

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

AIR/M/3
23 September 1982
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 1 July 1982

Chairman: Mr. M. Lagorce (France)

| | <u>Page</u> |
|--|-------------|
| 1. Matters under Article 1.2 - Military entities | 1 |
| 2. Matters under Article 2 - Duties and other charges on repairs | 2 |
| 3. Matters under Article 6 - Questions relating to subsidies | 4 |
| 4. Matters under Article 8.6 - Notification of subsidy investigation | 7 |
| 5. Report of the Technical Sub-Committee | 13 |
| 6. Matters under Article 8.3 - Further negotiations | 14 |
| 7. Possible contributions to the Ministerial Meeting | 15 |
| 8. Discussion of export credits in the OECD | 16 |
| 9. Rectification of the Annex - TSUS list | 16 |
| 10. Dates of next meetings | 16 |

1. Matters under Article 1.2 - Military entities

1. The Chairman recalled that this matter had been on the agenda for the previous five meetings (AIR/M/3, 4, 5, 6 and 7), and that at the last meeting he had urged those Signatories who had not yet fully settled the question of coverage of the agreement, with regard to military entities, to do so without delay.

2. The representative of Canada said that the internal procedures regarding the application of the Agreement to the Canadian Mounted Police were now completed and that a new notification would be submitted shortly.

3. The representative of France confirmed the statement he had made at the previous meeting (AIR/M/7) to the effect that the new notification would be made by the French authorities, as soon as Canada notified it included the Canadian Mounted Police under the Aircraft Agreement; the new French notification would indicate that aircraft operated by the "sécurité civile; préfecture de police; douanes" would also be covered by the Agreement.

4. The Chairman expressed the Committee's satisfaction that this matter was finally settled.

5. The representative of the United States recalled that he had expressed at an earlier meeting of the Committee some concern that the EEC in its common external tariff, defined civil aircraft as "other than military", and further defined military aircraft as "to be defined by competent authorities". For the sake of transparency he asked whether the common external tariff definition could not be modified to show which aircraft would be defined as military aircraft. He pointed out that this was important for United States exporters who had to deal with one common external tariff, but ten different customs authorities.

6. The representative of the EEC said that the footnote to the definition of military aircraft gave the competent authorities the power to fix the conditions of duty free treatment; i.e. the end-use system. There was need to insert a new explanatory note in the common external tariff (which was not the same as the explanatory notes to the CCCN), regarding military and similar authorities.

7. In reply to a question the representative of Italy confirmed the statement he had made at the previous meeting (AIR/M/7) to the effect that the Italian Police had a new legal status; this required new regulations for its application which were expected to be ready by the end of 1982.

8. The Chairman asked the representative of Italy to report to the secretariat as soon as the new regulations entered into force so that the matter need not be taken up at the next meeting. He said the Committee looked forward to new notifications of entities operating military aircraft from Canada and from France, so that the matter need not be reverted to at the next meeting.

2. Matters Under Article 2 - Duties and other charges on repairs.

Canadian Sales Tax

9. The Chairman said that the Canadian sales tax on civil aircraft and parts exported for repair and subsequently returned to Canada had been discussed at the previous meeting when Canada had stated that procedures to modify its legislation would be initiated. The representative of Canada said that the procedures were now nearly completed and that the amendment of the domestic legislation would enter into force very soon.

10. In reply to a question from the EEC concerning the content of the change in the legislation, the representative of Canada said that it was designed to insure that, when aircraft were repaired abroad and subsequently returned to Canada, the sales tax would not be levied on the value of the whole aircraft or of the labour content of the repair. He further explained that in the case

of those goods listed in the Annex to the Aircraft Agreement by Canada which were not exempt from sales tax, the basis for the tax calculation under the proposed legislation covering repairs would be the cost shown on the repair bill less the cost of direct labour and employee benefits, if shown separately. He added that although the procedure for changing such legislation was lengthy, his authorities had pressed the case; there was now an Order in Council which was on the Ministers' agenda. It was a matter of days before the new legislation would come into force.

Binding of Duties and Other Charges on Repairs

11. The Chairman recalled the discussion at the previous meeting, summarized in AIR/M/7, from which some divergence in interpretation of Article 2.1.2 had emerged. To clarify Signatories' customs treatment of both the material and labour content of civil aircraft repairs, the Chairman had circulated a questionnaire in document AIR/W/31. A United States reply to this questionnaire had been circulated in AIR/W/31/Add.1. Replies by Canada and the EEC would be distributed in Add.2 and 3. He also recalled that a redraft of the proposed text in document AIR/W/27--to cover the binding of duties on repairs in Signatories' respective Schedules---could only be undertaken in the light of the replies to his questionnaire.

