

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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Agreement on Trade in Civil Aircraft

COMMITTEE ON TRADE IN CIVIL AIRCRAFT

Minutes of the Meeting of the Committee
held on 19 May 1994

Chairman: Mr. M. Lindström (Sweden)

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1. Adoption of Agenda

1. The Chairman noted that the agenda for the present meeting was contained in GATT/AIR/3581. He said that he would make a statement under "Other Business" regarding the status of Signatories.

2. The Agenda was adopted, as amended.

2. Discussion of the proposal referred to in document MTN.TNC/40, footnote 2, as stated in document AIR/80 of 7 April 1994

3. The Chairman recalled that on 7 April he had circulated, as Chairman of the Committee, a communication (document AIR/80) to all Signatories indicating his intention to convene a meeting of the Committee in the latter part of May in order to discuss the proposal referred to in document MTN.TNC/40, footnote 2, which stated as follows:

"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."

4. He drew attention to the chronology of events leading up to the present. In July 1992 the Committee had decided to open negotiations under Article 8.3 of the Agreement with a view to broadening and improving the Agreement on the basis of mutual reciprocity. The Committee had also decided to establish a Sub-Committee in which the negotiations would be conducted. During the period October 1992 through December 1993, the Sub-Committee had met eleven times. (The Notes on these meetings could be found in documents AIR/69 through 79.) At those meetings the Sub-Committee had discussed a wide range of issues and considered various regimes for rules in the civil aircraft sector. Considerable progress had been made in these meetings, and at the Sub-Committee meeting of 12 December 1993 a revised Chairman's text (document AIR/RN/12/Rev. 1) had been circulated which most delegations had accepted as the best solution. However, despite the fact that most delegations had been willing to accept that text, it had not proved possible to reach consensus agreement on it in the Sub-Committee by the time of the Trade Negotiations Committee meeting in mid-December.
5. He recalled that at the Sub-Committee's last meeting (12 December) before the adoption of the Uruguay Round texts on 15 December 1993, a number of delegations had indicated that they were prepared to resume the negotiations for a revised Aircraft Agreement during the course of 1994. At the close of the 12 December meeting, he had suggested that -- as the Sub-Committee's work seemed to have been taken as far as possible at that juncture -- he would suspend its work following that meeting.
6. He further recalled that at the meeting of the full Committee the following day (13 December) he had made a report to the Committee on the work of the Sub-Committee. Also at that meeting the question of further negotiations had been raised, but some delegations had not been in a position at that time to agree to the scenario proposed, due in part to the fact that similar matters were being discussed concurrently in the Heads of Delegation meetings. He said that footnote 2 in document MTN.TNC/40 brought this matter full circle.
7. Before opening the floor for discussion of the question of the continuance of the negotiations under Article 8.3 of the Aircraft Agreement that had been set in motion in July of 1992, he asked that delegations, in discussing this question, address certain preliminary issues of substance and organization. The first of these issues was the basis on which such negotiations would be conducted. The second was the appropriate time-table for the negotiations. A third issue was the forum for the negotiations.
8. Regarding the basis for the negotiations, he noted that at the last meeting of the Sub-Committee on 12 December 1993, he had put a Chairman's text on the table (document AIR/RN/12/Rev. 1). That text represented his best effort for a compromise under the then-prevailing circumstances -- those being mainly the negotiating positions presented by delegations. He said that in light of the fact that those circumstances did not seem to have changed, that text remained on the table. He stressed that the proposal contained in that document could be seen as the last word under those circumstances; however, should there be any new elements that were not taken into account in the drafting of that text, these would have to be considered. He said that any delegation wishing to present new developments or new circumstances that would justify revision of the Chairman's text should bring these to the attention of the negotiating group for discussion. However, for the time being, and unless a new basis was proposed, it was his understanding that the Chairman's text remained on the table as the basis for continuing the negotiations.
9. Regarding the forum for the negotiations, the question was whether delegations wished to continue to use the Sub-Committee or whether the negotiations would take place in the Committee itself. He noted that this issue was directly linked to the question of participation in the negotiating group, as membership in the full Committee was quite limited, and that the intention of the Committee in establishing the Sub-Committee had been to embrace as wide a participation as possible.

10. With regard to the time-table for the negotiations, he noted that the Agreement Establishing the World Trade Organization was projected to come into force on 1 January 1995, and that this date might provide a time-frame for the negotiations, in particular as certain aspects of the existing (1979) Aircraft Agreement would become largely inoperative in the new institutional context of the WTO.

