

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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Committee on Trade in Civil Aircraft

MINUTES OF THE MEETING
OF THE COMMITTEE HELD ON
24 FEBRUARY 1994

Chairman: Mr. M. Lindström (Sweden)

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1. Election of Officers

1. The Committee re-elected Mr. M. Lindström (Sweden) as Chairman of the Committee and Mr. P. Latrille (France) as Vice-Chairman. It was noted 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 re-convened.

2. Adoption of Agenda

2. The Chairman noted that the agenda for the present meeting was contained in GATT/AIR/3555. He proposed the inclusion of two items under "Other Business" as follows: (1) Decision required by Appendix 1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes annexed to the WTO Agreement, and (2) Possible Future Accession of an Observer Government in the Committee.

3. The Agenda was adopted as amended.

3. Request by the People's Republic of China for observer status in the Committee

4. The Chairman noted that the People's Republic of China had made a request in November 1993 for observer status in the Committee. He drew the Committee's attention to the decision taken by the GATT Council in November 1984 (C/M/183) to grant the People's Republic of China observer status in the Council. He proposed that the Committee agree to grant observer status to the People's Republic of China, notwithstanding paragraph 2 of the Committee's decision of 20 February 1980 (AIR/M/1) on the participation of observers - which specifies participation in the Tokyo Round of trade negotiations as a condition for observership. He noted that according to the aforementioned decision,

"Observers may participate in the discussions but decisions shall be taken only by Signatories", and

"The Committee may deliberate on confidential matters in special restricted sessions."

5. The Committee so agreed.

4. Proposed technical revisions to the 1979 Agreement on Trade in Civil Aircraft in the context of placing it in Annex 4 of the Agreement Establishing the World Trade Organization (AIR/W/94 and 95)

6. The Chairman drew the Committee's attention to AIR/W/94 which had been circulated to all signatories two weeks earlier. He recalled that the Note introducing the document referred to a need to make certain technical revisions in the text of the 1979 Agreement on Trade in Civil Aircraft in order for that text to fit properly into Annex 4 of the WTO Agreement as a Plurilateral Trade Agreement. The Note explained the proposed exercise and included a draft text, containing suggested technical revisions, of the 1979 Aircraft Agreement and of the Annex on Product Coverage.

7. He said that before examining AIR/W/94 in detail, he wanted to explain briefly why he had proposed making certain changes to the current Agreement. As members of the Committee were aware, the Agreement on Trade in Civil Aircraft would be annexed (Annex 4) to the Agreement Establishing the World Trade Organization (WTO). Nevertheless, the current text made no sense in the context of the WTO and had to be changed if the Aircraft Agreement was to remain operational. He then gave the following examples to illustrate this point: First, Article 9.9.1 of the current Agreement provided that the Agreement would be serviced by the GATT Secretariat, but as of 1 January 1995, the GATT Secretariat would no longer exist and the Agreement would thus lack an institutional home. A second problem related to dispute settlement. While the Aircraft Agreement was identified as a covered agreement under the Uruguay Round Dispute Settlement Understanding, Article 8.8 of the Agreement explicitly stated that the 1979 Dispute Settlement Understanding applied, *mutatis mutandis*, to disputes under the Agreement; thus, the Agreement would be operating under the non-binding consensus-based rules that had plagued the present GATT system. A third example related to acceptance and accession. Article 9.1.1 provided that the Agreement was open for accession to GATT contracting parties. However, there would in all probability not be any contracting parties once the WTO entered into force, and new accessions would thus be difficult, to say the least. Even if a government acceded under Article 9.1.3, the terms of that accession would have to be deposited with the Director-General of the GATT, who would, after a certain period of time, no longer exist. In light of these facts it was his view that the operation of the current Aircraft Agreement after 1 January 1995 would be unnecessarily complicated unless modified.

