

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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**Sub-Committee of the Committee
on Trade in Civil Aircraft**

DRAFT REVISED AGREEMENT ON TRADE IN CIVIL AIRCRAFT

PREAMBLE

Signatories¹ to the Agreement on Trade in Civil Aircraft, hereinafter referred to as "this Agreement";

Desiring to achieve maximum freedom of world trade in civil aircraft, parts and related equipment, including elimination of duties, and to the fullest extent possible, the reduction or elimination of trade restricting or distorting effects;

Desiring to encourage the continued technological development of the aeronautical industry on a world-wide basis;

Desiring to provide fair and equal competitive opportunities for their civil aircraft activities and for their producers to participate in the expansion of the world civil aircraft market;

Being mindful of the importance in the civil aircraft sector of their overall mutual economic and trade interests;

Recognizing that many Signatories view the aircraft sector as a particularly important component of economic and industrial policy;

Seeking to eliminate adverse effects on trade in civil aircraft resulting from government support in civil aircraft research and development, production, and marketing;

Desiring that their civil aircraft activities operate on a commercially competitive basis, and recognizing that government-industry relationships differ widely among them;

Recognizing their obligations and rights under the Multilateral Trade Agreements annexed to the Agreement Establishing the Multilateral Trade Organization, hereinafter referred to as "the Multilateral Trade Agreements";

Recognizing the need to provide for international notification, consultation, surveillance and dispute settlement procedures with a view to ensuring a fair, prompt and effective enforcement of the provisions of this Agreement and to maintain the balance of rights and obligations among them;

Desiring to establish an international framework governing conduct of trade in civil aircraft;

Hereby agree as follows:

¹The term "Signatories" is hereinafter used to mean Parties to this Agreement.

Article 1

Product Coverage

1.1 This Agreement applies to the following products:

- (a) all civil aircraft,
- (b) all civil aircraft engines and their parts and components,
- (c) all other parts, components, and sub-assemblies of civil aircraft,
- (d) all ground flight simulators and their parts and components,

whether used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification or conversion of civil aircraft.

1.2 For the purposes of this Agreement "civil aircraft" means (a) all aircraft other than military aircraft and (b) all other products set out in Article 1.1 above.

Article 2

Customs Duties and Other Charges

2.1 Each Signatory shall eliminate, by the date of entry into force for it of this Agreement, all customs duties and other charges² of any kind levied on, or in connection with, the importation of products, classified for customs purposes under their respective tariff headings listed in the Annex, if such products are for use in a civil aircraft and incorporation therein, in the course of its manufacture, repair, maintenance, rebuilding, modification or conversion.

2.2 Each Signatory shall eliminate, by the date of entry into force for it of this Agreement, all customs duties and other charges³ of any kind levied on repairs (including maintenance, rebuilding, modification and conversion) on civil aircraft; this provision applies only to repairs of complete civil aircraft and those civil aircraft products which are classified for customs purposes under their respective tariff headings listed in the Annex to this Agreement.

2.3 Each Signatory which has incorporated in its Schedule to the General Agreement on Tariffs and Trade (1947) duty-free or duty-exempt treatment pursuant to Article 2.1.3 of the Agreement (1979) on Trade in Civil Aircraft shall maintain such treatment under the General Agreement on Tariffs and Trade (1994). Each other Signatory shall incorporate in its Schedule to the General Agreement on Tariffs and Trade (1994) by the date of entry into force for it of this Agreement, duty-free or duty-exempt treatment for all products covered by Article 2.1 above and for all repairs (including maintenance, rebuilding, modification and conversion) covered by Article 2.2 above.

2.4 Each Signatory shall: (a) adopt or adapt an end-use system of customs administration to give effect to its obligations under Articles 2.1, 2.2 and 2.3 above; (b) ensure that its end-use system

²"Other charges" shall have the same meaning as in Article II of the General Agreement on Tariffs and Trade (1994).

³"Other charges" shall have the same meaning as in Article II of the General Agreement on Tariffs and Trade (1994).

provides duty-free or duty-exempt treatment that is comparable to the treatment provided by other Signatories and is not an impediment to trade; and (c) inform other Signatories of its procedures for administering the end-use system.

Article 3

Technical Barriers to Trade

- 3.1 Signatories note that the provisions of the Agreement on Technical Barriers to Trade included in Annex 1 of the Agreement Establishing the Multilateral Trade Organization (the "Agreement on Technical Barriers to Trade") apply to trade in civil aircraft. In addition, Signatories agree that the provisions of the Agreement on Technical Barriers to Trade shall apply, as between Signatories, *mutatis mutandis*, to civil aircraft certification requirements and to specifications regarding the operation, maintenance and repair of civil aircraft.
- 3.2 Signatories agree that the provisions of Article VI of the Agreement on Government Procurement included in Annex 4 of the Agreement Establishing the Multilateral Trade Organization shall apply, as between Signatories, to all government procurement of civil aircraft, whether or not the procuring entity is a covered entity within the meaning of Article I.1 and Annexes 1 through 3 of that Agreement.

