

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 held in the Centre William Rappard on 25-26 March 1981

Chairman: Mr. S. Piper (United States)

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1. Election of officers

1. The Committee elected Mr. S. Piper (United States) as Chairman, and Mr. Y. Sakamoto (Japan) as Vice-Chairman.

2. The outgoing Chairman, Mr. R. Maynard (United Kingdom) drew attention to the importance of the Aircraft Agreement as the first sectoral agreement of its kind. In his view it was desirable that the Agreement be open and not exclusive. He referred to the recent "Airline, Manufacturers and Customs Seminar" that had taken place in California as an example of industry's

awareness of the benefits of the Agreement. It was important that in the future potential problems be foreseen so as to avoid confrontation and conflict.

3. Several representatives expressed their great appreciation for the able chairmanship of Mr. Maynard during the first year of operation of the Agreement. They wished to put on record that it was mainly because of such able chairmanship that the Agreement had had such a good start.

2. Status report - Acceptance of Agreement - (AIR/12/Add.2 and AIR/W/21)

4. The Chairman drew attention to document AIR/12/Add.2 recording the acceptance of the Agreement by Greece. He welcomed Greece as a new Signatory.

5. The representative of the EEC recalled that Greece was a member of the European Communities as of 1 January 1981 and as such had the obligation to apply the Aircraft Agreement. Greece had therefore signed the Agreement on 2 February 1981. The tariff provisions of the Aircraft Agreement had been applied by Greece as of 1 January 1981; and Greece was in a position to fulfill its obligations regarding the non-tariff provisions of the Agreement. In reply to a question the representative of the EEC said that Greece would apply the EEC end-use system and this as of 1 January 1981. Any difficulties that could arise should be referred to the Technical Subcommittee.

6. The Chairman said that the Committee looked forward to receiving a notification from Greece concerning entities operating military aircraft.

7. The Chairman noted that final acceptance of the Agreement was still pending for Canada, Belgium, Italy and the Netherlands. The representatives for Belgium and the Netherlands stated that their respective Parliaments had approved the Agreement and that formal notification to the secretariat would be forthcoming. The representative for Canada said that there had been no formal change to the Canadian position since the last meeting. Domestic legislation had been introduced in Parliament and was awaiting a third reading, as soon as it was passed the Canadian authorities would remove the reservation on Article 2. The representative of Italy said that final ratification of the Agreement was pending, but that both the tariff and non-tariff provisions of the Agreement were in application in Italy since 1 January 1980.

3. Matters under Article 1.2 - Military entities

8. The Chairman recalled that at the previous meeting Signatories with outstanding replies had been invited to resubmit notifications on entities operating military aircraft.

9. The representative of Romania said that a notification from his authorities would be submitted soon. The representative of Switzerland said that his authorities would furnish a new definition of entities operating military aircraft which would be forwarded to the secretariat shortly. The representative for Austria said that a notification by his Government had been received and would be forwarded within a few days to the secretariat.

10. The representative of the United States said that it was his understanding that other delegations were discussing, bilaterally, their new

notifications and he expressed the hope that by the next meeting a more complete picture would be obtained. Meanwhile his delegation had a question with respect to Italy's notification (AIR/22). It was his understanding that the national police was not now military and that the impending legislation would merely confirm and clarify the non-military nature of the national police.

11. The representative of Italy said that Parliament was examining a new law which would have the effect of modifying the military status of the national police. He reiterated that for the time being the national police had military status. In reply to a further question he stated that the legal services in Rome confirmed the military status of the national police; that was the position at this stage.

12. The representative of the United States proposed that the matter be discussed bilaterally. The representative of Italy acquiesced, indicating that a date be fixed close to the next meeting of the Committee so that he could have legal experts at hand.

13. The representative of Japan recalled that at the last meeting he had invited some Signatories to resubmit notifications; however, no such notifications had been received; he was referring in particular to Canada and France. The Chairman said that bilateral discussions were going on and he was optimistic that a consensus could be reached so that the matter could be resolved expeditiously, hopefully by the next meeting.

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

14. The representative of the United States recalled the discussion at the previous meeting on a sales tax levied by Canada on aircraft repairs effected abroad. He expressed concern at the fact that the basis of assessment of this sales tax discriminated in favour of repairs effected in Canada. He now sought further clarification from Canada.