8. He emphasized that this proposal was not attempting to effect any of the substantive changes that had been under negotiation over the past several years, or to prejudge in any way the holding of

any further substantive negotiations or the outcome of such negotiations. That matter was entirely in the Signatories' hands and was unaffected by his proposals. He noted in this regard that the Sub-Committee of the Committee on Trade in Civil aircraft remained ready for the purpose of continuing negotiations on a new agreement, and recalled the understanding among Signatories that was reflected in a footnote in the Minutes of the 15 December meeting of the Trade Negotiations Committee (document MTN.TNC/40 , page 6) as follows:

"The Chairman of the Committee on Civil Aircraft has drawn the attention of the Trade Negotiations Committee to the following proposal: The Signatories recognize the need to continue negotiations aimed at broadening and improving the disciplines in this Agreement on the basis of mutual reciprocity. They shall commence such negotiations promptly, and shall seek to complete such negotiations within one year. The negotiations shall take place on the basis of the draft agreement presented by the Chairman of the Aircraft Committee on 12 December 1993 and other proposals. In the course of these negotiations, an understanding among Signatories should be developed setting out the criteria for the identification and allocation of subsidies bestowed directly or indirectly upon the manufacture, production or export of civil aircraft."

9. He suggested that, considering that technical changes to the 1979 Agreement were necessary to make the Agreement operational in a normal manner in its new institutional and legal context, the Committee examine how this could be accomplished. He explained that AIR/W/94 and 95 were based on the assumption that the Agreement would be amended, and that he had been advised by the Secretariat that the usual way to amend an existing agreement was through a protocol of amendment. Such a protocol of amendment to the 1979 Aircraft Agreement could be signed by all Signatories of the Agreement at the Marrakesh meeting in April, and for those delegations which did not have full powers in Marrakesh, would be open for ratification thereafter. AIR/W/95 contained a draft of such a protocol.

10. The representative of Egypt asked whether the amendments that had been made to the 1979 Aircraft Agreement since 1980 would require new signature and acceptance by existing Signatories. What would the legal implications be of the amendments proposed for signature at Marrakesh? Would these amendments involve substantive changes to the 1979 Agreement? His Government was in the process of examining the Agreement and the draft protocol in the light of the proposed amendments, and reserved its position on the latter.

11. The Chairman said that the Committee would revert to Egypt's questions during the course of the meeting.

12. The representative of Japan said that a protocol of amendment was the correct way to amend the Agreement, as provided in Article 9.5.1, and established a clear relationship between the existing Aircraft Agreement and the coming new Agreement on Subsidies and Countervailing Measures. Regarding the date of entry into force of the protocol, he said that in order to achieve the desired purpose of the protocol and to avoid confusion, the date of entry into force of the protocol should be the same as the date of entry into force of the WTO Agreement. The Committee should consider how to provide for this.

13. The Chairman suggested that rather than a specified date for entry into force of the protocol, the text could provide for entry into force on the date of entry into force of the WTO Agreement.

14. The representative of the EEC said that there were three questions of a general character that should be addressed: (1) what should be the precise extent of any modifications; (2) what should be the timing of such modifications; (3) what should be the legal vehicle for these modifications and

the consequences flowing therefrom. His delegation was surprised that proposals were being made at the present time to modify the 1979 Agreement when all knew that the Signatories of the 1979 Agreement had decided in 1993 to undertake a renegotiation of the Agreement in 1994. The Community was also surprised that the footnote to the 15 December Trade Negotiations Committee which the Chairman had quoted stated that "the Chairman has drawn the attention of the TNC to the following proposal ...", as it had not been a question of a "proposal" but rather of a decision by the Signatories of the Aircraft Agreement. Regarding the timing of the proposed amendments, he said that in light of the fact that the renegotiation exercise on the substance of the Agreement would be conducted during the course of 1994, it was not clear why whatever technical modifications were necessary due to the inclusion of the Agreement in Annex 4 could not be adopted at the same time as the substantive modifications. The EEC had some doubt as to whether the proposed changes could or should be adopted prior to the Marrakesh meeting, and thus reserved its position on this matter. He asked the Secretariat to clarify the following questions: (1) what would the legal consequences be of a failure to agree to these technical modifications prior to Marrakesh, and (2) what would the legal consequences be of a failure to agree on technical or substantive modifications between Marrakesh and the entry into force of the WTO, in particular with respect to dispute settlement.