Article 4

Government-Directed Procurement, Mandatory Sub-Contracts and Inducements

- 4.1 Airlines, aircraft manufacturers and other entities engaged in the purchase of civil aircraft ("purchasers") should be free to select suppliers on the basis of commercial and technological factors.
- 4.2 Signatories agree that governments⁴ shall not require purchasers, nor exert unreasonable pressure on them, to procure civil aircraft from any particular source, which would create discrimination against suppliers from any Signatory. Accordingly, they agree that:
- 4.2.1 Governments shall not impose preference policies in favour of or against the suppliers of one or more Signatories.
- 4.2.2 "Unreasonable pressure" is understood to mean any action favouring products or suppliers, or which influences procurement decisions in a manner which creates discrimination against suppliers from any other Signatory. Signatories agree that the following are examples of practices which are not considered as exerting unreasonable pressure:
- (a) the participation of government or former government representatives on the boards of wholly or partly government-owned purchasers, but

⁴For the purposes of this Article, the term "government" includes the government of a Signatory and any national government within the territory of a Signatory.

only if such representatives act in the best commercial interest of the purchaser concerned and do not influence procurement decisions in a manner which creates discrimination against suppliers from any other Signatory;

- (b) government decisions concerning safety and environmental considerations.

4.3 Signatories agree that the purchase of products covered by this Agreement should be made only on the basis of commercial considerations, such as price, quality and delivery. Accordingly, they agree that:

4.3.1 Governments shall not intervene to obtain favoured treatment for particular firms, and shall not interfere with the selection of vendors in a situation where vendors of different Signatories are competing.

4.3.2 Government-mandated offsets shall not be permitted. Further, governments shall not require that other factors, such as subcontracting, be made a condition or consideration of sale. Specifically, a government may not require that a vendor provide offset, specific types or volumes of business opportunities, or other types of industrial compensation. Governments shall not, therefore, impose conditions requiring subcontractors or suppliers to be of a particular national origin.

4.4 In conjunction with the approval or awarding of procurement contracts for products covered by this Agreement a government may, however, require that its qualified firms be provided with access to business opportunities on a competitive basis and on terms no less favourable than those available to the qualified firms of other Signatories.⁵ Thus, a government may require that the manufacturer not discriminate against the Signatory's qualified firms with respect to any bid opportunities and with respect to the evaluation of any competitive bids made by those firms.

4.5 Governments shall not attach 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. Thus,

4.5.1 Governments shall refrain from the use of negative or positive linkages between the sale or purchase of civil aircraft and other government decisions or policies which might influence such sale or purchase whenever there is a competition between suppliers of Signatories. The following is an agreed illustrative, non-exhaustive list of such prohibited inducements:

- (a) rights and restrictions relating to the airline industry such as landing or routing rights;
- (b) general economic programmes and policies, such as import policies, measures aimed at changes in bilateral trade imbalances, policies on alien workers or debt rescheduling;

⁵Use of the phrase "access to business opportunities ... on terms no less favourable ..." does not mean that the amount of contracts awarded to the qualified firms of one Signatory entitles the qualified firms of other Signatories to contracts of a similar amount.

- (c) development assistance programmes and policies, such as grant aid, loans and infrastructure financing; it is understood that the use of such assistance for the purchase of civil aircraft does not fall under this category to the extent that the granting of these funds is not conditional on such purchase taking place;
 - (d) defence and national security policies and programmes.
- 4.5.2 Without prejudice to Article 4.4, governments shall not intervene in any way, nor exert any direct or indirect pressure on other governments or any entity involved in procurement decisions, including the establishment of any link of a negative or positive character between decisions concerning the procurement of civil aircraft and any other issue or action in any other area which might affect the interests of the importing country.
- 4.6 No participant in the domestic political decision-making process within a Signatory should take any action, including but not limited to political representations, pressure or inducements to other governments or foreign airlines, which would be contrary to any of the provisions of this Article. Signatories shall draw such participants' attention to this provision and shall use their best efforts to assure that these participants do not take such action.
- 4.7 For the purposes of this Article, the leasing of a civil aircraft is equivalent to the purchase of a civil aircraft.

Article 5

Trade Restrictions

- 5.1 Signatories shall not apply quantitative restrictions (import quotas) or import licensing requirements to restrict imports of civil aircraft in a manner inconsistent with applicable provisions of the Multilateral Trade Agreements. This does not preclude import monitoring or licensing systems consistent with the Multilateral Trade Agreements.
- 5.2 Signatories shall not apply quantitative restrictions or export licensing or other similar requirements to restrict, for commercial or competitive reasons, exports of civil aircraft to other Signatories in a manner inconsistent with applicable provisions of the Multilateral Trade Agreements.

