

**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 10 NOVEMBER 1994

Chairman: Mr. M. Abdel-Fattah (Egypt)

	<u>Page</u>
1. Adoption of Agenda	1
2. Proposed technical revisions to the 1979 Agreement on Trade in Civil Aircraft	1
3. Report (1994) to the CONTRACTING PARTIES	4

1. Adoption of Agenda

1. The Chairman noted that the agenda for the present meeting was contained in GATT/AIR/3649.

2. Proposed technical revisions to the 1979 Agreement on Trade in Civil Aircraft

2. The Chairman drew attention to document AIR/W/98 which had been circulated to all Signatories on 26 October 1994 and which contained, in Annex I, the text of the Protocol (1994) Amending the Agreement on Trade in Civil Aircraft, and in Annex II, the text of a Decision of the Signatories to the Agreement in connexion with the conclusion of the Protocol (1994) Amending the Agreement. He said that he had received very recently a communication from the United States related to these draft texts with the request that it be circulated to Signatories, and that communication was available in the meeting room as AIR/83. He suggested that in order to conduct the discussion in an orderly fashion, the Committee first focus on the draft text of the Protocol in Annex I of AIR/W/98, and subsequently take up the matter of the draft Decision contained in Annex II of that document.

3. Regarding the draft text of the Protocol, he recalled that there had been considerable discussion of the text, and said that an effort had been made in AIR/W/98 to reflect all of the changes to the text agreed to date. He noted that he had recently received from a French-speaking delegation comments on the French translation of the draft Protocol in AIR/W/98. As it would be necessary, for the purpose of preparing an authentic text in both French and Spanish, to make the required technical corrections in the translated texts, he had arranged for an informal meeting between the GATT translators and any delegation wishing to propose such technical corrections. The meeting was scheduled for Friday, 25 November in Room "C", and was open to any delegation wishing to attend.

4. With regard to the English text of the draft Protocol, he proposed that -- unless any delegation had further changes of a substantive nature to suggest -- the Signatories agree that the text in Annex I

of AIR/W/98 was the agreed text of the Protocol (1994) Amending the Agreement on Trade in Civil Aircraft.

5. The representative of the EEC said that while his delegation for the time being had no comment on the text of the draft Protocol in Annex I, in the Community's view the adoption of the texts in Annexes I and II should be done at the same time, as the contents of AIR/W/98 were part of a package and should not be separated.

6. The representative of the United States shared the view that the two elements in AIR/W/98 were part of a package. His delegation had concerns with Annex II, and could not accept Annex I absent agreement on the whole package.

7. The representative of Canada said that his delegation was prepared to accept Annex I as written. However, having experienced some of the implications of ambiguity in the past, particularly in this Committee, his delegation could suggest certain stylistic improvements to the text which -- should any delegation be unable to accept such changes -- Canada would withdraw.

8. The Chairman said he understood that the objective of the Signatories was to have a Protocol that would effect the necessary technical changes to the text of the 1979 Agreement and that would be attached to the WTO. This exercise in the Committee had been a long one. While he did not deny the right of any delegation to make further comments on these texts, it had appeared at the Committee's last meeting that there was a package acceptable to all. He asked for the cooperation of all delegations in giving their tacit agreement that the text of the draft Protocol as it stood in Annex I of AIR/W/98 remain intact, and that it not be opened unless absolutely necessary.

9. The representative of Sweden agreed that this process had involved long and arduous work in the Committee. She expressed surprise at the turn of events, as her delegation had come to this meeting expecting to adopt AIR/W/98. Sweden urged all Signatories to agree at the present meeting to adopt the entirety of AIR/W/98 as it stood.

10. The representative of Canada said that he wanted to make clear that his delegation was prepared to adopt at the present meeting the texts in AIR/W/98.

11. The representative of Switzerland said that his delegation could adopt the texts in AIR/W/98.

12. The representative of the EEC said that his delegation was ready to accept the texts in AIR/W/98 as they stood.

13. The representative of Japan asked why the phrase in the revised Article 8.8 of the Agreement "except as otherwise specifically provided herein" (Point 39 of the draft Protocol in AIR/W/98) had been included in the text, as there did not appear to be a need for it.

14. The Chairman said that while there might be absolutely rational reasons for improving or clarifying language in the text, this would no doubt cause considerable delay in the process. He asked Signatories for their tacit agreement that this text be kept intact. He said that apart from any linkage between Annexes I and II, there was a problem regarding Annex II, in that the United States had proposed certain changes to that text. He suggested that Signatories focus their efforts on finding a solution to the problem of Annex II, and that in the meantime Annex I remain intact.

15. The representative of the EEC expressed his delegation's surprise, since at the Committee's meeting of 21 October 1994 there had been agreement on the adoption of what was now Annex II to AIR/W/98. That agreement had been reported in the Minutes of that meeting. Regarding the Chairman's

procedural proposal, he asked for confirmation of the Community's understanding that a signatory could not be legally prevented from raising problems or questions with respect to Annex I.

16. The Chairman confirmed that understanding, and clarified that it was merely a request on his part that the text be kept intact, for the reasons he had explained. He again warned that once the text was opened, there was no telling where or when the process would end.