15. The Chairman, in response to the EEC's statement regarding the footnote in the TNC Minutes, said that his understanding was that it had been agreed at the highest political level that negotiations on a new Aircraft Agreement would continue during the course of 1994 on the basis of a proposal he had made in December 1993 and on the basis of other proposals. The drafting of the TNC Minutes was not, however, in his hands. Regarding the rationale for the timing of the proposed amendments, he said that he had been aware of an interest in renegotiating the Agreement and felt that it would be a good idea to get the technical modifications out of the way before entering into negotiations on what he assumed would be more difficult substantive modifications. Regarding the EEC's other questions, he asked the Secretariat to respond.

16. The Secretariat (Mr. Woznowski) said that while the technical modifications proposed did not have to be agreed before the Marrakesh meeting, the reason for doing this before Marrakesh was generated by the same considerations as had motivated the legal drafting process currently underway, which was to have clarity and consistency in the Uruguay Round texts. Regarding the EEC's second question, he said that the Signatories of the Aircraft Agreement could decide to retain special dispute settlement provisions different from the general dispute settlement provisions, and that this might even go as far as retaining the dispute settlement provisions of the 1979 Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance. Such a situation could in principle exist, but might foster a practice that Signatories had wished to eliminate, which was forum shopping. In summary, such a situation would create many practical problems. In addition, a question might be raised as to why the Aircraft Agreement had been included in Annex 4 of the WTO Agreement if it had been intended that provisions which were not part of the WTO framework would apply to it. He said that this was only an initial reaction to the questions put by the EEC, as it had been felt that the issue of making the technical amendments would be a simple and straightforward exercise and that such questions would not arise.

17. The representative of the United States said that his delegation reserved its position on this exercise as a whole and shared some of the questions raised by the EEC. He asked why the non-controversial substantive changes emanating from the Committee's work had not been included among the proposed amendments and cited the Agreed Interpretation of Article 2.1.2 adopted on 8 March 1983. He asked whether such Committee decisions and precedents would be specifically incorporated in the protocol exercise, and if not, whether they would still stand as precedents and interpretations. He asked what the proposed timing of the amendment exercise would be.

18. The Chairman said that the Committee would have to move at a pace that all were comfortable with, and that another meeting would be convened within the next few weeks to allow for further comments on the technical changes, provided that a protocol of amendment was the agreed way to proceed. He stressed that what was involved in this exercise was not a new agreement, and that signature at Marrakesh would mean ratification for those countries which had such authority, and that in other cases a subsequent process of ratification would be necessary. This was up to each government to decide.

19. The representative of Sweden said that in his delegation's view this was a non-controversial legal drafting exercise that would pave the way for future negotiations and would not in any way prejudice or affect the continuing negotiations later in 1994 in the Sub-Committee. Sweden approved of the Chairman's suggested approach to the technical revisions which should be made sooner rather than later.

20. The representative of Canada said that in his delegation's view, this was a technical exercise only, which had nothing to do with the substantive negotiations on a new Agreement. It seemed wise to make these particular technical changes for the same reasons as lay behind the legal drafting exercise underway in respect of the other WTO agreements. Regarding the participation of members of the Dispute Settlement Body in decisions or actions pursuant to this Agreement, Article 2.1 of the Dispute Settlement Understanding (DSU) provided that in respect of Annex 4 Agreements only those members of the Dispute Settlement Body (DSB) which were signatories of those Agreements could participate in actions or decisions pursuant to those Agreements. It was Canada's understanding that in respect, in particular, of decisions by the DSB not to adopt a panel report pursuant to the Aircraft Agreement only Signatories of the Aircraft Agreement would be participating in that decision.

21. The Chairman said that the proposed amendments would not do anything to affect the DSU as it read. He noted that there was an item under "Other Business" relating to the decision required by Appendix 1 of the DSU, and that the Committee would revert to this matter under that item.

22. The representative of the EEC said that his delegation understood that the Chairman of the Aircraft Committee was not in a position to alter the Minutes of the TNC; nevertheless, it was useful to recall that the decision by the Signatories to resume and to conclude the negotiations was actually a decision announced, on behalf of all the Signatories of the Agreement, to the heads of delegation. Regarding the proposed amendments, he said that there were a number of questions as to the legal consequences both of action and of inaction on which the EEC would like to reflect further. The EEC thus reserved its position on this matter. He suggested that it might be useful if the Secretariat could lay out in a Note the legal consequences of inaction, in particular, with respect to the dispute settlement question.