12. The representative of Japan referred to the questionnaire (AIR/W/31) and said that the replies to the questions asked on page 2 were as follows: The equipment under questions IA, B1, 2 and 3 was duty-exempt. The equipment under B4 and 5 which was not listed in the Annex to the Agreement, was subject to Japanese customs duties. However, there were special provisions to exempt or reduce customs duties on certain kinds of equipment for aircraft. He said that he would give a full reply in writing at a later stage. (See AIR/W/31/Add.5.)

13. The representative of Sweden said that his customs authorities' reply to question a) and b) was "none"; and consequently the reply to c) was "not applicable". A written reply to the questionnaire would be forwarded to the secretariats, (See AIR/W/31/Add.4).

14. The representative of Norway said that his customs authorities' reply to questions a), was "duty free", b) was "duty free" and c) was "duty free". With respect to equipment covered in B4 and 5 there was a duty levied on each spare part of this equipment. A written reply would be provided.

15. The representative of Canada said that the Canadian customs authorities imposed a duty on the repair of parts not covered in the Annex to the Agreement. The Canadian reply, (circulated in advance, later reproduced as (AIR/W/31/Add.2), did not address the question concerning taxes as no other taxes than those applied to Canadian products were levied. He added that the question of duties and taxes were different issues to be treated separately. Asked to specify, the Canadian representative said that the question at issue was that of binding of duties on repairs of products not listed in the Annex. The Canadian answers to questions a) and c) were sufficient to explain the Canadian Customs' treatment of products not covered in the Annex.

16. The Chairman pointed out that Article 2.1.2 covered not only duties on repairs, but also other charges. Replies to questions concerning other charges were required.

17. The representative of the EEC summarized the advance reply of the EEC to the questionnaire, (AIR/W/31/Add.3). In principle the duty applied to repairs was based on the duty levied on the imported article. If the product was duty free, the rule of course did not apply. He pointed out that apart from the EEC's GATT obligations, it also had a long list of tariff suspensions, i.e., products on which no duties were levied. For a small number of dutiable products, the rule would apply, but most of these products were things like ball bearings, which were never exported for repair, so that de facto no duties were levied on aircraft repairs.

18. The representative of the United States said that from this discussion and the replies circulated, he had come to the conclusion that all Signatories gave the same customs treatment to repairs on civil aircraft; that, generally, these items were dutiable at the same rate as the product itself; when the product was covered in the Annex to the Agreement, and was therefore duty free, then no duty was levied on the repairs. It seemed to him that a number of Signatories were in technical default of a strict application of Article 2.1.2 but were not in any practical default. He therefore suggested a text which would reflect this and would be an amendment to document AIR/W/27.

19. The representative of Japan also submitted an amendment to AIR/W/27.

20. The Chairman said he would circulate these amendments as an addendum to AIR/W/27. He recalled that it was too early to examine the draft text which would cover the binding of duties and other charges on repairs as this could only be done after a careful examination of all Signatories' replies to the questionnaire. He set the deadline of 30 July 1982 for outstanding replies to AIR/W/31. The committee would revert to this matter at its next meeting.

3. Matters under Article 6 - Questions relating to subsidies

21. The representative of the United States recalled the statement he had made under this item at the 19 October 1981 meeting when he recalled that considerable attention had been given to export credit subsidies at the OECD meetings, the Ottawa summit and bi-lateral consultations; the subject had also been discussed recently at the OECD and at the Versailles summit. The basic premise for the United States was that it sought international agreements for eventual elimination of government subsidization of export credits. It had been agreed that the Aircraft Committee was not the forum for undertaking substantive negotiations on export credit terms. Discussions were proceeding in other fora.

22. He recalled that subsidized export credit financing of civil aircraft sales in the United States had become a serious and contentious problem. Competition for sales in the US market between domestic and foreign suppliers was intense, due to the size of the market and the potential for sales in third markets following sales in the United States. While the US welcomed free competition in its market among all aircraft manufacturers, and while the US recognized that governments as a matter of policy might want to foster such exports, both the Aircraft Agreement and the Subsidies Agreement provided that such assistance should not adversely affect the trade interests of other

Signatories. The US had specifically objected then to subsidizing by governmental institutions in support of sales of civil aircraft in the US because it gave an artificial advantage to foreign suppliers over domestic ones, who were obliged to finance on a commercial basis. This basic concern about trading rights, international agreements and trade distortions was implicit in the US policy statement of 8 July 1981. It was also the United States' position that it sought to avoid confrontation on such trade matters.

23. He drew attention to a recent statement by the United States Trade Representative to the effect that the Administration and Congress were increasingly concerned over the potential for trade distortion resulting from foreign government subsidization of financing for export of capital equipment, including to the United States, and consequent adverse effects on US industry. Credit terms were very important in the sale of capital equipment. The US had entered into several international agreements concerning official export credit practices. Some of these agreements provided for minimum interest rates for sales to the US and other countries; other agreements did not cover interest rates or were limited to sales outside the United States. However, none of these agreements sanctioned trade distorting subsidization of export credits.

