings, were a point of extreme concern. As a legal matter, the obligations under the Subsidies Code should be honoured regardless of the product that happened to be involved. There was nothing in the text of the Aircraft Agreement which counteracted that. This was a case of tremendous significance economically and politically. His delegation hoped that the parties could remain able, despite the extreme sensitivities of this case, to pursue it in as workmanlike a fashion as possible, so that the end-result would be to enhance the credibility of the GATT process.

11. The Committee took note of the statements.

2. Chairman's announcement

12. The Chairman recalled that at the meeting on 21 March 1991, he had indicated that he would be holding informal consultations on the best way to proceed with the initiative put forward by the Community at that meeting concerning multilateral negotiations aimed at renegotiating the Aircraft Agreement. At the present stage he had had preliminary contacts with two Signatories on this matter, and it was his intention to move forward at an appropriate time with informal consultations on the basis of broader participation, which would include all interested signatories. He said that the draft interpretative note on Article 4 that the Community had indicated it would submit shortly would hopefully have a positive impact on this matter.

13. The Committee took note of the statement.