23. The Chairman suggested that the Committee examine the proposed technical revisions set out in AIR/W/95. He said that his aim had been to try to achieve consensus at the present meeting on as many of the necessary revisions as possible, and then to submit such revisions to Signatories in a draft of the legal vehicle agreed upon. He said that as indicated in the Note in AIR/W/94, changes had been proposed only where it was felt essential to provide for consistency and accuracy in the integration of the 1979 Aircraft Agreement into the WTO Agreement. The nature of the proposed changes was as follows:

- (a) those necessitated by the fact that certain Agreements to which reference was made in the 1979 Aircraft Agreement had been superseded by Agreements which formed part of the WTO Agreement;

- (b) those necessary in order to ensure consistency in the terms used in the 1979 Aircraft Agreement and in the Agreements annexed to the WTO Agreement;
- (c) those necessary to reflect the relationship between the 1979 Aircraft Agreement and the Understanding on Rules and Procedures Governing the Settlement of Disputes; and
- (d) those necessary to incorporate the agreed interpretations of Article 2.1.2 of the Agreement contained in AIR/M/10 of 8 March 1983.

24. He said that the latter type of changes (in (d) above) would presumably respond to the question put earlier by the United States regarding inclusion in Article 2 of the 1983 Agreed Interpretation. He emphasized that these proposed changes were of a purely technical nature. Before opening the floor for discussion on the specific proposed changes in AIR/W/95, he pointed out a number of minor corrections that needed to be made in the text as follows:

- (a) Page 1: in the third line of the paragraph beginning "In order to ensure", add "1" after "Appendix".
- (b) The chapeau to Article 2.1 should read "Each Party agrees", rather than "Parties agree".
- (c) the first line of Article 2.1.3 should read "to incorporate in its respective GATT Schedule", rather than "to incorporate in their respective GATT Schedules".

25. The representative of the United States said that he had referred to other precedents and decisions than the one referred to by the Chairman, and that he would point these out directly to the Secretariat. His delegation suggested that it might be more clear to refer in the Preamble to "the Agreement Establishing the WTO including the Agreements and associated legal instruments in Annexes 1, 2, 3 and 4", or to specify that what was being referred to were the Multilateral Trade Agreements and Plurilateral Trade Agreements. The reference to "for it" in Article 2 could be made more clear. Article 6 should list both Articles 5 and 6 of the WTO Subsidies Agreement.

26. The representative of Japan said that he would like to revert to the question of the language regarding the date of entry into force. Regarding the annexation of the protocol of amendment to Annex 4, he asked what would actually be attached to the Annex. He asked why the term "Parties" rather than "Signatories" had been used, and whether and why it was necessary to delete Article 9.1.4. In addition, there were other minor technical changes that his delegation would suggest to the Secretariat later.

27. The Chairman said that the term "Party" had been used in lieu of "Signatory" as it was used in the agreements annexed to the WTO. Article 9.4.1 had been deleted on the advice of the legal experts because this whole approach had been eliminated in the WTO Agreement.

28. The representative of the EEC asked the Secretariat to address the question of what could or should be the legal vehicle for enacting either the proposed technical changes or the overall changes that the EEC hoped to negotiate in 1994. His delegation had understood that the Committee had decided at the end of 1993 that the Aircraft Agreement as duly amended would become part of Annex 4, and that this decision would be translated into formal terms when the WTO was adopted in Marrakesh. He asked if it was necessary to go to the length of adopting or signing a protocol for the purpose of enacting purely technical modifications which should naturally flow from the basic decision made in 1993 to put this Agreement into Annex 4. He noted that Article 9.5 provided that Signatories could amend the Agreement. Regarding specific proposed changes, the EEC agreed with the suggestion

that in the Preamble, the reference be not only to the Multilateral and Plurilateral Trade Agreements annexed to the WTO but to the WTO itself. He said that the suggestion in line 6 of Article 6.1 to replace "they shall seek to avoid adverse effects" by "no Party should cause adverse effects" did not seem to be a modification necessary for technical purposes. While the difference in terminology was reflected in the 1994 Subsidies Agreement, it nevertheless constituted a change that went beyond the purely technical. As to the US suggestion that the reference to the Subsidies Agreement include Article 6 as well as 5, it would seem that the reference to Article 5 covered the waterfront.