24. According to directives from the President, the US Trade Representative had requested, pursuant to Section 332(g) of the Tariff Act of 1930, that the International Trade Commission conduct an investigation and report on the sale, in the United States, of capital equipment from foreign countries with the aid of subsidized export credits. Because of the diversity of products and industries that could be involved in this study it would be limited to civil transport aircraft, commuter-size and larger, heavy electrical equipment and self-propelled railcars. Sales of these items frequently involved financing provided by the seller, and in the case of foreign manufacturers selling in the United States, this involved usually export credits provided by an official lending agency.

25. The Senate Finance Committee had for its part requested the International Trade Commission to conduct a study, also under Section 332(g) of the Tariff Act of 1930, to evaluate the impact of export credit subsidies by foreign governments on US producers of commuter aircraft. These studies were asked for completion by 26 November 1982 and in the second case not later than eight months from 24 May 1982, i.e., by February 1983.

26. He emphasized that the studies, in particular the one requested by the USTR were not targeted on civil aircraft only. There was no suggestion of any charge of injury, or contravention of any international agreement or of US law. Section 332 provided an opportunity for a factual investigation to be made into current prevailing practice. Such studies did not lead to any remedy; they were aimed at establishing the facts.

27. Recalling that members of the Committee had expressed an interest in the programmes in the United States supportive of aeronautical development, his delegation had brought copies of a recent testimony by NASA, which described the support programs and budget for research and development. A few copies would be deposited with the secretariat where they could be consulted.

28. The representative of the EEC said that the United States' statement was controversial and that he could not accept some parts of it. He sought clarification concerning the two studies under section 332(g). In particular, he asked what the motivation for these studies were and what their utilization would be when completed; had Section 332 ever been resorted to before and, if so, what had happened after the studies were completed. In his view it was inopportune for the administration to resort to Section 332 at this moment, when negotiations were under way in other fora, and it was difficult to understand why the administration had requested these studies at this particular time. This controversial statement by the US administration, plus the fact that there was a countervailing case in the aircraft sector caused his delegation unhappiness.

29. The representative of the United States said that the motivation was the concern felt by US producers that they were at a disadvantage in competing in the US market because of subsidized financing of imports in some important sectors, not only in aircraft. He noted that in some countries there existed provisions to match foreign government subsidization terms; the US had no such provisions. However, he suggested that it was not in the interest of any Signatory to match subsidies. He also remarked that the US was not alone in the OECD in objecting to trade distortion from export credit financing. He added that the Administration had many complaints from US industry, claiming loss of sales in the domestic market as a consequence of foreign government export credit subsidies. In view of the number of complaints and allegations of this kind, the US Trade Representatives felt that it was in order to have a factual investigation of the practices. Once the ITC completed the study, it would report to the USTR who would determine the course to be followed. The second study would be reported to the Senate Finance Committee, who would also determine how to dispose of it. He said that Section 332 investigations had been resorted to in the past a number of times. He added that the study requested by the Senate Finance Committee was in no way related to the countervailing petition by the Commuter Aircraft Corporation.

30. The representative of the EEC said that the Commission was also in receipt of allegations of matching subsidies in other markets, however, this did not lead it to request a factual study. He noted that the time scale of the two studies was outside the time scale of negotiations on export credits. He asked to have the specific terms of reference of these studies and some examples of recent use of studies carried out under Section 332.

31. The representative of the United States said the whole matter was a question of domestic law and that he had raised it for the information of the Committee in a spirit of consultation. He said that there had been more than 200 investigations under Section 332, for instance the investigation of the United States lumber market, as affected by Canadian exports; this was requested by the Senate Finance Committee and was completed in April of this year. The terms of reference of the study on aircraft recently requested by the Senate Finance Committee were "to evaluate the impact of export credit subsidies by foreign governments on US producers of commuter aircraft". As low density airline service became subject to greater competition, the Senate Finance Committee felt it should have available information on the implications of foreign export credit subsidies on the domestic competitive position of the US commuter aircraft manufacturing industry. The Senate Finance Committee had requested the ITC to examine: 1) the current structure of the US commuter aircraft industry and that of major foreign competitors; 2) the current US market for these aircraft; 3) the factors of competition in the

market; 4) foreign government export policies relating to these aircraft and their impact on the competitive position of the US industry; and 5) the likely future trends in the US market. He reiterated that nothing in this approach conflicted with any obligation under the Aircraft Agreement or the Subsidy Agreement.

32. The representative of the EEC said that there were some implications in the US statement that had to be countered. He would elaborate on these points under the next item.

33. The Chairman pointed out that, while the information given was appreciated, this committee was not the forum for general policy statements. In his view it was preferable to avoid generalities and concentrate on specifics.

4. Matters under Article 8.6 - United States - subsidy investigation

34. The Chairman called upon the representative of the United States to introduce this item, as it was on the agenda at his request.