11. The representative of Japan said that participants should seek to complete the negotiations on a new Aircraft Agreement within one year. In Japan's view, these negotiations should be based on the revised Chairman's text of 12 December 1993 which represented a final compromise after the long discussions during 1993. Japan maintained its position that the subsidy-based approach was the only basis for such negotiations. Aside from negotiations on the substance of a new Agreement, there was a minimum responsibility to complete the technical revisions necessary in the 1979 Aircraft Agreement.

12. The representative of the EEC said that he agreed with Japan's statements and suggestions. A certain course of action had been agreed in December 1993 from which there was no reason to depart either in respect of the basis for the negotiations -- although the EEC had, and continued to have, many considerable difficulties with the Chairman's text -- or the time-frame. As for the forum, he saw no reason not to continue with the Sub-Committee.

13. The representative of Sweden, speaking on behalf also of Norway, said that Sweden and Norway were prepared to continue the negotiations on the basis of the revised Chairman's text. However, he said that one should keep in mind that this negotiation covered not only large civil aircraft but also small and medium-sized aircraft and engines, which had been somewhat overlooked. The time-table for the negotiations should follow that spelled out in the proposal in the footnote to the TNC Minutes, and the Sub-Committee would be the appropriate forum.

14. The representative of the United States said that there were two things that made the present situation different from the situation at the time of the December meeting: the Uruguay Round had been completed and along with it the negotiations on a new Subsidies Agreement, and there had been eleven meetings of the Sub-Committee upon which participants could reflect. In view of these developments and having considered the impact of the Uruguay Round Subsidies Agreement, the US position on the negotiations was that with respect to subsidies disciplines, any subsidy question should be dealt with under the new Subsidies Agreement. The Sub-Committee thus should not focus on the interpretation or modification of the Subsidies Agreement. The United States remained interested in achieving some sort of disciplines along the lines of the US-EC Bilateral Agreement on Large Civil Aircraft, i.e. support-based, and thus in seeing whether this type of discipline could be introduced into the Aircraft Agreement. Regarding product coverage, he recalled his delegation's position that it would be better to focus on large civil aircraft where there was at least an agreement in place between two parties and a greater measure of agreement amongst the parties generally than in other products. As for the basis for the negotiations, the proposal in the TNC Minutes identified the Chairman's text and other proposals. Given the US view that a subsidy-based approach should not be pursued, and in so far as the Chairman's text was based on such an approach, this text would not be an appropriate basis for proceeding with respect to subsidy/support issues. It was anticipated that other proposals would be forthcoming, and there were other proposals that had been made during the course of the negotiations. Regarding the time-table for the negotiations, he said that should there be an agreed basis for proceeding, the one year mentioned should be respected. Regarding the forum, the Sub-Committee should be maintained. As to the technical revisions to the 1979 Agreement, he supported Japan's comment that at a minimum, the 1979 Agreement should be brought into conformity with the WTO, and said that there were advantages to doing this sooner rather than later.

15. The representative of Canada recalled that over the past two years, participants had been trying to renegotiate the Aircraft Agreement on the basis of several proposals. While there had been no formal connection with the Uruguay Round, there was a connection in time as an attempt had been made to

complete all of the negotiations by the deadline of the Uruguay Round. As this had not proved possible, a proposal had been put in a footnote to a TNC document. In Canada's view, the question of whether and how to proceed with the negotiations that had not been completed in 1993 was up for discussion. Canada could not support continuing the negotiations at the present time. He said that one major change in circumstances since December 1993 was the successful negotiation of the Uruguay Round Subsidies Agreement, which contained two footnotes specific to the aircraft sector. One of these referred to a benchmark for triggering "deemed serious prejudice" provisions, which Canada had understood was a matter of particular importance to certain delegations. He said that given the fact that there was now a dramatically different Agreement governing subsidies in the civil aircraft sector and other sectors, and that this Agreement had not even begun to function yet, it was premature to seek sectoral-specific improvements when it was not at all clear how the new general rules would operate. This was not to say that Canada would not support sectoral-specific improvements upon the general subsidy rules, if, as and when it was determined that the current general rules created particular problems given the specific complexities of the civil aircraft sector. Canada was open to renegotiating the Aircraft Agreement at such time as it made sense to do so, and Article 8.3 of the Agreement provided for this. However, in Canada's view now was not the time for these negotiations. He said that contrary to the US view, Canada would see no problem with the Aircraft Committee at some point improving upon, in a GATT-plus or WTO-plus way, the general provisions on subsidies unique to the civil aircraft sector. Regarding support-based disciplines, Canada had not been prepared in the past negotiations to accept such disciplines and would not accept them now. Regarding the technical revisions to the 1979 Agreement, work on this issue should be initiated and completed as soon as possible.

