

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

AIR/M/3

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Special Distribution

Agreement on Trade in Civil Aircraft

COMMITTEE ON TRADE IN CIVIL AIRCRAFT

Minutes of the Meeting held in the
Centre William Rappard on
16-17 December 1980

Chairman: Mr. R. Maynard (United Kingdom)

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1. Status reports

1.1 Acceptance of Agreement - Article 9.1 - (AIR/12 and Add.1)

1. The Chairman drew the Committee's attention to AIR/12/Add.1 which showed that the Agreement now applied to the Netherlands Antilles. He also noted that a number of Signatories had not yet completed procedures for final acceptance of the Agreement.

2. The representative of Canada said that a bill had been tabled in the House of Commons which, when passed, would enable the Government to withdraw the reservation attached to Canada's acceptance; it was expected that the bill would be passed in the near future.

3. The representative of Belgium said that a final ratification by Parliament had not yet been completed, but was well on its way and that no difficulties were expected.

4. The representative of Italy said that the procedure for final acceptance was following its course in the Parliament.

1.2 GATT aircraft bindings - Article 2.1.3 (AIR/13 and AIR/13/Rev.1)

5. The Chairman noted that all Signatories were up to date with respect to incorporation in their respective GATT Schedules of concessions made under Article 2.1.1.

1.3 End-use systems - Article 2.2(c) (AIR/18, AIR/19 and AIR/21)

6. The Chairman drew the Committee's attention to the Progress Report of the Technical Sub-Committee (AIR/TSC/1) where it was indicated that the Sub-Committee would consider initiating in 1981 a comparative study of Signatories' end-use systems and their implementation. He proposed that the Committee consider matters regarding end-use systems as and when the Technical Sub-Committee would report on aspects requiring the Committee's consideration.

2. Matters under Article 1.2 - Military Entities (AIR/20)

7. The Chairman referred to the previous discussions of this matter (AIR/M/1, paragraph 35 and AIR/M/2, paragraphs 24-29) and recalled that Signatories who had listed entities operating military aircraft other than armed forces were to provide an explanation for the exclusion of such aircraft. Some replies were still outstanding and two initial notifications were yet to be made.

8. The representative of Austria said that his authorities were trying to elaborate a definition of entities operating military aircraft closer to the spirit of the Agreement; the legal definition of military aircraft at present in use in Austria was too wide for the purposes of the Agreement.

9. After hearing a number of remarks on Signatories' previous notifications the Chairman said that it would be useful to clarify this matter, in order to arrive at an agreed coverage of the Agreement by all Signatories. Whether this could be done through notifications concerning the legal basis of entities operating military aircraft or by other means was not important. On the basis of consultations that he had held with several representatives, the Chairman invited Signatories with outstanding replies to resubmit notifications at the next meeting of the Committee. He was confident that on

the basis of these new notifications and justifications a satisfactory conclusion of the matter could be reached.

3. Matters under Article 2.1.2 - Duties and other charges on repairs

10. The representative of the United States said that companies operating aircraft in Canada were hampered from having these aircraft repaired in the United States because, when they returned to Canada, a sales tax was levied on the repair effected abroad. The sales tax was levied on a different basis for repairs abroad than for domestic repairs. This problem had been raised and discussed bilaterally and it was his understanding that it was on its way to resolution.

11. The representative of Canada recognized that there was a problem in the application of the Canadian sales tax on repairs. The Canadian authorities were taking the necessary steps to ensure that the application of the sales tax, would be in conformity with the spirit of the Agreement.

12. The Chairman noted that the problem was the object of bilateral discussions between the United States and Canada and expressed the hope that it would be resolved in due course.