35. The representative of the United States drew attention to the advance copy of document AIR/33 which contained a notification by the United States, under Article 8.6, of an investigation to determine the existence of an alleged subsidy. On 27 May 1982, a private US company filed a petition on behalf of the United States industry producing certain large commuter aircraft with the Department of Commerce, alleging that substantial subsidies were being provided directly or indirectly with respect to the export of the ATR 42 commuter aircraft to the United States market, and that the United States industry producing a like product was being materially injured, threatened with material injury or materially retarded in its establishment by reasons of imports of the ATR 42. The ATR 42 was manufactured by Aerospatiale and Aeritalia. The Department of Commerce immediately upon receipt of the petition advised the embassies of France and Italy in Washington that the case had been filed and offered opportunity for immediate consultation. The representative of the United States said that he had telephoned the week of 7 June to both the Chairman of the Committee and the Geneva delegation of the EEC to advise them of the filing of the petition and to state that the United States would be prepared to discuss the matter at this meeting of the Committee. Subsequently a letter was received from the European Commission requesting consultations under Article 8.5 of the Aircraft Agreement; these consultations were held on 15 June 1982. Simultaneously, other people were interested in the same issue and telephonic conference call consultations were held between Brussels, the Department of Commerce and the Office of the USTR on 14 June 1982, and it was his understanding that those consultations were under Article 3 of the Agreement on Subsidies and Countervailing Measures.

36. The representative of the United States explained that the Department of Commerce had the responsibility to determine on or before the 20th day after a petition is filed whether or not the petition is administratively in order. There was a requirement that there not only be an allegation of subsidy, but also an allegation of injury and an allegation of causality. He explained that the Department of Commerce did not, in those 20 days, make any determination or comment as to whether or not there was a subsidy or whether or not there was injury. On 16 June 1982, the Department of Commerce initiated an investigation and so informed the International Trade Commission.

The ITC was now to make a preliminary determination whether there was a possibility of injury, and that determination was to be made on or before 12 July. The ITC held a public hearing in which all parties to the dispute had the opportunity to present their arguments and positions regarding whether or not there was injury. Those hearings were held on 23 June and then post-hearing briefs or positions could be filed in continuation of the process.

37. If the ITC decided in its preliminary determination, on or before 12 July, that there was a possibility of injury, then the examination would continue and the Department of Commerce would simultaneously continue its investigation into whether or not there was a subsidy. The Department of Commerce was held to make its preliminary determination on or before 20 August 1982. The whole procedure was prescribed by law and after the preliminary determinations, depending on their outcome, there was a final determination. Throughout this process interested parties had full opportunity to have their positions known and to present their views.

38. The Chairman drew attention to the importance of this matter in terms of precedent for the Committee's procedures and for the application of the Aircraft Agreement. It was the first time that the Committee dealt with matters under Article 8.6; it was also the first time that a Signatory initiated an investigation of an alleged subsidy. He suggested that the procedural questions be examined before turning to the substantive questions.

39. The representative of the EEC said that while there had been a perfunctory consultation under Article 8.5 and telephone conversations between capitals of the Subsidies Code, these did not amount to proper consultations. With respect to Article 8.6 of the Aircraft Agreement, he noted that the United States had notified the initiation of an investigation as prescribed by that Article; however, that provision of the Article referred to "exceptional circumstances" in which no consultations occur before such an investigation is initiated. It was to be regretted that consultations in the Committee had not been held before initiation of the investigation. Apparently, the provisions of Article 8.6 were not compatible with the provisions of United States law on initiation of countervailing and dumping procedures.

40. The Chairman pointed out that the terms of Article 8.6, second sentence, called for notification to the Committee and simultaneous consultations to seek a mutually agreed solution that would obviate the need for countervailing measures.

41. The representative of Japan stressed that any overburdening of the consultation and dispute settlement procedures of the Committee could endanger the proper functioning of these provisions. His authorities attached great importance to dispute settlement provisions in general and considered that the matter should be examined at ministerial level. He urged the parties concerned to make every effort to prevent this mechanism from being overloaded and to make maximum efforts to find an equitable and acceptable solution. He also invited both parties to consult further under Article 8.5.

42. The representative of the United States pointed out that the petition of alleged subsidy had been filed by a private party, with no prior notice to the government. The Commerce Department and the International Trade Commission were now in the preliminary stage of considering the case. Only after this

preliminary stage was the formal investigation initiated. The 20-day period was an administrative process to see that all the documents were in order. The formal, definitive investigation would not begin until some time in July. Referring to the dissatisfaction expressed by the representative of the EEC over the consultations that had taken place, he pointed out that no expression of this dissatisfaction had been registered at the time. He pointed out that consultations did not compel one party to agree with the arguments of the other; after a consultation it was still possible to have a difference of positions. He assured the Committee that his authorities had fully considered all the arguments made by the European Commission in the two consultations, prior to even saying that the petition was complete and that a preliminary investigation would be undertaken.