29. The Secretariat (Mr. Woznowski) said that the only reason for the change noted by the EEC was to reflect the change in the legal instrument to which reference was made. For all practical purposes this change would not affect in any way the rights which future Parties would have with respect to the issue dealt with under this paragraph. If anyone felt that there was a substantive change here, the old text could be used. Regarding the reference in Article 6 to Article 5 of the Subsidies Agreement, he said that this was sufficient and that it would only create confusion to include a reference to Article 6 as well.

30. In response to other suggestions made by delegations, the Secretariat (Mr. Kreier) said that a reference in the Preamble to the Agreement Establishing the WTO did not seem to pose any problems. With regard to "for it" in Article 2, this did not seem to be unclear in light of the additional change in the chapeau of the Article.

31. The representative of the United States said that with regard to other interpretations by the Committee that had not been included in the proposed changes, this might be the subject of a Note by the Secretariat.

32. The Secretariat (Mr. Kreier) said that it would be helpful to know precisely to which decisions the United States was referring. He noted that what was at issue was an amended Agreement where only a very few particular references were changed, and that otherwise it was the same Agreement and the same Committee.

33. The representative of Austria drew the Committee's attention to two items related to the Harmonized Commodity Description and Coding System (HS). First, according to a decision taken by the HS Committee of the Customs Cooperation Council (CCC) in October 1992 (document HSC/10/Oct 92), "paragliders" were to be classified under HS heading No. 88.04 and not 88.01. Second, Austria welcomed the follow-up action of the Committee to the changes to the HS which entered into force on 1 January 1992, in the form of the proposed amendment of the Annex on Product Coverage of the 1979 Aircraft Agreement. However, much more extensive changes to the HS were to come into force on 1 January 1996. In order to take care of these changes, Austria suggested that the Committee make use of a procedure similar to that used by the International Meat Council in its decision of 14 June 1989 regarding the Harmonized System.

34. The Chairman said that this was a matter that would need some reflection on the part of other delegations.

35. The Committee took note of the statements and agreed to revert to these issues at a forthcoming meeting.

"Other Business"

5. Decision required by Appendix 1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes annexed to the WTO Agreement

36. The Chairman recalled that the Understanding on Rules and Procedures Governing the Settlement of Disputes annexed to the WTO Agreement (DSU) specified that Signatories of each Agreement in Annex 4 were to set out the terms for the application of the Understanding to the individual agreement, including any special rules or procedures for inclusion in Appendix 2 of the Understanding. He said that should the Committee agree to a protocol of amendment to the 1979 Agreement, it could take a decision on this matter along the lines of the following:

"The Signatories to the Agreement on Trade in Civil Aircraft,

Noting that the Agreement on Trade in Civil Aircraft (the "Agreement") is an agreement covered by the Understanding on Rules and Procedures Governing the Settlement of Disputes annexed to the Agreement Establishing the World Trade Organization (the "Understanding");

Desiring to set out the terms for the application of the Understanding to the Agreement, as called for by Appendix 1 to the Understanding,

hereby DECIDE:

1. that the Understanding shall apply to the Agreement on the terms provided in the Understanding; and
2. that there are no special or additional rules or procedures to be notified to the Dispute Settlement Body or to be listed in Appendix 2 to the Understanding."

37. The representative of Japan said that Article 8.7 of the Agreement might be a special provision and that his delegation would like to revert to this matter at the Committee's next meeting.

38. The representative of the EEC said that Article 8.7, although not *strictu sensu* a dispute settlement provision, should be considered a dispute prevention provision, and that for clarity, if not for legal reasons, this should not be forgotten and a reference should be made to it in Appendix 1 of the DSU. The EEC wished to revert to this matter.