13. The representative of the United States reverted to the question of binding duties on repairs which he had raised at the previous meeting (AIR/M/2, paragraph 15). He reiterated his previous request that other Signatories include in their respective schedules a provision to the effect that they would continue not to impose duties or other charges on repairs. Referring to the argument that it was difficult to bind non-existent duties, he stressed that Article 2.1.2 did contain a concession concerning the future, i.e. not to impose duties on repairs, and that therefore as explicitly required in Article 2.1.3 this concession should be the object of a GATT binding. He said that the United States had, prior to the entry into force of the Agreement levied a duty on certain repairs abroad on US aircraft; had removed this duty in US implementation of the Agreement; and, pursuant to Article 2.1.3, bound this concession in the US GATT Schedule. This means the United States had adopted to bind the elimination of this duty was to insert a headnote at an appropriate place in its GATT Schedule. Should other Signatories not provide a comparable binding, he said that his authorities would be obliged to consider eliminating this headnote in the US Schedule.

14. The representative of Sweden said that this question was a formal legal issue rather than a question of substance. His authorities were studying ways to accommodate the United States' request.

15. The representative for the EEC stressed that the obligation not to impose duties on repairs existed in the Agreement and that the question of binding this obligation was a formality, but added that he would be prepared to study the matter further.

16. The Chairman said that if any Signatory to the Agreement introduced a duty on repairs of aircraft it would be in violation of the Agreement. He invited delegations to consider the possibility of making a statement in the Committee which could meet the concerns of the representative of the United States. He added that this matter could be reverted to at a further meeting.

4. Progress report of the Technical Sub-Committee (AIR/TSC/1 and AIR/TSC/2)

17. The Chairman introduced the second progress report of the Technical Sub-Committee (AIR/TSC/1) and the List of Selected Products (AIR/TSC/2) prepared by the Sub-Committee for consideration in view of enlarging the coverage of the Annex to the Agreement. He drew the Committee's attention to the matter of statistical reporting covered in paragraph 2 of AIR/TSC/1.

18. The representative of the United States said that his delegation was disappointed that so little progress had been made in the Technical Sub-Committee on the matter of statistical reporting. He called the Committee's attention to the Report of the Sub-Committee's Chairman (AIR/TSC/1) to the effect that only a few Signatories had made submissions on collectible statistics and that the Sub-Committee had agreed that all outstanding reports should be submitted to the secretariat by the end of 1980. He commended the Technical Sub-Committee for its work, especially on the second point of its terms of reference. With respect to the List of Selected Products he stated that further work was needed and expressed the hope that the Sub-Committee would be able to gather significant trade information on the products in that list. He explained that indications of the trade value of the products proposed for future inclusion in the Agreement would be of help to his delegation in overcoming domestic resistance to extend the coverage of the Annex. He added that this was properly the work of the Technical Sub-Committee but that it was up to the Committee to decide, once it had the trade data, which products should be considered for inclusion in the Annex. He suggested that this question could be addressed at a special session or possibly at the next meeting of the Committee, after capitals had had a chance to study document AIR/TSC/2. In his view it was important that the Committee have the 1980 statistical trade returns on the operation of the Agreement before even considering enlarging the coverage.

19. The representatives of the EEC, Canada, Japan and Sweden pointed out that there was a major difference between statistical reporting on the items covered by the Agreement and statistical reporting on any of the products in the List of Selected Products (AIR/TSC/2). On many of the latter items it would be difficult to collect any statistics; many of the items were new technological products, which would not necessarily have individual tariff positions, let alone statistical positions; other products were included in more general tariff positions and were not comprised in any end-use systems. If collection of significant trade data on selected products were to be a prerequisite for consideration for inclusion in the Annex, it could bar products for which no statistics could be collected from ever being considered. It was pointed out that no statistical data was required when the Annex, as it stands today, was negotiated.

20. The representative of the United States said that his delegation needed trade information on the selected products to justify the new additions to domestic industry.

21. In reply to a complaint made by the representative of France on the tariff classification of aircraft windows, the representative of the United States replied that the classification was being investigated with the US Customs and that the reply would be made in the Technical Sub-Committee, where the matter was first raised.

22. The Chairman said it was clear that no substantive comment could be made by the Committee on the List of Selected Products (AIR/TSC/2) at this stage. He noted that Signatories attached importance to the statistical reporting of the products covered by the Agreement and that, while trade data on the proposed products could serve as a useful background for discussion for extended coverage, the future discussion should not be constrained by the provision of such statistical material, particularly in view of the material difficulties in certain cases in obtaining figures. The Committee should not be in a position to have to exclude an item from coverage because no significant trade could be reported. He invited Signatories to review document AIR/TSC/2 and to reflect on how best to proceed in the future. He proposed that delegations could submit their views on the subject well in advance of the next meeting of the Committee.