15. The representative of Canada stated that as a result of an Order-in-Council established on 6 March 1981 sales tax on Canadian civil aircraft and parts exported for repair and subsequently returned to Canada would be assessed only on the value of the work done abroad, rather than on the full value for duty of the returned goods. The representative of Canada trusted that this action would alleviate concerns raised by the representative of the United States at the December 1980 meeting. The representative of the EEC sought clarification on the discriminatory nature of this sales tax; in view of the fact that it was levied at the border, he asked whether the tax amounted to a customs duty, or whether it was a sales tax applied to domestic repairs as well. The representative of Canada replied that the sales tax is also applied domestically. The representative of the EEC considered that this still indicated a possible element of discrimination as between taxes on domestic and foreign repairs. Later in the meeting, the representative of Canada reintroduced this subject noting that further questions had been raised on the application of the sales tax at the border. He indicated he would obtain further information and report back to the Committee.

16. Turning to the question of the binding of duties on repairs, the Chairman recalled that at the previous meeting the Chairman had invited delegations to consider the possibility of making a statement in the Committee to meet the

concerns of the United States' representative on the binding of repairs in Signatories Schedules.

17. The representative of Romania stated that in conformity with the provisions of the Agreement Romania did not impose duties on aircraft repairs effected abroad. In fact such a provision existed in the Romanian customs legislation prior to the conclusion of the Aircraft Agreement.

18. The representative of Sweden said that there was no need for reciprocity in the binding of duties on repairs when such duties did not exist. He proposed that Signatories make a statement in the Committee to meet the concerns of the representative of the United States. Such a statement could be along the following lines: "The Signatories of the Agreement confirmed that for products covered by the Agreement on Trade in Civil Aircraft, concessions in their Schedules are given according to the provisions of Article 2 of that Agreement." Such an agreed statement would be inserted in the Minutes.

19. The representative of the United States said that what was needed was a note in Signatories' Schedules, as required under Article 2.1.3, and not in the Committee's Minutes.

20. The representative of the EEC said he would need to reflect on the proposed text. For the time being his preference would go to making a statement in the Committee; he did not share the view that there was an obligation to insert a note in Schedules.

21. There was some discussion on whether to add the words "maintenance, rebuilding, modification or conversion", in the proposed text. There were different views on whether the meaning of the word "repairs" in Article 2.1.2 was limited to repairs on products (covered by the Agreement), or whether it also included cost of labour.

22. The representative of Sweden said that his proposed text was intended as a compromise between those Signatories who were reluctant to add a note to their Schedule and those who insisted on having reciprocity for all bindings. He added that if there was agreement that all Schedules were to contain a note, Sweden would be prepared to insert such a note in its Schedule.

23. The Chairman recalled that the matter should be treated on a reciprocal basis by all Signatories. For him there was no question that products should be bound in Signatories' GATT Schedules. The problem was how to treat services and repairs on products - together or separately. The question to be decided was whether to insert a statement such as the one proposed by the representative of Sweden in the Minutes of the Committee or in Signatories' GATT Schedules. He invited Signatories to reflect on the matter with a view to reaching common ground for consideration at the next meeting. The other question derived from the discussion was whether the Note in Schedule XX - United States - was adequate in terms of the obligations under Article 2.1.3. He also noted that the European Economic Community wished that attention be focussed not only on repairs but also on those other actions regarding maintenance, rebuilding, modification or conversion.

5. Report of the Technical Sub-Committee (AIR/TSC/1 and 2 and AIR/23)

24. The Chairman recalled that at the last meeting of the Committee Signatories had been invited to review AIR/TSC/1 and 2 and to reflect on how best to proceed. He drew attention to document AIR/23 containing the views of the United States on the question.

25. The representative of the EEC said that the Technical Sub-Committee had provided good material which could serve as a basis for negotiation. The Communities' position was that all aircraft products should be included in the Agreement. The Communities were flexible with respect to the procedures for negotiation; he recalled that it was customary to have plurilateral and bilateral discussions in the course of a negotiation, with periodic reporting to the Committee in order to keep track of progress.

26. The representative of Sweden agreed with the position of the EEC; he said that the work of the Technical Sub-Committee with respect to proposals for product coverage had been finalized, and a useful report was before Signatories for consideration. The report of the Technical Sub-Committee should remain on the agenda of the Committee while the process of plurilateral and bilateral negotiations was going on. The Committee should take stock periodically of the results of these informal discussions.