Article 6

Government Support and Aircraft Marketing

- 6.1 Signatories note that the provisions of the Agreement on Subsidies and Countervailing Measures annexed to the Agreement Establishing the Multilateral Trade Organization, hereinafter referred to as "the Agreement on Subsidies and Countervailing Measures", apply to trade in civil aircraft, except among Signatories to this Agreement as specifically provided in Articles 8.1, 8.2, 10.1 and 10.6 below. They agree that certain additional disciplines with respect to government assistance in the civil aircraft sector shall apply as provided in this Agreement. They shall

also take into account the special factors which apply in the aircraft sector, in particular the widespread governmental support in this area, their international economic interests, and the desire of producers of all Signatories to participate in the expansion of the world civil aircraft market.

- 6.2 Signatories agree that pricing of civil aircraft should be based on a reasonable expectation of recoupment of all costs, including non-recurring programme costs, identifiable and pro-rated costs of military research and development on aircraft, components, and systems that are subsequently applied to the production of such civil aircraft, average production costs, and financial costs.

Article 7

Additional Prohibitions

- 7.1 Signatories agree that the following subsidies⁶ for a civil aircraft, in addition to those subsidies referred to in Article 3 of the Agreement on Subsidies and Countervailing Measures, are prohibited:
- (a) subsidies the value of which increases with the total volume of production or sales;
 - (b) subsidies related to the production process and which can be fully attributed to current-year production, in accordance with generally accepted accounting practices;
 - (c) subsidies to cover operating losses sustained by an industry;
 - (d) subsidies to cover operating losses sustained by an enterprise, other than one-time measures which are non-recurrent and cannot be repeated for that enterprise and which are given merely to provide time for the development of long-term solutions and to avoid acute social problems;
 - (e) direct forgiveness of debt, i.e. forgiveness of government-held debt, and grants to cover debt repayment.
- 7.2 Where royalty-based financing is not fully repaid due to the level of actual sales falling below the level of forecast sales, the resulting failure to repay the financing fully does not in itself give rise to the "direct forgiveness of debt" within the meaning of sub-paragraph 1(e) of this Article.
- 7.3 The provisions of Article 4 of the Agreement on Subsidies and Countervailing Measures shall apply, *mutatis mutandis*, to consultations and the settlement of disputes under this Article.

⁶For the purposes of this Agreement, the term "subsidy" means any subsidy as defined in Article 1 of the Agreement on Subsidies and Countervailing Measures which is specific within the meaning of Article 2 of that Agreement.

Article 8

Presumption of Serious Prejudice

- 8.1 Signatories agree not to invoke the threshold for the presumption of serious prejudice provided for in subparagraph 1(a) of Article 6 of the Agreement on Subsidies and Countervailing Measures with respect to civil aircraft produced by Signatories of this Agreement. Instead, the following thresholds shall apply among Signatories:
- (a) total *ad valorem* subsidization⁷ of a civil aircraft exceeding 5 per cent; or
 - (b) where royalty-based financing for the development of a new large civil aircraft programme is provided pursuant to the additional disciplines in Article 10 and is therefore non-actionable under this Article, total *ad valorem* subsidization⁸ of the civil aircraft benefiting from that financing, excluding subsidization for development, exceeding 3.5 per cent.
- 8.2 Notwithstanding footnote [21] to subparagraph 2(a) of Article 8 of the Agreement on Subsidies and Countervailing Measures, Signatories to this Agreement shall not invoke as between themselves Part III of the Agreement on Subsidies and Countervailing Measures with respect to subsidies for civil aircraft provided in conformity with subparagraph 2(a) of Article 8 of that Agreement. Such subsidies shall, however, be applied towards the thresholds provided for in subparagraphs 1(a) and (b) of this Article.
- 8.3 The provisions of Article 7 of the Agreement on Subsidies and Countervailing Measures shall apply, *mutatis mutandis*, to consultations and the settlement of disputes under this Article.

Article 9

Certain Subsidies

- 9.1 The Signatories recognize that the following government activities may give rise to subsidies allocable to civil aircraft:
- (a) financing for the research and/or development of a non-civil aircraft, which product is subsequently, in whole or in part, incorporated in or transferred into a civil aircraft;
 - (b) financing for research and/or development in the military or non-commercial aerospace sectors which does not result in a product suitable for use in the civil aircraft sector but which produces results applicable in the civil sector;

⁷The provisions of Annex IV of the Agreement on Subsidies and Countervailing Measures shall apply *mutatis mutandis* to the calculation of total *ad valorem* subsidization under this subparagraph.

⁸The provisions of Annex IV of the Agreement on Subsidies and Countervailing Measures shall apply *mutatis mutandis* to the calculation of total *ad valorem* subsidization under this subparagraph.