43. The Chairman pointed out that as far as the Aircraft Committee was concerned, it was dealing with matters under Article 8.6, second sentence.

44. The representative of the EEC said that consultations under Article 8.5 and under Article 8.6 were in no way mutually exclusive. He did think that it was the appropriate moment to have a consultation under Article 8.6, particularly as he considered the subject to be extremely important and that it should be discussed in the full Committee.

45. The representatives of Sweden and of Canada suggested that the parties concerned should consult under Article 8.5 and, only after such consultations, should the full Committee discuss the matter under Article 8.6.

46. The representative of the EEC said that Article 8.6 called for simultaneous consultations in this case, and insisted on having a discussion of substance even if not all Signatories could participate. This did not exclude reverting to the matter, at a later stage, to have further discussions in the Committee. It was important for the proper working of procedures that there be a discussion of the investigation in this Committee, because there were issues of principle involved, of fundamental importance to all Signatories.

47. The Chairman opened the floor to a discussion on the substance of the matter.

48. The representative of the EEC said that this was the first countervailing investigation initiated against an aircraft exported by one of the Signatories, thus it could well serve as a precedent in future cases. The EEC had serious criticisms to put forward against the way in which this case had been handled. It regretted that a countervailing investigation against the ATR 42 had been initiated without taking full account of the comments and presentation of the Community. Article 6 of the Aircraft Agreement provided for the application of the Subsidies Agreement to trade in civil aircraft; the Subsidies Agreement contained clear rules on the conduct of an investigation and these had not been respected by the United States authorities. Article 2, paragraph 1 of the Subsidies Agreement required a number of conditions to be fulfilled before a countervailing investigation could be initiated. A complaint should include sufficient evidence of the existence: a) of the subsidy b) of injury within the meaning of Article VI of the GATT as interpreted by the Subsidies Agreement; and c) of a causal between the subsidized import and the alleged injury. It was the EEC view that none of these conditions had been fulfilled by the complainant. Nevertheless, the United States administration had initiated the investigation. He noted that

the representative of the United States had stated that the initiation of an investigation took place only after the ITC had made a preliminary determination; in this case, 12 July 1982. This statement could not be upheld in view of the Subsidies Agreement and in view of the US notification in document AIR/33 which read, "that a countervailing duty investigation was initiated on 16 June 1982".

49. Commenting on the three conditions necessary to initiate an investigation, the representative of the EEC reiterated that the requirements in this case had not been fulfilled; this case could therefore constitute a very dangerous precedent. He pointed out that the very initiation of a case already constituted an impediment to international trade. On the first requirement: sufficient evidence of a subsidy; by opening this investigation the Department of Commerce implied that it considered the export credits granted by the European producers to be countervailable subsidies. He strongly refuted this implication. The Community was of the view that an export credit which was in line with an international undertaking on export credits was not a countervailable subsidy. He referred to item k) of the Illustrative List in the Annex to the Subsidies Agreement, and stated that the alleged export credit subsidy in the case of the ATR 42 was in line with the conditions of item k), and therefore was not countervailable. In the EEC's view the action taken by the United States was not in conformity with the Subsidies Agreement. He also referred to the 1975 Standstill Agreement on export credits for aircraft, which was clearly an international undertaking in the sense of item k), paragraph 2 of the Illustrative List. He referred to the terms of this Standstill Agreement and concluded that the export credits granted the ATR 42 were well within the limits set by that agreement.

50. Referring to the second requirement: that the complaint contain sufficient evidence of injury caused to a domestic industry: he pointed out that the Subsidies Agreement required that the product against which the complaint was lodged should be compared to a like product in the domestic market. Enumerating several technical points, he told the Committee that the Commuter Aircraft Corporation's CAC-100 was not in any way a "like product" to the European aircraft ATR 42. Furthermore, the Commuter Aircraft Corporation, which launched this complaint, did not represent a major portion of the US commuter aircraft industry in question. He recalled that under the Subsidies Agreement complaints were only receivable if they were lodged by an industry in the country of importation, and industry meant a major part or even the whole industry producing the like product. He also contested that there was a case of material retardation of the establishment of the industry, because there already were a number of other producers of like aircraft established in the United States. Going further in the injury context, he noted that the complaint stated that the US market for commuter aircraft was of about 1000 planes, and pointed out that the number of orders which the Italian/French producers had received for the ATR 42 was limited to a mere 23 aircraft. How could the future import of 23 aircraft constitute material injury to a US industry if the market was to be of about 1000 planes.