27. The representative of Japan said that while the work of the Technical Sub-Committee was much appreciated it was his delegation's view that there remained further work to be done, e.g. to complete a concordance of CCCN, TSUS and Canadian Tariff, and to examine the end-use systems. He suggested that the Technical Sub-Committee continue work on the completion of the List of Selected Products (AIR/TSC/2) With respect to procedures for negotiation, he said that he could not commit his delegation to a time schedule but that plurilateral and bilateral informal meetings would be a reasonable approach. He added that his delegation was prepared to participate in such negotiations.

28. The representative of the United States said that the suggestion of discussions in plurilateral informal meetings sounded reasonable. It was his view, however, that the Technical Sub-Committee could play a useful role in the negotiations. His delegation was disappointed that the supporting statistical data was lacking with respect to the items on the List of Selected Products. He saw there a useful role for the Technical Sub-Committee, which should be asked to gather relevant technical or statistical information available on the products proposed for inclusion in the Annex. This should be provided to the Committee on a flow basis; such information could bear on trade flows, expanded and more explicit product descriptions, concrete examples of the articles covered by the subject product descriptions, including illustrations of their function within an aircraft and technical specifications and drawings where appropriate. Such information would be of particular help to his delegation when submitting the final results to Congress.

29. The representative of the EEC pointed out that there were marginal problems with respect to a concordance between CCCN, TSUS and the Canadian Tariff; these could be dealt with by the Technical Sub-Committee in the normal course of its work. He recalled that rectifications to the Annex had already been proposed, and that the Japanese representative had said that they would need Diet approval; it was therefore appropriate to enter into negotiations. The Technical Sub-Committee would continue to make

contributions, in particular, in cases where no statistics existed, e.g. when trade in a product was too restricted or when a product was classified in an aggregate tariff line. In such cases a precise product or function description could supplement statistical lacunas.

30. The representative of Sweden agreed that the Sub-Committee should be called on to do any technical work that would be needed, whether on items in the selected list of products or on other matters. In general the Technical Sub-Committee should be turned to for technical problems. He agreed with the representatives of the United States and of the EEC that it would be useful to have trade statistics. Sweden was prepared to do its best. There were limitations, however, such as the absence of particular statistical lines for certain products and the merging of civil and military aircraft and parts in statistical collection. He hoped that the representative of the United States was not implying that a statistical collection was a pre-condition to negotiations. If so, it would be difficult to have any negotiations. He recalled that no statistical data had been available at the time of negotiation of the present Annex to the Agreement. He also stressed the interest of the aircraft industry to expand product coverage and pointed out that the basis for the present Annex had not been provided by bureaucrats but by industry. In his view it was possible to arrive at a positive result even if trade flow information were incomplete.

31. The representative of the United States said that trade flow data was not a prerequisite but that his delegation was asking for best efforts in this field.

32. The representative of the EEC said that the Technical Sub-Committee could attempt to furnish technical specifications and manufacturer's parts numbers when trade flow data was absent or difficult to extract, but stressed that the discussion should not focus on statistics only. The need for statistics was questioned and concerns expressed that the absence of statistics or, alternatively, large trade flows could influence Congress in a negative way.

33. The representative of the United States pointed out that there were domestic interests in the United States who did not want a further expansion of the Annex of the Agreement until there was a basis to assess the present operation of the Agreement. There would be difficult questions to answer when proposals for expansion would go to Congress. He recalled that the Agreement as it stood had been presented as one element in the total Tokyo Round package; proposals to expand the Annex would have to be presented alone. He added that there were industry pressures to expand the Annex, and assured the Committee that small trade flows revealed by statistical data would not be a hindrance to such expansion. He was of the view that trade data would show that United States' interests had not been hurt by the Agreement, and thus would argue in favour of an expanded Annex.

34. The Chairman noted that it was not suggested that trade flows would predetermine which products were included in an expansion of the Annex. In view of the discussion on the extension of the Annex he anticipated lively discussion in multilateral and bilateral meetings, with periodic reporting to the Committee.

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

35. The Chairman recalled that after discussion of this matter at the last meeting, Signatories were to consult with their respective airworthiness authorities and report any relevant views to this meeting.

36. The representative of Canada said that it appeared, after consultations, that some Signatories had misunderstood the intent of the Canadian paper discussed at the last meeting (AIR/W/18). He assured the Committee that his delegation had not intended to suggest that a new bureaucracy be established to look at aerospace standards. Canadian concerns had focussed on problems of definition and the subject had been raised on an exploratory basis.

