

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

AIR/RN/8
20 April 1993

Special Distribution

Sub-Committee of the Committee
on Trade in Civil Aircraft

Original: English

ELEMENTS OF THE FRAMEWORK FOR NEGOTIATIONS

Communication from the European Community

The following communication, dated 13 April 1993, has been received from the Delegation of the European Communities.

In its communication of 24 November 1992 (AIR/RN/1), the Community provided the Committee on Trade in Civil Aircraft with a detailed description of proposed elements of a new GATT Agreement on Trade in Civil Aircraft. While stressing its preliminary character, the Community thought it useful to submit a very precise outline of the structure and contents of the proposed new GATT Agreement on Trade in Civil Aircraft, and this in order to accelerate the negotiating process.

Two full meetings of the Sub-Committee have taken place since then, and there has been much useful clarification of our respective positions and proposals. A number of complex technical questions have been discussed, and it is the Community's hope that other delegations will now provide detailed proposals so as to allow the negotiations to proceed expeditiously.

This communication only addresses questions concerning government support for the aircraft industry, to the exclusion of market access issues. Its purpose is to provide further clarification concerning the objectives and approach proposed by the Community. It should, however, be stressed that the Community's position on all issues of substance remains as described in AIR/RN/1.

General objectives

In its earlier submission, the Community has already stressed the importance of establishing one single GATT legal instrument which should include all relevant substantive and procedural provisions concerning government support for the civil aircraft sector.

The main objective of such a new GATT Agreement would be to establish a set of very clear disciplines for government support and subsidies in this sector with a view to reducing the rôle of government support and trade tensions in this area. This has also been the purpose of the Bilateral Agreement concluded between the United States and the Community in July 1992 on trade in large civil aircraft.

Such new disciplines should be based on the principle that rules with comparable economic effect should apply to beneficiaries of all forms of public support or subsidy, whether they are of a direct or indirect character. The Community accepts the principle of strengthening and clarifying disciplines on direct programme-specific support. Indirect government support has been provided on a large scale in some countries. It is rarely subject to recoupment, and its trade distorting effects can be large, if not larger, than those of direct support. This is why the Community insisted on the introduction of disciplines on such support in the Bilateral Agreement with the United States, and that is why it is equally essential to introduce into the new GATT Agreement disciplines on indirect support for this industry which would have effects comparable to those applying to direct support. Not only large civil aircraft, but also aircraft engines and helicopters benefit from the close symbiosis that exists in some countries between government-funded research and the development and production of military aircraft and engines on the one hand and the development and manufacture of products for the civilian sector on the other hand.

In view of the qualitative and quantitative importance of such indirect support, it would be impossible to imagine a future GATT Subsidy Agreement covering civil aircraft which did not contain detailed and quantified disciplines on such support, for example along the lines of the EC/US Bilateral Agreement. Several questions have been raised with respect to the interpretation of this part of the Agreement. For its part, the Community is ready to improve upon the proposed disciplines (i.e. that of Article 5 of the Bilateral Agreement) if others consider it necessary to clarify this provision, bearing in mind the need to observe the principle that this discipline should have economic effects comparable to those foreseen for direct support.

Further discussion is necessary on the question of whether such a provision on indirect support should be differentiated as between sub-sectors of aircraft (large, engines, etc.). Comments have already been made concerning the justification of the ceiling of 3 per cent, judged by some to be overly generous as compared with the stringent terms of the disciplines on direct support.

Summary of the EC proposal

As indicated in AIR/RN/1, the Community suggests that the new Aircraft Agreement draw, to the largest extent possible, on work already undertaken in the Uruguay Round, to be combined, as appropriately modified, with the

substantive disciplines drawn from the EC/US Bilateral Agreement. This approach is described in detail in the earlier Community submission, but it might be helpful to other participants if a simplified summary was provided in order to clarify the Community position. This can be done by presenting the EC proposals on substance (i.e. to the exclusion of all procedural and presentational issues) by way of comparison with the draft Subsidy Agreement (contained in MTN.TNC/W/FA of December 1991):

For all practical purposes, as compared with the draft Subsidy Agreement, the Community approach¹ would consist in modifying only three substantive aspects of this draft¹ and in making five additions thereto.