- (c) financing for research and/or development which, while not targeted to a specific civil aircraft programme, produces results applicable in the civil aircraft sector generally (including research relating to manufacturing and process technologies);
 - (d) the use by a civil aircraft producer of government-owned or -provided plant, equipment, or intellectual property;
 - (e) the purchase by a government of non-civil aircraft products.
- 9.2 For the purposes of this Agreement, the provision by a government of the results of research is a financial contribution within the meaning of paragraph 1 of Article 1 of the Agreement on Subsidies and Countervailing Measures.
- 9.3 A subsidy arising from a government activity referred to in paragraph 1 of this Article may be allocated in whole or in part to civil aircraft for the purposes of Articles 7 and 8 of this Agreement if, *inter alia*, the activity gives rise to an identifiable reduction in costs of research, development or production of a civil aircraft. To this end, any relevant evidence, including cost data from the civil aircraft producer allegedly receiving the subsidy, from other producers in the subsidizing country, or from producers in other countries may be considered.

Article 10

Royalty-Based Financing

- 10.1 Any subsidies derived from royalty-based financing are subject to the provisions of Articles 6, 7 and 8 of this Agreement. However, where a Signatory agrees that royalty-based financing for the development of a new large civil aircraft programme shall be subject to the additional conditions of paragraph 10.3 of this Article:
- (a) any subsidies derived from such financing shall not be applied towards the thresholds in Article 8.1, and
 - (b) Signatories shall not exercise their rights under Part III of the Agreement on Subsidies and Countervailing Measures with respect to any subsidies derived from such financing.
- 10.2 For the purposes of this Agreement,
- (a) "royalty-based financing" means any financial contribution within the meaning of subparagraph 1(a)1 of Article 1 of the Agreement on Subsidies and Countervailing Measures, the repayment of which is directly dependent on the level of sales of a new civil aircraft programme.
 - (b) "total development costs" means the following cost items, incurred prior to certification or, where a large civil aircraft does not require certification, prior to first delivery:
 - (i) preliminary design;
 - (ii) engineering design;

- (iii) wind-tunnel, structural, system and laboratory tests;
 - (iv) engineering simulators;
 - (v) equipment development work, except for work directly financed by engine manufacturers;
 - (vi) flight tests, including associated ground support, and analysis necessary to obtain certification;
 - (vii) documentation required for certification;
 - (viii) the cost of manufacture of prototypes and test aircraft, including spares and such modifications as may be necessary to obtain certification, less the estimated fair market value of flight aircraft after refurbishment;
 - (ix) jigs and tools, except machine tools, for use on specific programmes.
- (c) "large civil aircraft" means all aircraft other than military aircraft, which are designed for passenger or cargo transportation and which have 100 or more passenger seats or its equivalent in cargo configuration, and key structural components of such aircraft, e.g., fuselage sections, wings and tails. The products set forth in subparagraphs 1.1(b) and 1.1(d) of Article 1 of this Agreement are not within this definition.

10.3 In order to obtain the benefits of paragraph 1 of Article 10 for royalty-based financing, such financing must meet the following conditions:

10.3.1 A critical project appraisal, based on conservative assumptions, has established that there is a reasonable expectation of recoupment, within 17 years from the date of first disbursement of such financing, of all costs as defined in subparagraph 2(b) of this Article, including repayment of royalty-based financing on the terms and conditions specified below.

10.3.2 Such financing has been notified in advance of its implementation. Any such notification shall be sufficiently precise to enable other Signatories to evaluate the consistency of the programme with the conditions and criteria provided for in the relevant provisions of this Article, and shall include the following specific information:

- (a) the total amount of government financing;
- (b) the share of government financing as a percentage of the estimated total development cost of the programme;
- (c) the anticipated return to the government;
- (d) the planned period of repayment;
- (e) the forecast number of large civil aircraft on which the calculations made in accordance with paragraph 10.3.4 of this Article are based; and
- (f) all information necessary to evaluate the critical project appraisal in so far as this relates to the provisions of this Article.

10.3.3 Any changes in royalty-based financing previously notified pursuant to paragraph 10.3.2 of this Article are immediately notified, including, *inter alia*: changes in the repayment period, failure to make the royalty payments, reduction of the scheduled repayments and an increase in the percentage share of government financing previously estimated. Signatories shall also notify annual disbursements and repayments on a per programme basis for programmes notified under paragraph 10.3.2 of this Article.

10.3.4 The financing committed does not exceed:

- (a) 25 per cent of that programme's total development cost as estimated at the time of commitment (or of actual development costs, whichever is lower); royalty payments on this tranche shall be set at the time of commitment of the development support so as to repay this support at an interest rate no less than the cost of borrowing to the government within no more than 17 years from first disbursement, plus
- (b) eight per cent of that programme's total development cost as estimated at the time of commitment (or of actual development costs, whichever is lower); royalty payments on this tranche shall be set at the time of commitment of the development support so as to repay such support at an interest rate no less than the cost of borrowing to the government plus one per cent within no more than 17 years from first disbursement.