17. The representative of the United States said that after further review his delegation had found the language in the draft Decision in Annex II to be ambiguous, and that the text addressed the major concern of one party but did not adequately address the United States' concerns. In the US view, the proposed language in AIR/83 made very clear the relationship among the Agreements, basically maintaining the status quo ante and doing nothing more. Given that this language was new to other Signatories, it would be appropriate to address it at an additional meeting of the Committee. The United States too was anxious to conclude this exercise and believed it was important to bring the 1979 Aircraft Agreement into conformity with the WTO as a Plurilateral Agreement.

18. The representative of Japan said that his delegation too would like to conclude this exercise. If it could be confirmed that the phrase "except as otherwise specifically provided herein" in Article 8.8 to which he had referred earlier had no substantive meaning in the 1979 text, his delegation could agree very soon to adopt the texts in AIR/W/98.

19. The Chairman said that in his view, the phrase referred to by Japan reflected the routine language often seen in GATT texts, which neither added nor subtracted any obligation, and he recalled that in the Committee's discussion of the application of the Dispute Settlement Understanding to the Aircraft Agreement, it had been generally agreed that no provisions in the Aircraft Agreement would be cited as special or additional dispute settlement provisions.

20. The representative of Japan said that in view of the Chairman's explanation, his delegation could agree to adopt the texts as they stood in AIR/W/98.

21. The Chairman said that noting the provisional agreement on Annex I, he would like to turn to the draft Decision of the Signatories to the Agreement in connexion with the conclusion of the Protocol (1994) Amending the Agreement, found in Annex II of AIR/W/98. In this regard, he asked the United States to explain the rationale behind its view that the text in Annex II did not cover its concerns.

22. The representative of the United States reiterated that without agreement on the language in Annex II, his delegation could not agree to adopt the text in Annex I of AIR/W/98. Regarding the alternative language his delegation had suggested in AIR/83, the United States believed that this language made clear that the existing relationship between the 1979 Aircraft Agreement and the 1979 Subsidies Code carried over to the revised Aircraft Agreement and the WTO Agreement on Subsidies and Countervailing Measures (the "ASCM"). However, this relationship might be clouded because of the revision of the Aircraft Agreement being delayed and coming later in time than the Marrakesh Agreement Establishing the WTO, which included the ASCM. A similar concern related to the dropping of existing language in the Aircraft Agreement on the relationship between that Agreement and other Agreements, as part of the process of adoption of the WTO Dispute Settlement Understanding for disputes under the Aircraft Agreement. Upon further reflection, his delegation had found that the language proposed by the Chairman at the last meeting of the Committee and reflected in AIR/W/98 for review in capitals was not sufficient to address these concerns. The United States believed that the language it proposed in AIR/83 would restore the situation that existed before this technical revision exercise and would ensure that this relationship continued under the Protocol. Without this language or language which accomplished this result, the United States could not agree to the revision exercise, and would be happier with the existing arrangement, as messy as it was. The United States remained open to suggestions

for language that would address these concerns. The language in Annex II was ambiguous: it stated that the fact that one Agreement came after the other did not necessarily mean that the latter took precedence, however it did not mean that it did not take precedence. His delegation was hopeful that this problem could be resolved.

23. The representative of Canada said that his delegation had not had much time to reflect on the US proposal, but that its initial reaction was that while the first sentence of Paragraph 2 might be a useful improvement on the original draft, the second sentence of that paragraph did not seem to be necessary or to add anything to the text. Delegations might want to reflect on the possibility of keeping the first sentence and deleting the second.

24. The representative of the EEC said that the US proposal was to a certain extent a reversal of what was in Paragraph 2 of Annex II, and tended to invert the relationship between the two Agreements involved and to cancel the parallel application of the two Agreements to the aircraft sector, which was a principle that had always been strongly supported by the Community. It was important to maintain the parallel application of the two Agreements, and for these reasons the EEC could not accept the new language proposed by the United States.

25. The representative of Japan said that the text of Paragraph 2 in AIR/W/98 was more rational than what the US was proposing, in the sense that there was a need to finalize this technical revision exercise.

26. The representative of Sweden said that her delegation found the formulation in the text in AIR/W/98 superior to that of the US proposal.

27. The representative of the EEC said that the Community wanted to underline that it was not a question of trying to find a better version of the US proposal, but rather of trying to adopt the text in AIR/W/98.

28. The Chairman said that as it appeared that not all Signatories were prepared at the present meeting to adopt the texts in AIR/W/98, he proposed that the Committee agree to revert to this matter at its next meeting, with an understanding among delegations that they would not re-open the text of the draft Protocol in Annex I, and that the Committee would revert to the adoption of AIR/W/98 in its totality at the next meeting.

29. The Committee so agreed and took note of the statements.

3. Report (1994) to the CONTRACTING PARTIES

30. The Chairman recalled that the Committee has an obligation under Article 8.2 of the Agreement to inform the CONTRACTING PARTIES of developments under the Agreement during the year. To facilitate this work the Secretariat had prepared a draft report which could be used as a basis of work.

31. The Committee adopted its fourteenth report to the CONTRACTING PARTIES, contained in document L/7557.