Additions to the draft Subsidy Agreement

The Community wishes to introduce into the new GATT Agreement the main provisions of its Agreement with the United States on Trade in Large Civil Aircraft. Certain nuances would have to be introduced with respect to certain sub-sectors. The main issues to be added are, as follows:

1. Direct support and subsidies

Introduce disciplines similar to those of the EC/US Bilateral Agreement for large civil aircraft and extend such disciplines also to cover parts for large civil aircraft. More flexible disciplines should be foreseen for small and medium sized aircraft and their engines and parts. Disciplines similar to those for large civil aircraft could be foreseen with certain qualifications for engines (for more details see the November submission).

2. Indirect support

The Community proposes to introduce the corresponding provision of the Bilateral Agreement between the US and the EC.

3. Programme-specific direct production support

In addition to the existing proposals on prohibited subsidies contained in the draft Subsidy Agreement, it is proposed to introduce a prohibition (of the type contained in the EC/US Bilateral Agreement) of programme-specific production subsidies.

4. Exceptional circumstances

A provision along the lines of the clause on exceptional circumstances contained in the Bilateral Agreement (Article 9) should be added.

¹This is without prejudice to the proposals made in another context by the Community for the modification of these and other provisions of the draft Subsidy Agreement. It should be noted that these other proposals have been made with a view to their application to all sectors other than civil aircraft, to which specific rules should apply.

5. "Green list"

Article 8:2 (a) of the draft Subsidy Agreement excludes from its application assistance for research activities conducted for the civil aircraft industry "since it is anticipated that civil aircraft will be subject to specific multilateral rules ..." (cf its footnote 1). The Community considers the "Green Listing" of government support and subsidies granted in conformity with the above-mentioned disciplines on direct support to be amply justified by the nature and extent of the proposed limitations on such direct support. To the extent that a signatory was respecting its obligations to apply direct support only in conformity with these stringent disciplines, it is difficult to see the justification for another Party taking any action against such support.

Modifications of the Dunkel Text

1. Article 6:1 (a) should be deleted. it is, for example, difficult to see how the provisions of this sub-paragraph could apply to government support provided for large civil aircraft on the basis of a royalty scheme. Its implementation would always be subject to considerable uncertainty and hence create a risk of harassment and trade conflict. In any event, as suggested above, the Community is prepared to envisage stringent limitations on direct support, accompanied by equivalent, quantified limitations on indirect support.
2. Article 6:3 of the draft Subsidy Agreement is unacceptably imprecise since it leaves open the possibility that a signatory may, without further justification, conclude that serious prejudice has arisen out of possibly minor or irrelevant changes in market shares and prices. This cannot be justified in circumstances where other substantive disciplines such as ceilings on direct and indirect support have been accepted and implemented. The intended purpose of such ceilings would, of course, be to impose a maximum level on the quality and quantity of direct and indirect support. It would seem logical to infer from this that support granted within such limits did not and could not cause prejudice. This sub-paragraph should therefore be modified (e.g. along the lines suggested in the EC submission of November 1992) and it should be made clear that it could not be invoked with respect to support or subsidies granted in conformity with the ceilings and terms and conditions laid down elsewhere.
3. The substantive disciplines proposed by the Community do, in several respects, go considerably further than the draft Subsidy Agreement. As in the bilateral EC/US Agreement, it is therefore thought justified to introduce a provision to the effect that existing government support and subsidies would not be actionable. This would consequently require an approach different from that of the draft Subsidy Agreement.

* * * * *

In summary (and abstracting from a number of procedural and presentational issues), the Community is therefore proposing an agreement which would consist of a combination of the draft Subsidy Agreement (with three substantive modifications) and the addition of the substantive disciplines of the EC/US Bilateral Agreement with certain sub-sectoral modifications. The result, if accepted by other Parties, would be a considerably strengthened international commitment to reduce government support for this industry.