16. The representative of the EEC said that when it was agreed in December to continue these negotiations on the basis of mutual reciprocity and on the basis of the Chairman's text and other proposals, this had been done in the same context as prevailed at present, that is, where all knew that there would be a new Subsidies Agreement that would contain certain sectoral-specific disciplines, or exceptions from disciplines, for the civil aircraft sector. That had been the basis for the agreement that had been read aloud at the Heads of Delegation meeting. Nothing had changed since then. As to the substance, efforts had been undertaken to try to address some of the problems that had arisen since the entry into force of the 1979 Agreement. One such area was government inducements, which had become an even bigger problem over time. Another area was reinforced disciplines on subsidies. In the EEC's view, that reinforcement had not taken place to a sufficient degree in the new Subsidies Agreement, and his delegation had understood that others agreed that this was a shortcoming. Government interference in the civil aircraft sector through subsidies was on the increase, and to wait until it was clear to what extent the new Subsidies Agreement would take care of that problem would delay a process which the EEC thought it had been agreed to undertake expeditiously. One example of the extent to which the new Subsidies Agreement did not meet the legitimate concerns of some delegations was the area of transparency of "indirect subsidies", where it fell far short of providing any form of sufficient guidance or disciplines. He reiterated the EEC's strong support for the continuance of the negotiations as previously agreed, with three objectives: reduction of government interference in purchasing decisions, reduction of government subsidization, in particular in those areas where it was on the increase, and attracting new signatories to the Aircraft Agreement.

17. The Chairman said that it seemed that the question of whether the negotiations would continue had been broadly answered in the affirmative. One delegation had said that it did not support the continuation of negotiations at the present time. Regarding the basis for the negotiations, it seemed that the Chairman's text might be one element, with one delegation wishing to focus on large civil aircraft and elements in the US-EC Bilateral Agreement. There seemed general agreement that the time-frame of one year would be appropriate as would the continuance of the Sub-Committee as the forum.

18. The representative of the United States noted that the EEC had identified three basic objectives of the negotiations. First, the United States agreed on the need to lower government interference in purchasing decisions. Second, regarding the objective of attracting new signatories to the Agreement, he said that bringing the 1979 Agreement up to date might enhance these efforts. Third, his delegation shared the EEC's objective of improved disciplines on government support, and had made clear in December 1993 that it did not feel that the Chairman's text was a basis for concluding the negotiations. The United States would like to see a support-based discipline in this sector, with a focus on large civil aircraft, as there did not seem to be any likelihood of reaching agreement in the other areas satisfactory to all parties and there were now agreed rules on subsidies that covered products in the civil aircraft sector.

19. The representative of Canada said that his delegation supported the objective of increasing the membership of the current Agreement and noted that a number of potential members were hesitating due to their uncertainty over what obligations the Agreement contained. This would continue as long as negotiations continued. He agreed with the United States that bringing the Agreement up to date vis-à-vis the WTO Agreement might encourage countries to join.

20. The representative of the EEC said that prospective members would not be enticed into acceding to the Agreement on the basis of a few technical amendments being effected, when they were aware that a few months hence, they would be faced with a substantially modified Agreement. While the EEC agreed that such technical modifications had to be undertaken, there was no need to go through the institutional complications of modifying the Agreement twice. He suggested that the negotiations on substance be conducted as expeditiously as possible, and that technical amendments be dealt with in that same context, so that not later than the end of 1994 there would be a completely revised text. On procedure, he said that the Chairman's text of December was the Chairman's best attempt at squaring a very strangely shaped circle. While no delegation had been completely satisfied with the outcome, some had indicated their willingness to accept the text in a spirit of compromise. Some delegations, including the EEC, had pointed out a number of areas of disagreement with the text, but others had not. He suggested that it would be useful for those delegations to indicate in what spirit they approached the continuing negotiations.

21. The Chairman recalled that there had been a fairly substantial discussion of the Chairman's text which preceded the version of 12 December, but not on the final attempt at compromise, and suggested that it might be useful to have a discussion of the pros and cons of that text at the present meeting.