51. Turning to the third requirement: that of the causality of the injury; he made a number of points with a view to showing that the future imports of the ATR 42 could not cause injury to the US industry. The US airlines which had ordered the ATR 42s had not done so at the expense of the CAC-100, nor had they done so in view of the export credits offered. The CAC-100 would only be available in late 1987, whereas the ATR 42 would be available in 1985. He

described some of the technical points of support marketing after a sale which entered into the purchaser's considerations. He also stressed that there were no imports for the time being. There would not be any imports until 1985 so that there could not be, even theoretically, a link between subsidized imports and the alleged injury. In the Community's view, this was the most evident factor which should have prevented the US administration from initiating the investigation. He again stressed that the US administration did not respect its international obligations under the Agreement.

52. The representative of the EEC went on to explain that other factors were also involved in the Commuter Aircraft Corporation's difficulty in obtaining orders; the first of these was the current state of the commuter aircraft market in the United States, and the second was the lack of credibility of the corporation, its product and the fact that the company was under-capitalized.

53. The representative of France said that this was a case of a subsidy complaint where there was no subsidy in the sense of international agreement. There was also no injury, as there was no like product, at least on the part of the complainant. He gave further details regarding the considerations the customers of the ATR 42 had when ordering the aircraft.

54. The representative of the United States expressed surprise that there should be a suggestion that Signatories of the Aircraft Agreement interpret the provisions of the Subsidies Agreement and, in particular, its Annex and whether or not export credits were subsidies. In his view this was not the proper forum to deal with interpretations of another agreement. Nor did he feel that this Committee was in a position to say whether a private enterprise in the United States was under-capitalized or not. He contested the view of the Community that the Department of Commerce had not taken full account of the EEC views when taking action on 16 June. The presentation made by the Community was basically the same as that made by the Commission through the Department of Commerce in the week of 8 June. With respect to the criticism that insufficient evidence had been provided before the investigation was initiated, he pointed out that the Department of Commerce did not weigh the evidence within the first 20 days of its procedure; all it did was to verify that the complaint was complete. The determination of injury would be made by the International Trade Commission. No one in the United States administration had yet taken a position on the question of like product. He went on to describe in detail the internal US procedures to deal with subsidy complaints.

55. Turning to the contention by the Community that a supported export credit in line with an international undertaking was not countervailable, he stated that any subsidized export credit was a subsidy under United States law, and, if injury were demonstrated and linked to this subsidy, it was countervailable. The obligations in Article 2 of the Subsidies Agreement did not deny the rights under United States countervailing law provided United States citizens. He reiterated the position of the United States that aircraft were not covered by item k) of the Illustrative List of the Subsidies Agreement. His authorities did not accept the contention of the Commission, or of the French representative that export credit subsidies were not considered subsidies at all and hence were not countervailable.

56. Turning to the matter of the causal link between subsidy and injury and the Community's argument that since there had been no imports there could not be any injury or causal link, he explained that all aircraft before they were

launched were sold on paper; aircraft manufacturers competed intensively in the design concepts and strived to obtain orders at this stage, before investing the very considerable capital required to launch the actual construction.

57. The representative of Japan said that while he welcomed the transparency of this discussion, he was nevertheless puzzled as to how to deal with the matter. It was a question of importance to all Signatories. Like others, he recognized the importance of avoiding any distortion of trade which might arise from the use of government supports for the aircraft industry; he also attached importance to the successful implementation of Articles 6 and 8 of the Agreement. He pointed out that the link between the Aircraft Agreement and the Subsidies Agreement had been a very carefully negotiated balance of interests. With respect to international undertakings concerning export credits, it was normal that any participating country respect the terms of the undertaking. Arbitrary recourse to dispute settlement for domestic ends should be avoided. This was of great concern to his authorities. Having heard the two parties to this question, he invited them to continue to consult on the basis of Article 8.5 and to seek mutually agreed solutions that would obviate the need for countervailing measures. It was important to deal with this matter in a way that would not challenge the principles and spirit of the Civil Aircraft Agreement for it would set a dangerous precedent.

58. The representative of Canada thanked both delegations for their exposés of the case at issue. He had noted the points made and believed they gave rise to important considerations; however, he was not in a position to make any substantive comments on the specific case. He expressed the hope that both parties would resume their consultations with a view to reaching a mutually agreed solution.

59. The representatives of the EEC assured the Japanese representative that the Community would follow his advice and continue to hold consultations with the United States throughout the course of the proceedings. However, in his view, it was important that Signatories understand the purpose of Article 8.6 of the Aircraft Agreement, which was to involve the Committee at an early stage so that it be informed and aware of the issues of principle which arose in the interpretation of the Subsidies Agreement and the Aircraft Agreement, or any other relevant agreement, and to engage its support and help in trying to give some guidance in interpretation; also to give it the opportunity to express its views about the various issues in question. This had been the purpose of the Community in raising the matter here, even if there was little time for delegations to prepare their positions. He added that the Community may wish to come back to the Committee for additional consultations under Article 8.6, should there be further developments in the procedure, after July 12.