These calculations shall be made on the basis of the forecast of aircraft deliveries in the critical project appraisal referred to in paragraph 10.3.1.

10.3.5 Royalty payments per aircraft have been calculated at the time of commitment of the royalty-based financing to be repaid on the following basis:

- (a) at least 20 per cent of aggregate payments calculated in accordance with paragraph 10.3.4 of this Article are payable on the basis of the delivery of a number of aircraft corresponding to 40 per cent of forecast deliveries;
- (b) at least 70 per cent of aggregate payments calculated in accordance with paragraph 10.3.4 of this Article are payable on the basis of the delivery of a number of aircraft corresponding to 85 per cent of forecast deliveries.

10.3.6 No other government financing for the development of the programme receiving royalty-based financing is provided; however, a government may provide forms of financing other than royalty-based financing for the development of that new civil aircraft programme provided that (a) the total government financing does not exceed 33 per cent of that programme's total development costs, and (b) such financing is repaid in a manner consistent with the terms of this Article.

10.4 The provisions of Articles 4 and 9 of the Agreement on Subsidies and Countervailing Measures shall apply, *mutatis mutandis*, to consultations and the settlement of disputes under paragraph 10.3 of this Article.

- 10.5 Royalty-based financing committed for the development of a large civil aircraft programme prior to the date of entry into force of this Agreement is not subject to the provisions of paragraphs 10.1 through 10.4 of this Article.
- 10.6 Signatories agree not to exercise their rights under Article 8 of this Agreement and Part III of the Agreement on Subsidies and Countervailing Measures, or to self-initiate any action under domestic laws, with respect to royalty-based financing committed for the development of a large civil aircraft programme within the territory of another Signatory prior to the date of entry into force of this Agreement, provided that:
- (a) the terms and conditions on which such prior royalty-based financing is granted are not modified in such a manner as to render it more favourable to the recipients; however, *de minimis* modifications shall not be deemed inconsistent with this provision;
 - (b) the Signatory desiring non-actionability under this paragraph notifies to the Committee a complete list of such financing already committed or disbursed, including information on the type of repayment obligation and the planned period of repayment. Disbursements and repayments relating to these programmes on an aggregate basis shall also be notified annually to the Committee. In addition, the Signatory shall notify the Committee of any changes which render the terms and conditions of such financing more favourable to the recipient, including changes in the repayment period, failure to repay the financing or reduction of the scheduled payments;
 - (c) as of the date of entry into force of this Agreement, no new subsidies are provided that directly benefit a large civil aircraft programme that has received royalty-based financing, committed prior to the date of entry into force of this Agreement, for which the provisions of paragraph 10.6 of this Article apply; and
 - (d) the Signatory desiring non-actionability under this paragraph subjects all royalty-based financing, committed after the date of entry into force of this Agreement for the development of new large civil aircraft programmes within its territory, to the additional conditions of paragraph 10.3 of this Article.

Article 11

Regional and Local Governments

- 11.1 In addition to their other obligations under this Agreement, Signatories agree not to require or encourage, directly or indirectly, regional and local governments and authorities, non-governmental bodies, and other bodies to take action inconsistent with provisions of this Agreement.

Article 12

Surveillance and Review

- 12.1 There shall be established a Committee on Trade in Civil Aircraft (hereinafter referred to as "the Committee") composed of representatives of all Signatories. The Committee shall elect its own Chairman. It shall meet as necessary, but not less than once a year, for the purpose of affording Signatories the opportunity to consult on any matters relating to the operation of this Agreement, including developments in the civil aircraft industry, to determine whether amendments are required to ensure continuance of free and undistorted trade, and to carry out such responsibilities as are assigned to it under this Agreement, or by the Signatories.
- 12.2 The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the Members of the Multilateral Trade Organization of developments during the period covered by such review.
- 12.3 The Committee may establish such subsidiary bodies as may be appropriate to keep under regular review the application of this Agreement to ensure a continuing balance of mutual advantages. In particular, it shall establish an appropriate subsidiary body in order to ensure a continuing balance of mutual advantages, reciprocity and equivalent results with regard to the implementation of the provisions of Article 2 above related to product coverage, the end-use systems, customs duties and other charges.
- 12.4 Signatories recognize the desirability of consultations with other Signatories in the Committee in order to seek a mutually acceptable solution prior to the initiation of an investigation to determine the existence, degree and effect of any alleged subsidy. In those exceptional circumstances in which no consultations occur before such domestic procedures are initiated, Signatories shall notify the Committee immediately of initiation of such procedures and enter into simultaneous consultations to seek a mutually agreed solution that would obviate the need for countervailing measures.