23. Turning to the question of the Chairmanship of the Technical Sub-Committee the Chairman expressed the Committee's appreciation of Mr. R. Wright's work in the past year. It was his understanding that the Canadian delegation was disposed to make Mr. P. Douglas available for the chairmanship. The Committee elected Mr. P. Douglas (Canada) as Chairman of the Technical Sub-Committee.

5. Matters under Article 3 - Standards (AIR/W/18)

24. The representative of Canada drew attention to the proposal submitted by his delegation (AIR/W/18) which sought to exchange information on measures taken by Signatories to implement Article 3 of the Agreement. The paper contained a proposal that, as a first step, the Technical Sub-Committee might be asked, with the technical advice from airworthiness certification authorities, to identify specific certification requirements and specifications on operating and maintenance procedures covered by the Aircraft Agreement. The Technical Sub-Committee could also examine steps taken by Signatories to implement Article 3 of the Agreement with respect to certification requirements and specifications identified by the Technical Sub-Committee having regard to the requirements of the Agreement on Technical Barriers to Trade including, as examples, Articles 2, 7 and 10. Included in this discussion could be an examination of existing systems with a view to avoiding duplication of work done by other institutions. Mr. Owen, Director of Airworthiness in the Canadian Department of Transport, added that the main concern of airworthiness authorities was safety and that any standards adopted for safety purposes could be seen as trade barriers if one so wanted to. He pointed to the difficulties that could arise from different interpretations of certain words, for instance "maintenance", and proposed that discussions be undertaken to arrive at a common understanding of such words, in terms of their meaning and application with regard to Article 3 of the Agreement.

25. The representative of the EEC pointed out that most airworthiness standards were administered by international bodies. The administrative obligations in the Standards Code, such as publishing a notice and notification to the GATT secretariat, did not apply when standards were based on international standards. Problems or disputes regarding international standards could not be treated in the same way as disputes over national standards because, by nature, international standards were open to all countries. He thought it was unlikely that trade disputes over standards would occur in the field of aircraft; if they did, they would probably be best dealt with by the appropriate international bodies such as ICAO. If cases did arise, involving other than international standards, these should be considered within the Aircraft Committee and possibly with the Signatories of

the Standards Code. He recalled that there was already a complicated notification procedure within the Standards Agreement, which included aircraft, and one should not duplicate it by requiring notification to the Aircraft Committee. However, if a problem of interpretation or substance arose, it should be dealt with within the Aircraft Committee. Should there be a need for notification of standards concerning maintenance procedures, which were not covered by the Standards Agreement, then such notification should be made to the Aircraft Committee. Turning to the Canadian proposal (AIR/W/18, A) concerning identification of specific certification requirements and specifications on operating and maintenance procedures covered by the Aircraft Agreement, he suggested that such identification may already have been done by ICAO and that duplication of work should be avoided.

26. The representative of Canada pointed out that ICAO's standards were by definition agreed minimum standards, but that most countries tended to have higher requirements. In reply to a question by the Chairman he said that ICAO member countries did have the obligation to publish and notify their standards to ICAO, but that he was not aware that ICAO distributed these standards to other countries.

27. The Chairman pointed out that the objective of the Standards Agreement was not so much to review and harmonize existing standards, but to avoid creating unnecessary trade obstacles through the application of standards. He also said that the Aircraft Committee's competence was to look at trade problems arising from standards, and not to deal with the standards themselves.

28. The representative of the United States suggested that Signatories might want to consult with their respective airworthiness authorities to get some guidance in this matter. If there were particular cases of airworthiness standards that operated to restrict trade, it would be an appropriate matter for this Committee to consider.

29. The Chairman concluded that it was clear that any problems affecting trade resulting from technical regulations and standards in the civil aircraft industry were appropriate for consideration by this Committee. He invited Signatories to consult with their airworthiness authorities and to submit any views on the matter in advance of the next meeting.