37. The representative of the EEC reiterated the view expressed at the last meeting that it was important to avoid duplication of work; in the case of aircraft, ICAO and other bodies were responsible. It was generally felt within the Community that the work performed by ICAO in the field of standards was perfectly adequate and that there was no call for the Aircraft Committee to play a role in this field. He suggested that any problems of definition, such as what was the exact coverage of the words "certification systems" or "repairs", etc., were bound to occur in any new agreement. In case of difficulty it would be up to the ICAO to draw its own conclusions as to the difference of meaning between GATT terms and their own. He suggested that such problems could be dealt with best on an informal basis.

38. The representative of Sweden supported this statement, adding that his airworthiness authorities found the work performed by ICAO to be perfectly adequate. With respect to the Canadian proposal that a body be set up to identify the specific certification requirements in the field of civil aircraft, he was of the opinion that this went beyond the scope of the Agreement on Technical Barriers to Trade. He recalled that the aim of the Agreement on Technical Barriers to Trade was to ensure that technical regulations and standards do not create unnecessary obstacles to international trade; it did not require an inventory of existing standards, nor the examination of potential problems. He cautioned against reading more into the provisions of Article 3 of the Aircraft Agreement than was intended.

39. The representative of Canada said that it was apparent that there was no consensus to discuss the matter further in the Aircraft Committee, he agreed that the Committee would deal with any problems in the field of standards as they arose.

40. The Chairman said that the Signatories to the Agreement on Technical Barriers to Trade and the Signatories of the Aircraft Agreement had an obligation to work within the relevant international standardizing bodies; in the field of aircraft it was ICAO. He noted that the Committee would deal with problems of technical regulations or standards having an impact on international trade. He proposed not to pursue the matter further at this stage.

7. Matters under Article 5 - Trade restrictions

41. The Chairman recalled that at the last meeting the representative of Japan had undertaken to reply to the question of why the Japanese monitoring licensing system was applied to only four categories of aircraft and engines, while other aircraft and engines had been removed from the licensing list.

42. The representative of Japan explained that the licensing system, which was not quantitative, was designed to monitor imports of certain aircraft, helicopters and engines, from the point of view of safety and noise level, and to check whether the capacity of the aircraft satisfied Japanese standards. The delay for obtaining a license was short - approximately one week - and so far there had been no case of refusal of licence. The licensing system was applied only to aircraft and engines above a certain weight or thrust because the safety and noise factors were all the more critical on large capacity aircraft.

43. In reply to a question whether this system was covered by provisions of the Agreement on Import Licensing, the representative of Japan said that he did not think it had any adverse effect on trade and therefore it had not been considered under what provision of the GATT or the Agreement on Import Licensing it fell. He explained that it was not an automatic import licensing system.

44. The representative of Sweden said that if the system was not automatic it must be non-automatic, and therefore came under the provisions of the Agreement on Import Licensing, in particular Article 3. However, Article 3 of the Import Licensing Agreement governed licensing systems applied for purposes of administering quotas, but no quotas were involved in this particular case.

45. A representative of the secretariat explained that the Import Licensing Agreement differentiated between automatic licensing, which was generally applied for statistical purposes, and non-automatic import licensing applied to administer restrictions. GATT rules did not deal with the modalities of import licensing as such but only referred to fees in connection with import licensing. He pointed out that Article 5.1 of the Aircraft Agreement referred to the applicable provisions of the GATT concerning quantitative restrictions; the relevant provisions of the GATT being mainly Articles XI and XII which ruled out quantitative restrictions except under specific circumstances.

46. The representative of the EEC noted that the licensing system was neither to administer quotas, nor was it really automatic as MITI could, in certain case, refuse to issue the licence. This did not appear to be in conformity with Article 5 of the Aircraft Agreement, or with the GATT. He added that the monitoring of technical specifications, such as noise level and safety, was usually undertaken by airworthiness authorities and not by organizations like MITI. Normally, in other countries there were two stages to the importation of aircraft: 1) certification by airworthiness authorities and 2) customs. In the case of Japan there appeared to be three stages: 1) certification, 2) import licence from MITI and 3) customs. Furthermore he could not understand why this monitoring of technical specifications by MITI was limited to large aircraft, while smaller aircraft were not subject to it. He invited the Japanese authorities to review the system with a view to eliminating this licensing requirement.

47. The representative of Canada supported the statement by the representative of the EEC and suggested that it was the role of airworthiness authorities to deal with any problems of safety and technical specifications.