Article 13

Notification

- 13.1 Signatories shall notify to the Committee any subsidy relating to the civil aircraft sector, and all other measures specified in this Article, granted or maintained within their territory, in accordance with the procedures provided in this Article. Unless otherwise provided below, these notifications shall be made on a calendar year basis and shall be submitted and/or updated not later than 1 June of each year. The content of notifications should be sufficiently specific to enable other Signatories to evaluate the trade effects and to understand the operation of the notified subsidy programmes.
- 13.2 Signatories shall notify the following financial measures irrespective of whether they confer a subsidy:
- (a) any infusion of equity, or change in equity position, by a government or by any public body within the territory of a Signatory, with respect to firms engaged in civil aircraft

research, development, production or marketing, including the amount and type of equity provided as well as a statement outlining the anticipated use of such funds;

- (b) any loan made by a government or by any public body within the territory of a Signatory, to firms engaged in civil aircraft research, development, production or marketing, including the terms and conditions of such loan;
- (c) any loan made by private lenders and guaranteed by a government or by any public body within the territory of a Signatory, to firms engaged in civil aircraft research, development, production or marketing, including the terms and conditions of such loan and of the guarantee thereon;
- (d) any royalty-based financing provided by a government or by any public body within the territory of a Signatory, to a firm engaged in civil aircraft research, development, production or marketing, including a description of the operation or purpose of the programme, information on the type of repayment obligation, annual disbursements already planned or effected under the programme as well as annual repayments already made, and the planned period and schedule of repayment.

Signatories shall further notify any changes in the measures set forth above.

13.3 Signatories shall, on an annual basis, notify all new government-funded research and development projects undertaken or initiated in the previous year, and all ongoing research and development projects, in the aeronautical area. With respect to each such project, Signatories shall provide the following information:

- (a) the basic goals of the project;
- (b) the identities of the recipients of the funding;
- (c) the amount of the funding;
- (d) the terms and conditions on which the funding was provided, including the terms on which the recipient or third parties may use the results of the project;
- (e) the date of commencement and termination of the project;
- (f) the potential use in the civil aircraft sector.

13.4 Signatories shall, on an annual basis, notify:

- (a) any use in, or transfer to, the civil aircraft sector of the results of research activities conducted by a government or with government funding, and the terms and conditions on which such results were made available, including the amount of any recoupment;
- (b) any use, for civil aircraft purposes, of plant or equipment owned by a government, including the terms and conditions on which such plant or equipment was used.

13.5 Signatories shall encourage firms engaged in the manufacture of civil aircraft to increase the public disclosure of disaggregated financial results of their civil aircraft operations through the separation of reporting on military and civil aircraft operations and the adoption of lines of business financial reporting. These disaggregated financial results would at a minimum

be expected to include information on sources and uses of funds, including specific information on revenue, operating income, net assets, capital investment and government equity infusions.

- 13.6 Where specific points required by this Agreement have not been included in a notification, an explanation of the omission shall be provided in the notification itself.
- 13.7 Signatories that consider that there are no programmes or actions within their territories requiring notification under this Agreement shall so inform the Committee in writing.
- 13.8 Signatories recognize that notification of a programme or action does not prejudice its legal status under the Multilateral Trade Agreements or under this Agreement, the effects under this Agreement, or the nature of the measure itself.
- 13.9 Any Signatory may, at any time, make a written request to another Signatory for information on any programme or action it believes to be covered by this Agreement or any matter affecting the operation of this Agreement, including the nature and extent of any subsidy granted or maintained by that Signatory. Signatories so requested shall provide such information promptly to the requesting Signatory, and in no case later than 60 days after the receipt of the request, and shall be ready on request to provide additional information to the requesting Signatory. The information provided shall be comprehensive and sufficiently detailed to allow Signatories to evaluate compliance with this Agreement. Any Signatory that considers that such information has not been adequately provided may bring the matter to the attention of the Committee.
- 13.10 Any interested Signatory that considers that any subsidy or other measure specified in this Agreement has not been notified in accordance with this Agreement may bring the matter to the attention of such other Signatory. If the alleged subsidy or measure is not thereafter notified within 30 days, such Signatory may itself bring the alleged subsidy or measure in question to the attention of the Committee.
- 13.11 Information a Signatory provides on a confidential basis shall not be disclosed by other Signatories without the specific written consent of the Signatory providing such information. If a Signatory provides confidential information that cannot be disclosed outside the Committee, that Signatory shall also provide at the same time a non-confidential version of the information. Information shall normally be classified as confidential information only if it is specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter.
- 13.12 Signatories shall ensure that information provided on any matter affecting the operation of this Agreement will be classified as public information if it is factual information of a type that has been published or otherwise made available to the public, information that will not reveal confidential business information regarding a particular entity, or information that is contained in publicly available laws, regulations, decrees, orders, and other official documents of a Signatory.
- 13.13 Nothing in this Agreement shall be construed to require any Signatory to furnish any information the disclosure of which it considers contrary to its essential security interests.
- 13.14 The Secretariat shall promptly distribute to all Signatories copies of all notifications and responses received from any Signatory.
- 13.15 Paragraphs 13.6 through 13.14 of this Article apply to notifications pursuant to paragraphs 10.3.2 and 10.6(b) as well as to notifications pursuant to this Article.