39. The representative of the United States said that the question of whether special provisions in Article 8 should be notified had to be studied. His delegation wished to revert to this matter.

40. The representative of Canada asked whether or not decisions by the Dispute Settlement Body (DSB) under Articles 16.4 and 17.14 of the DSU not to adopt a panel report would, in the case of a dispute under the Aircraft Agreement, be taken by consensus only of those DSB members who were Parties to the Aircraft Agreement. Canada's interpretation of the suggested amendment to Article 8.8 and of the draft decision read out by the Chairman was that members of the DSB who were not Parties to the Aircraft Agreement would not participate in a decision not to adopt a panel report. This interpretation flowed from Article 2.1 of the DSU. He asked whether other Signatories shared that view in respect of either the draft decision or of Article 8.8 in the draft protocol in AIR/W/95. Second, Canada's view was that Article 8.7 should not be listed in Appendix 2 of the DSU as a special and additional provision, precisely because it was not a dispute settlement provision *per se*, but a Committee

procedure that was quite distinct from GATT panel dispute settlement. In Canada's view, no provisions in the Aircraft Agreement were required to be listed in Appendix 2.

41. The representative of the United States asked what the procedure would be once the Committee agreed on whether special provisions would be notified, as the DSB would not exist until the entry into force of the WTO. He asked how, physically or legally, one would notify something to a body that did not yet exist, and whether this would come under the scope of the Implementation Committee.

42. The Chairman referred to page 5 of AIR/W/95, where it was proposed that "the protocol be deposited with the Director-General of the CONTRACTING PARTIES to the GATT 1947." This formulation had been chosen because it would be impossible to deposit a protocol with the Director-General of the WTO before that Agreement was in force, and thus the deposit would be to the existing structure. It would seem that the same would apply in the case mentioned by the United States.

43. The Committee took note of the statements and agreed to revert to this matter at its next meeting.

6. Possible future accession of an observer government in the Committee

44. The representative of Poland, speaking as an observer, said that his country was exploring the possibility of acceding to the Aircraft Agreement. He recalled that Poland had participated actively in the 1993 negotiations on a new Agreement, and that some of the provisions in the negotiating texts reflected special concerns of Poland and of other countries in the process of transformation to a market economy. Without prejudice either to the future negotiations or to Poland's possible accession to a new agreement, his delegation wanted to voice specific concerns regarding its interest in acceding to the 1979 Aircraft Agreement. First, while the elimination of Poland's import duties on large civil aircraft was expected soon, only a gradual reduction in the duties on small and medium aircraft could be envisaged. The aim was to complete the elimination of tariffs on all civil aircraft products by the beginning of 2001. Second, there was a need to maintain, for a transitional period, certain public support measures as well as incentives for private investment, both national and foreign, in the aircraft sector. Third, Poland would like to reserve the possibility of using government-mandated offsets for a transitional period. He said that while some of these issues might fall under the competence of other agreements and arrangements, his delegation felt it would be useful to state these concerns in the Committee. He asked for the guidance of the Chairman and members of the Committee with regard to how such procedures might be established, including whatever consultations might be required.

45. The representative of the United States said that his delegation looked forward to working with the Government of Poland toward its goal of acceding to the Aircraft Agreement.

46. The representative of Sweden said that his country welcomed Poland's intention to accede to the Agreement and would consider its wishes regarding gradual elimination of duties under transitional rules. Sweden hoped that other countries involved in the civil aircraft sector would take the same step as Poland.

47. The representative of the EEC welcomed Poland's expression of interest in acceding to the Agreement. As to Poland's request for transitional provisions, he said that this could be discussed and decided upon in the context of what was foreseen in Article 9.3 of the Agreement.

48. The Chairman said that as he understood it, Poland's wish to become a Signatory to the Agreement on certain conditions regarding tariff elimination would necessitate agreement among all the present Signatories. He said that he would be at the disposal of the Polish delegation to conduct informal consultations on how to arrive at an agreed solution for accession conditions for Poland.

He expressed the hope that this could be done rapidly so that Poland could become a Signatory to the Agreement as soon as possible.

49. The Committee took note of the statements.