48. The representative of Japan said that there existed specific regulations for the manufacture of aircraft in Japan which were checked for safety. This

was in addition to airworthiness rules. MITI had regulations on the production of aircraft and engines; it followed that similar standards had to be applied to imported aircraft. This was not a duplication of airworthiness authorities standards but was a supplementary check, not only on safety but principally on the appropriateness of the level of trade.

49. The representative of the EEC asked whether the verification of the level of purchases of aircraft and engines by MITI was to ensure that they conformed to Japanese commercial policy. If this was so, it was not in conformity with the Aircraft Agreement, the Agreement on Import Licensing and with the GATT. He asked for further information on particular points: 1) did the Japanese airworthiness authorities certify the safety of smaller aircraft; 2) were these safety standards of the same order for small and larger aircraft; 3) if so, why was there need for supplementary safety approval by MITI. In what cases did MITI refuse the import licence, and was the airworthiness certification not considered sufficient by MITI in the case of larger aircraft; 4) under what conditions could the Japanese authorities consider removing this discretionary import licensing system.

50. The representative of Japan said that the licensing system was operated in consultation with airworthiness authorities. He emphasized the trade aspect and appropriateness of importers and operators. He said that the licence could be refused to an unauthorized airline.

51. The representative of the United States noted that an aircraft imported into Japan had to pass a test by the airworthiness authorities and a further test to obtain a licence which, though usually granted, could be refused. This was contrary to the provisions of Article XI of the GATT, particularly if the airworthiness authorities passed the aircraft and the licence were refused.

52. The representative of Sweden noted that the policy of the operator (airline) was relevant to the granting or refusal of the licence, and asked whether there was no other system which authorized operators or users to fly imported aircraft.

53. The representative of Japan said that licences had not been refused to entitled users and operators of aircraft.

54. The representative of Sweden asked for further information, in particular in what cases import licences could be refused: when noise and safety requirements were not met, or when the operator or user was not authorized? He questioned whether this was a necessary precaution and asked whether any operator could possibly use an aircraft unless he were an authorized operator.

55. The Chairman requested Japan to review the system in the light of Article XI of the GATT and of the Agreement on Import Licensing. He noted that there was a consensus that this issue be reverted to at the next meeting to hear the replies to the specific questions asked by the representatives of the EEC and Sweden. He asked Japan to consider whether the licensing system was in conformity with Article 5 of the Aircraft Agreement and with the provisions of the GATT.

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

56. The Chairman recalled that the matter had been discussed at the two previous meetings and enquired whether there were any further views.

57. The representative of the United States said that a notification procedure on government supports in the Aircraft Committee was desirable. In this context, he proposed that there be an exchange of publicly available documents relevant to government supports for civil aircraft in order to facilitate an assessment of their impact on trade. The type of information to be supplied should be of comparable level of detail. As an initial step he proposed that prior to the next meeting of the Committee each Signatory notify the secretariat of those documents publicly available in which data on government supports to trade in civil aircraft are published. This should cover all aspects of government supports except that given for generic research. It was proposed that only the reference to available documents be notified, but that the documents proper need not be supplied. The Committee could consider at its next meeting what steps to take.

58. The representative of the EEC said that the Community would have to reflect on the matter; its position would probably be the same as that expressed at the previous meeting, i.e. that the appropriate procedure to follow with regard to information on government supports was that laid out in Article 7 of the Agreement on Subsidies and Countervailing Measures, as referred to in Article 6 of the Aircraft Agreement.

59. The representative of Sweden said that he had no problems with the substance of this new proposal and that the Committee could look into the matter. He pointed out, however, that discussions were under way in the Committee on Subsidies and Countervailing Measures concerning procedures for Article 7 of that Agreement. He warned against the Aircraft Committee taking action that might prejudice actions to be taken in the Committee on Subsidies.

60. The representative of Japan supported the views expressed by the EEC and Sweden. He said that his authorities would consider the proposal by the United States.

61. The Chairman recalled that at the last meeting there had been a general view that matters concerning government supports should be discussed in the Aircraft Committee. He invited delegations to reflect further on the proposal made by the United States and said that the Committee would revert to this matter at its next meeting.

62. The representative of Sweden felt that it was important that the Committee on Subsidies establish a procedure before the Aircraft Committee set up its own procedure.

9. Date of next meeting

63. The date of the next meeting of the Committee was set for Thursday, 18 June 1981, to continue into Friday, 19 June as necessary.

64. The date for the autumn meeting of the Committee was set for the second half of October in order to have time to draw up the Committee's report to the CONTRACTING PARTIES. The aim was to meet during the week of 26 October 1981, the precise date to be fixed after consultations.