6. Matters under Article 4 - Government-directed procurement

30. The Committee had a discussion on general policy questions arising from the provisions of Article 4 of the Agreement and had an exchange of views on the interpretation of these provisions. The United States representative discussed in some detail a discussion paper circulated informally.

31. Discussion revealed divergent views as to the way Article 4 should affect the role of government and the nature of its involvement, as government and shareholder, in the procurement of aircraft. Some representatives suggested that the Committee await the experience it would gather from dispute settlement cases to guide it in its interpretation of Article 4.

32. The Chairman concluded that the matter could nonetheless be considered at a future meeting on the basis of an appropriate paper.

7. Matters under Article 5 - Trade restrictions

33. The representative of Japan, in reply to questions put to him at the previous meeting (AIR/M/2, page 10), said that Japan applied no import restrictions or quotas on aircraft and parts. The licensing system in force was a monitoring system to prevent public nuisances, e.g. noise and checking of reliability. There had been no case of Japan preventing imports of aircraft on the basis of this monitoring system. He recalled that as a result of the Tokyo Round Japan had reduced the number of items subject to monitoring licensing and that there now remained very few items on the list. In reply to a question as to whether licensing was automatic, as provided for in the Licensing Agreement, the representative of Japan said that it could not be considered as automatic in view of the definition of that term under the Licensing Agreement. He added that the delay for obtaining a licence under the system was of one to two weeks.

34. Several representatives asked why this monitoring licensing system was applied to only four categories of aircraft, while all other aircraft had been removed from the list. The representative of Japan said that he was not in a position to reply to this question and that he would revert to the matter at the next meeting.

35. The representative of Switzerland recalled the position his authorities had taken concerning the coverage of export restrictions under Article 5 (see AIR/M/1, paragraph 41 and AIR/M/2, paragraph 50). The Chairman said that the Committee had taken note of the concerns recorded by Switzerland on this matter.

8. Matters under Article 6 - Government supports (AIR/W/17)

36. The Chairman recalled that there had been a preliminary discussion of this matter at the last meeting (AIR/M/2, page 11).

37. The representative of the United States introduced his proposal (AIR/W/17) on procedures for providing transparency of governmental supports. Three considerations prompted his paper: concern for adherence to Article 6.1 and 6.2 of the Aircraft Agreement; concern for the objectives set out in the Preamble "to eliminate adverse effects on trade in civil aircraft resulting from governmental support in civil aircraft development production and marketing while recognizing that such governmental support, of itself, would not be a distortion of trade;" and a desire that this Committee be the forum for discussion and resolution of any matters under Article 6. It was desirable to get as much transparency as possible in the matter of governmental supports. He recalled that under Article 7 of the Agreement on Subsidies and Countervailing Measures, Signatories were under the obligation to provide information rapidly and comprehensively. The United States had serious concerns regarding recent and substantial appropriation of funds by governments for the development of civil aircraft and engines. In this context the United States could request information under Article 7 of the Subsidies Agreement but before doing so his delegation wished to discuss the matter in this Committee. He noted that little active use had been made of the provisions for self-notification under Article XVI of the GATT. He drew attention to the proposal in AIR/W/17: "in order to enhance effective operation of the Agreement, to provide a procedure for monitoring the application of Article 6, to lessen resort to trade complaint procedures by providing a regular procedure for transparency of governmental programmes which might have significant effect on trade, and to establish the Committee as the forum for discussion of such programmes, and being mindful of the

interest of participants in the Tokyo Round to establish transparency of actions that do or might affect trade in order to assure greater fairness and openness in the world's trading system, it is proposed that significant governmental supports of civil aircraft programmes, to include programmes involving engines, components, equipment and parts be regularly and promptly notified to the Committee." The central issue in his view was whether Signatories wished to ensure a mechanism for transparency within the Aircraft Committee or whether the matter should be handled elsewhere in the GATT.