60. The representative of the EEC noted that the United States representative had emphasized the importance of the United States domestic law; he also noted the explanation to the effect that injury could only be determined by the International Trade Commission and not by the Department of Commerce. This could only be interpreted as meaning that, for the United States, what counted was actually the preliminary determination of the ITC before an investigation was really initiated. The second point he wished to note was the statement by the US representative that under US law export subsidies were countervailable. Thirdly, he noted the implication by the United States representative that the

market impact was felt in the aircraft sector already with the orders taken and not only when imports took place. In his view, these three points lacked one important consideration and that was that this was an international forum. What was important in this Committee was the Aircraft Agreement and the Subsidies Agreement. It was not important for this Committee that the United States' domestic legislation required this, or prohibited that; if it were not in line with international agreements, it could not serve in any way as a defense against the arguments presented by the Community.

61. The representative of the United States said that there had been a useful exchange of views and the case for transparency had been advanced. A number of points had been made; many of these points had already been put on record in the due process of the International Trade Commission. His delegation would be reporting to its authorities all the points made here.

62. The Chairman asked the parties directly concerned to continue bilateral consultations and to keep in mind the calendar of US domestic procedures. He urged other Signatories not directly concerned to reflect on the arguments that they had heard, so that should bilateral consultations fail, they would be prepared to debate the matter in the Committee under Article 8.6 or possibly 8.7.

5. Report of the Technical Sub-Committee (AIR/TSC/4)

63. The Chairman thanked the Technical Sub-Committee for having accelerated its work on product coverage so as to finalize its report for this meeting.

64. The Chairman of the Technical Sub-Committee (Mr. Douglas, Canada) said that the report spoke for itself. He drew attention to paragraph 5 which indicated that further work could be undertaken by the Sub-Committee only when this Committee was clear as to how it wanted to proceed. He added that other work was under way in the Technical Sub-Committee under point 1 of its terms of reference.

65. The representative of Japan expressed appreciation for the work accomplished by the Technical Sub-Committee and pointed out that it was up to this Committee now to take over.

66. The representative of the EEC noted that the Technical Sub-Committee had brought its work as far as it could. He suggested that the Chairman organize a meeting of Signatories to examine the report in detail. It might not be possible to complete this work in one meeting, but hopefully Signatories would arrive at some decision by the second meeting in 1983. There seemed to be no point in further technical discussion as those aspects were fully covered in document AIR/TSC/4.

67. This proposal was supported by the representatives of Canada and the United States.

68. The Chairman concluded by saying the Technical Sub-Committee had completed its task on product coverage. He would call an informal meeting of Signatories, the date to be fixed after consultation, to consider the extension of product coverage on the basis of the Technical Sub-Committee's report. The first meeting would be called before the next meeting of the

Committee in October. He noted that the Technical Sub-Committee was pursuing other work which would be reported on at a later stage.

6. Matters under Article 8.3 - Further negotiations

69. The Chairman recalled the terms of Article 8.3 which provided for further negotiations three years after the entry into force of the Agreement, with a view to broadening and improving the Agreement on the basis of mutual reciprocity. He noted that by the end of 1982, the three years would have been completed. With a view to fulfilling the obligations in Article 8.3 he asked whether Signatories were prepared to negotiate and, if so, on what; the Annex to the Agreement or the Agreement itself, or both.

70. The representative of Japan said that his delegation attached some importance to encouraging non-signatory contracting parties to participate in the Agreement.

71. The representative of the United States said that it would be appropriate for Signatories to reflect on each article of the Agreement, and on its operation as a whole. In his view, some areas of the Agreement had been outstandingly successful whereas other areas, such as transparency in particular regarding government supports, were less so. He suggested that one could achieve more both in the Committee and under the Agreement; for instance, it might be appropriate to take into account results of the OECD talks concerning export credits. Other areas that needed attention were statistics, and how to enhance their commonality of nomenclature. In the area of standards, the Agreement seemed to be working satisfactorily. In this context he made available a brochure entitled, "Impact of International Standardization Trends on the Aerospace Industry" for general information. He suggested that Signatories reflect on the operation of the Agreement and discuss it further at the next meeting.

72. The representative of Canada supported the principle of an examination of the operation of the Agreement, but added that such an examination should also include the "product coverage" as described in the text of the Agreement, and the headnote to the Annex.

73. The Chairman suggested that further reflection on the interpretation of Articles 8.5, 8.6 and 8.7 could usefully be undertaken.

74. The representative of the EEC suggested the Committee consider the extension of the product coverage, and how to encourage other contracting parties to join the Agreement. With regard to dispute settlement provisions, he pointed out that the Committee did not have sufficient practical experience with them to undertake an interpretation of Article 8.7.

75. The representative of Japan said that dispute settlement was an important matter to his delegation, but that it should be discussed in the light of past experience. He added that dispute settlement would be a major item for the Ministerial Meeting.