Article 14

Consultation and Dispute Settlement

- 14.1 The provisions of Articles XXII and XXIII of the General Agreement on Tariffs and Trade (1994) as elaborated and applied by the MTO Understanding on Rules and Procedures Governing the Settlement of Disputes shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.

Article 15

Transitional Arrangements

- 15.1 Programmes that have been established within the territory of any Signatory prior to the date on which such a Signatory signed this Agreement and which are inconsistent with the provisions of Article 7 shall be:
- (a) notified to the Committee not later than 90 days after the entry into force of this Agreement for such Signatory;
 - (b) brought into conformity with the provisions of this Agreement within three years of the date of entry into force of this Agreement for such Signatory and until then shall not be subject to paragraph 3 of Article 7 of this Agreement.
- 15.2 No Signatory shall extend the scope of any such programme, nor shall such a programme be renewed upon its expiration.

Article 16

Transformation into a Market Economy

- 16.1 Signatories in the process of transformation from a centrally-planned into a market, free-enterprise economy may apply programmes and measures necessary for such a transformation.
- 16.2 For such Signatories not Signatories to the Agreement (1979) on Trade in Civil Aircraft, paragraphs 1 and 2 of Article 2 shall apply with the following modifications:
- (a) customs duties and other charges of any kind referred to in paragraphs 1 and 2 of Article 2 shall be reduced to a level not in excess of nine per cent *ad valorem* by 1 January 1996;
 - (b) such duties and other charges shall be reduced to a level not in excess of six per cent *ad valorem* by 1 January 1997;
 - (c) such duties and other charges shall be reduced to a level not in excess of three per cent *ad valorem* by 1 January 1998;

- (d) such duties and other charges shall be eliminated by 1 January 1999.

With respect to the obligation in paragraph 3 of Article 2, the reduced tariff levels resulting from subparagraphs (a), (b), (c) and (d) above shall be incorporated in the respective Schedules of the General Agreement on Tariffs and Trade of such Signatories by the dates corresponding to the required tariff reductions cited in subparagraphs (a), (b), (c) and (d) above.

- 16.3 For Signatories in the process of transformation, programmes falling within the scope of Article 7, and notified according to paragraph 16.3.1 below, shall be phased out or brought into conformity with Article 7 within a period of seven years from the date of entry into force of this Agreement. In such a case, paragraph 3 of Article 7 shall not apply.

16.3.1 Subsidy programmes falling within the scope of Article 7 shall be notified to the Committee by the earliest practicable date after entry into force of this Agreement. Further notifications of such subsidies may be made up to two years after entry into force of this Agreement.

16.3.2 In exceptional circumstances Signatories may be given departures from their notified programmes and measures and their time-frame by the Committee if such departures are deemed necessary for the process of transformation.

- 16.4 For a period of seven years from the date of entry into force of this Agreement, there shall be no presumption, in terms of paragraph 1 of Article 8 of this Agreement, that a subsidy granted by a Signatory in the process of transformation results in serious prejudice.

- 16.5 The thresholds set forth in subparagraphs 1(a) and 1(b) of Article 8 shall apply to any country in transformation that has reached export competitiveness in any given civil aircraft product. In addition, for such Signatories, subsidy programmes falling within the scope of Article 7 of this Agreement shall be phased out or brought into conformity with Article 7 within a period of two years from the date of notification or determination that such Signatory has reached export competitiveness.

16.5.1 A Signatory in the process of transformation shall be deemed to have reached export competitiveness in a product when its exports of the product have reached a share of at least 3.25 per cent of world trade of that product for two consecutive years. The existence of export competitiveness shall be determined as follows: (i) on the basis of notification by the Signatory having reached export competitiveness; or (ii) on the basis of a computation conducted by the Secretariat at the request of any Signatory.

16.5.2 For the purpose of this paragraph, a "civil aircraft product" is defined as a section heading of the Harmonized System Nomenclature.

*Article 17**Final Provisions**17.1 Acceptance and Accession*

17.1.1 This Agreement shall be open for acceptance by signature or otherwise by governments⁹ Members of the Multilateral Trade Organization.

17.1.2 This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Signatories, by the deposit with the Director-General of the Multilateral Trade Organization of an instrument of accession which states the terms so agreed.

17.2 Reservations

17.2.1 Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Signatories.

17.3 Entry into Force

17.3.1 This Agreement shall enter into force on the date of entry into force of the Agreement Establishing the Multilateral Trade Organization for the governments which have accepted or acceded to it by that date. For each other government it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement.

17.4 National Legislation

17.4.1 Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

17.4.2 Each Signatory shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

17.5 Further negotiations

17.5.1 The Signatories recognize the need to continue negotiations aimed at broadening and improving this Agreement on the basis of mutual reciprocity, and agree to undertake further negotiations to this end.