22. The representative of the EEC recalled that his delegation had, in a spirit of compromise, agreed to accept the Chairman's text. The EEC had welcomed the market access provisions, including those relating to the question of inducements. Its difficulties with the text then, as now, had to do with a number of quite substantive problems that had been needlessly created in certain areas. For example, Article 7 included a number of prohibitions additional to those contained in the then-draft Subsidies Agreement, the inclusion of which the EEC did not understand then or now. Article 9 was too weak; it contained nothing beyond a restatement of the current understanding of what GATT practice would be should such cases be brought to GATT dispute settlement, and difficulties of interpretation would arise out of its paragraph 3. In Article 10 the extent of grandfathering remained limited to Part III (of the Subsidies Agreement) action, leaving signatories free to pursue Part V (countervailing duty) action. In the EEC's view, the notification provisions were overly ambitious for "direct subsidies", whereas the degree of transparency for "indirect subsidies" still fell short of what the EEC would like to see.

23. The representative of the United States asked the EEC to restate its views with respect to Article 8 and to indicate whether it was seeking to introduce an ad valorem figure for the presumption of serious prejudice.

24. The representative of the EEC said that he would like to come back to this question.

25. The representative of the United States recalled that his delegation had made a statement at the December meeting outlining its major concerns with the Chairman's text and with the approach taken. In the US view, the disciplines on production subsidies in that text were much weaker than the broad prohibition on production support contained in the Bilateral Agreement, which was the standard the US had sought to achieve in the negotiations. Similarly, the caps set in Article 8 would have allowed a significant level of subsidization above and beyond the limits set in Article 10. Article 9 on "certain subsidies" was vague and seemed to be aimed at imposing a constraint on US military research programmes and at providing a pretext for unjustified GATT action against such programmes. Further, the Article was not balanced in that it did not refer to the many other types of government activities that might be seen as "indirect" or less direct than normal subsidies -- but no less prevalent -- that could result in government support. There was also concern over the permanent exemption from action under Part III, both in terms of substance and the precedent this would have set in curtailing a country's ability to pursue GATT rights in the area of countervail. The parts of the text dealing with market access and government interference in purchasing decisions were basically acceptable to the United States. Based on the experience of the negotiations both on the Aircraft Agreement and in the Uruguay Round, it would not be possible to accomplish anything in the area of subsidies *per se*, but there might be a possibility of accomplishing something in the area of a support-based discipline that would complement what had been achieved in the Subsidies Agreement.

26. The representative of Sweden said that what his delegation considered important in the Chairman's text and what was still lacking from the Uruguay Round were transparency provisions as spelled out in Article 13 of the text, especially in the area of small and medium-sized aircraft and engines. Second, Sweden favoured the expansion of the category of prohibited subsidies as drafted in the text. And third, Sweden would like to reintroduce the balance from the Chairman's text between green-lighted subsidies and the presumption of serious prejudice as spelled out in Article 8. He said that there was a difference between Article 8 now and that same Article in early December 1993, since Article 8.1 of the Subsidies Agreement had been widened in the last days of the Uruguay Round, and this had to be examined for the civil aircraft sector on its own merits.

27. The Chairman said that the onus was on the members of the Committee to determine how to proceed and in what direction. He would consult informally with delegations to try to see how best to move forward. He noted that there were some parts of the Chairman's text that no one seemed to have any problems with, for example inducements and market access. On other areas it was not clear how to proceed. As to the question of technical modifications to the 1979 Agreement, this too was up to members of the Committee to decide how and when to move on this issue.

28. The Committee took note of the statements.

Other Business

3. Status of Signatories

29. The Chairman drew attention to the fact that the Government of Greece had signed the Agreement on Trade in Civil Aircraft on 2 February 1981 subject to ratification. However, the ratification had not yet taken place. In light of the time that had elapsed since that signature he urged the Government

of Greece, on behalf of the Committee, to take the steps necessary to move toward ratification of the Agreement.

30. He also noted that two Signatories -- Egypt and Romania -- had not yet accepted the Protocol (1986) Amending the Annex to the Agreement on Trade in Civil Aircraft. With regard to Egypt, which had ratified the Agreement on 4 July 1989, he recalled that at the meeting of 20 December 1986 when the Committee adopted the Protocol (1986), it had agreed on the interpretation proposed by the Chairman that acceptances or accessions to the Agreement on Trade in Civil Aircraft were understood to include any rectifications, modifications or amendments as may have become effective on the day the acceptances or accessions entered into force (AIR/M/19, paras. 14 and 15). He encouraged the countries involved to take the necessary steps to tie up these legal loose ends.

31. The Committee took note of the statements.