76. The Chairman invited Signatories to reflect on these matters and prepare papers if necessary for the next meeting. Any proposals for amendments of the articles of the Agreement should be submitted in writing in good time. He

also recalled that under Article 8.2, the Committee had to prepare a yearly report to the CONTRACTING PARTIES. This would be on the agenda for the next meeting.

7. Possible contributions to the Ministerial Meeting

77. The Chairman said that there had been a preliminary discussion of this item at the last meeting in March, 1982 (AIR/M/7). Following this he had attended an informal meeting called by the Chairman of the Preparatory Committee, on 18 March 1982. The Chairman of the Preparatory Committee had asked if positive proposals could be submitted to the Preparatory Committee who would then decide whether they should be passed on to the Ministers. The Chairman of the Aircraft Committee had indicated that although the entry into force of the Aircraft Agreement had benefited trade in civil aircraft, the present economic recession obscured its effects.

78. The representative of the EEC said that the Committee should distinguish between points that would be appropriate for its own tri-annual review under Article 8.3, and points that would be appropriate as contributions to the Preparatory Committee and the Ministerial Meeting. In his view, the points which should be referred to the Preparatory Committee were: (1) how to encourage other contracting parties to accept the Agreement on Trade in Civil Aircraft and (2), the extension of the products coverage in the Annex, which should be flagged to ministers for information.

79. The representatives of Japan and Canada supported this proposal. The representative of Canada stressed that the Ministerial Meeting would provide a rare occasion for the Signatories to the Aircraft Agreement to demonstrate that they have benefited from the operation of the Agreement, and to invite other contracting parties to accept it.

80. The Chairman pointed out that, to date, two committees had made contributions to the Ministerial Meeting in the form of notes by the Chairman containing a factual account of the operation of their committee or agreement. It was his understanding that other committees were still considering the matter. He also pointed out that it was not compulsory to make contributions.

81. The representative of the EEC added that for those committees that had followed that approach, the note by the chairman had been made under his own responsibility.

82. The representative of the United States recalled that at the last Ministerial Meeting, the Ministers had referred to sectorial agreements and that the Aircraft Agreement was a result of this. In general, the Aircraft Agreement had been a successful sectorial agreement and it would be useful to have Ministers endorse it.

83. The representative of Japan remarked that it would be better to avoid any value judgments when referring to the Agreement.

84. The Chairman said that he would prepare a draft note by the Chairman, highlighting the points made by Signatories and which they would want drawn to the attention of the Ministers. He would circulate this note informally before sending it on to the Chairman of the Preparatory Committee.

8. Discussion of export credits in the OECD

85. The representative of the United States said he wished to inform the Committee that on 4 May 1982, the OECD export credit group convened a special meeting to discuss an agreement for export credit terms for small and medium-sized aircraft. He wished to draw attention to one point in particular: at that meeting delegations had expressed from the outset their concern over increasing competition in the field of commuter and smaller-sized aircraft from non-OECD countries, in particular from Brazil, Indonesia and Israel. Thus, it had been suggested that these countries should be associated in an appropriate way with the efforts to establish new OECD rules in this sector. Most delegations at the OECD's Export Credit Group meeting felt that this should be done from the outset in order to avoid any criticism from these countries that they would be faced with a "fait accompli" agreement. The OECD secretariat was seeking, with the endorsement of the participants in the export credit group, a way to associate these countries. There had, of course, also been discussions on how an OECD agreement in this field might be put together; he would not go into the details of these discussions as each delegation could obtain them from their capitals. However recent talks indicated that there was a constructive effort at the international level to solve this problem of financing and the outcome, it was hoped, would be of help in the trade sector of aircraft which was of concern to this Committee.

9. Rectification of the Annex to the Agreement - TSUS list (AIR/34)

86. The representative of the United States drew attention to document AIR/34 which contained a request by the United States to rectify the TSUS part of the Annex to the Agreement. He explained that these changes, which were mainly changes in tariff numbers of the TSUS, were already operative in the United States tariff schedule. The request for the rectification of the Annex had been delayed until Schedule XX in its loose-leaf form had been amended. This was now about to be completed, so that it was timely to introduce the rectification to the TSUS part of the Annex. He also drew attention to the Committee's Decision to apply mutatis mutandis the GATT procedure for Rectifications and Modifications of Schedules to the Annex to the Agreement (see AIR/M/1 and AIR/M/3). The procedure called for circulation of the rectifications and modifications for a 90-day period open for objections. He asked that the secretariat prepare a paper describing how the procedure would be applied mutatis mutandis for the Annex to the Agreement.

87. The Chairman said that the secretariat would prepare a paper describing the mutatis mutandis application of the procedure for Rectifications and Modifications to the Annex to the Aircraft Agreement.

10. Dates of next meetings

88. The date of the next meeting was set for 6 and 7 October 1982.

89. The date of the following meeting was set for the week of 7 March 1983.