17.6 Review

17.6.1 Not later than two and one half years after the entry into force of this Agreement, the Committee shall commence a review of the operation of the Agreement with the objective of considering improvements in the disciplines in this Agreement. As part of this review, the Committee shall evaluate whether the Agreement operates in a balanced and equitable manner. Such review shall be completed within 180 days.

⁹For the purpose of this Agreement, the term "government" is deemed to include the competent authorities of the European Communities.

17.7 *Withdrawal*

17.7.1 Upon the completion of the review referred to in Article 17.6, any Signatory may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of twelve months from the day on which written notice of withdrawal is received by the Director-General of the Multilateral Trade Organization. Any Signatory may upon such notification request an immediate meeting of the Committee.

17.8 *Amendments*

17.8.1 The Signatories may amend this Agreement, having regard, *inter alia*, to the experience gained in its implementation. Such an amendment, once the Signatories have concurred in accordance with the procedures established by the Committee, shall not come into force for any Signatory until it has been accepted by such Signatory.

17.9 *Non-Application of this Agreement Between Particular Signatories*

17.9.1 This Agreement shall not apply as between any two Signatories if either of the Signatories, at the time either accepts or accedes to this Agreement, does not consent to such application.

17.10 *Annex*

17.10.1

The Annex to this Agreement forms an integral part thereof.

17.10.2

The Committee shall establish procedures for modification and rectification of the Annex to this Agreement.

17.11 *Secretariat*

17.11.1

This Agreement shall be serviced by the Secretariat of the Multilateral Trade Organization.

17.12 *Deposit*

17.12.1

This Agreement shall be deposited with the Director-General of the Multilateral Trade Organization who shall promptly furnish to each Signatory and each Member of the Multilateral Trade Organization a certified copy thereof and of each amendment thereto pursuant to Article 17.8 and a notification of each acceptance thereof or accession thereto pursuant to Article 17.1, or each withdrawal therefrom pursuant to Article 17.7.

17.12 *Registration*

17.12.1

This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

ANNEX

PRODUCT COVERAGE

1. The product coverage is defined in Article 1 of the Agreement on Trade in Civil Aircraft.
2. Signatories agree that products covered by the descriptions listed below¹ and properly classified for customs purposes under the Customs Co-operation Council Nomenclature (Revised) headings of the Harmonized System codes shown alongside shall be accorded duty-free or duty-exempt treatment, if such products are for use in civil aircraft or ground flying trainers and for incorporation therein, in the course of their manufacture, repair, maintenance, rebuilding, modification or conversion.
3. These products shall not include:

an incomplete or unfinished product, unless it has the essential character of a complete or finished part, component, sub-assembly or item of equipment of a civil aircraft or ground flying trainer*, (e.g. an article which has a civil aircraft manufacturer's number),

materials in any form (e.g. sheets, plates, profile shapes, strips, bars, pipes, tubes or other shapes) unless they have been cut to size or shape and/or shaped for incorporation in civil aircraft or a ground flying trainer* (e.g. an article which has a civil aircraft manufacturer's part number),

raw materials and consumable goods.
4. For the purpose of this Annex, «Ex» has been included to indicate that the product description referred to does not exhaust the entire range of products within the Customs Co-operation Council Nomenclature (Revised) headings or the Harmonized System codes listed below.¹

¹For the purposes of Article 1.1 of this Agreement <<ground flight simulators>> are to be regarded as ground flying trainers as provided under 8805.20 of the Harmonized System.

Modifications to the Annex on Product Coverage

1. Addition: HS Code Ex 7318.15 Other screws and bolts, whether or not with their nuts or washers, having shanks or threads with a diameter of 6 mm or more
2. Addition: HS Code Ex 7508.00 Other articles of nickel
3. Amendment: HS Code Ex 8108.90 The text accompanying the heading would read "Other articles of titanium" (this would replace the existing text)
4. Addition: HS Code Ex 9023.00 Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions), unsuitable for other uses - ground maintenance simulators

Austria suggested in April 1993 that changes would be necessary in the Annex in order to take account of the 1992 Amendments to the Harmonized System. The following changes, which are of a technical nature, could effectuate this suggestion:

1. Amend the text accompanying HS Code Ex 8521.10 to read:

"Video recording or reproducing apparatus, whether or not incorporating a video tuner, magnetic tape-type"
2. Amend the text accompanying HS Code Ex 8522.90 to read:

"Parts and accessories of apparatus of 8521.10"
3. Amend the text accompanying HS Code Ex 9025.11 to read:

"Thermometers and pyrometers, liquid filled, for direct reading, not combined with other instruments"
4. Amend the text accompanying HS Code Ex 9025.19 to read:

"Other thermometers and pyrometers, not combined with other instruments"

These changes will be made if there is consensus that they are appropriate.