38. The representative of the EEC said that this Committee was the appropriate forum for all matters under Article 6 and that, as far as procedures were concerned, the Committee should follow those laid out in Article 7 of the Agreement on Subsidies and Countervailing Measures. However, both the Preamble and Article 6 of the Aircraft Agreement recognized that special factors applied to the aircraft sector and, in view of the different types of government-industry relations to be found among Signatories, it was very important to keep these special factors in mind. He recalled that Article 7 of the Subsidies and Countervailing Measures Agreement required Signatories to provide information on subsidies that affected trade, upon request duly substantiated. In his view it was quite clear that these procedures should apply to aircraft, within the Aircraft Committee. He added that Signatories should not innovate but adhere to the procedures clearly laid out, both in the Aircraft Agreement and in the Agreement on Subsidies and Countervailing Measures.

39. The representative of Sweden supported the idea that the Aircraft Committee was the appropriate forum for such matters, without prejudice to Signatories' rights to raise any subsidy matter in the Committee on Subsidies and Countervailing Measures. He stressed that the Aircraft Agreement recognized the special factors which applied in the aircraft field with regard to the role of government. He guarded against modifying any of the obligations that existed either in Article 7 of the Subsidies Agreement or in the Aircraft Agreement. Article 7 of the Subsidies Agreement should remain the guiding principle for procedures to be carried out within the Aircraft Committee. He suggested that Signatories could reflect further on whether there was any scope for specific procedures within the Aircraft Committee, or whether the Subsidies Agreement provided all the necessary procedures in this field.

40. The representative of Canada stated that he agreed with the principle of transparency, but said that it was important to retain Signatories' rights in other fora.

41. The representative of Japan recalled that Article 6 of the Aircraft Agreement had been the object of much negotiations, which had resulted in agreement to apply the provisions of the Agreement on Subsidies and Countervailing Measures to the field of aircraft, no more no less. It would be difficult to read in the Agreement more obligations than there were in the Agreement on Subsidies and Countervailing Measures. He agreed that the Aircraft Committee was the appropriate forum for discussion of government support programmes, and that the procedures of Article 7 of the Subsidies Agreement should apply. He added that he had problems with the proposal of self-notification to this Committee. The form and type of government-supports varied from country to country and this was recognized in the Aircraft Agreement. The United States proposal was ambiguous in the sense that it did not specify what type of government-support should be notified. The same measures would not necessarily be regarded as government-supports by all Signatories; for instance, from a Japanese point of view, United States

Government support through NASA programmes would be regarded as effective and substantial support to civil aircraft. Similarly government investment in national companies would also be regarded as government-support. These were merely examples, but they needed consideration. The representative of Sweden said that it was necessary to clarify whether the United States was proposing to introduce obligations additional to those contained in the Subsidies Agreement.

42. The representative of the EEC said that the discussion should be reverted to at a later meeting in order to clarify once and for all the appropriate procedures in matters of government-supports. In his view, Article 7 of the Subsidies Agreement as well as the special factors clearly provided for in the Aircraft Agreement should be taken into account, without prejudice to Article XVI of the GATT.

43. The Chairman said that there had been an interesting exchange of views on what was recognized to be a fundamental aspect of the Aircraft Agreement. It was not expected that the Committee could reach any conclusions at this meeting on how to proceed. He noted the general view that the Aircraft Committee was considered the appropriate forum for discussion, without prejudice to Signatories' rights in other fora in the GATT. It was also clear that Signatories did not wish to prejudice the work in the Subsidies Committee. He invited delegations to reflect on the matter and to revert to it at the next meeting.

9. Procedures for Modification and Rectifications (L/4962)

44. The Chairman recalled the Decision of the Committee to adopt GATT procedures for Modification and Rectification of Schedules (BISD, 16th Supplement, page 16), adopted in February 1980 (AIR/M/1, page 2). These procedures were now superseded by a Council Decision of 26 March 1980, contained in document L/4962.

45. The Committee decided to apply the superseding Decision (L/4962) in respect of the Annex to the Agreement on Trade in Civil Aircraft.

10. Date of next meeting

46. The Chairman proposed that the date of the next meeting of the Committee would be set by him after consultation with Signatories and the secretariat. His aim was to meet during the week starting 23 March 1981, following a meeting of the Technical Sub-Committee.