

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Trade in Civil Aircraft

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## EXPORT CREDIT SUBSIDIES FOR CIVIL AIRCRAFT

### A Discussion Paper Submitted by the United States Delegation

We recall the desire expressed by a number of signatories in the course of negotiation of the Agreement on Trade in Civil Aircraft that questions relating to subsidies in the civil aircraft sector be brought before the Committee on Trade in Civil Aircraft, with a view to obtaining resolution there. One of the important reasons advanced in support of this desire was the fact that, as the preamble to the Agreement notes, "many signatories view the aircraft sector as a particularly important component of economic and industrial policy." Further, the Agreement provides (Article 8.6) that "signatories recognize the desirability of consultations with other signatories in the Committee in order to seek a mutually acceptable solution prior to the initiation of an investigation to determine the existence, degree and effect of any alleged subsidy."

We wish to raise for the Committee's discussion at its next meeting the subject of export credit subsidies in the civil aircraft sector.

#### Background

Export credit subsidies are a proper subject for Committee consideration. Article 6.1 of the Aircraft Agreement requires signatories to apply the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code) to their trade in civil aircraft. As already noted, Article 8.6 of the Aircraft Agreement is clear in noting that signatories should seek discussion within the Committee on matters relating to subsidies in the civil aircraft sector. Export credit subsidies are explicitly included in the list of export subsidies in the Annex to the Subsidies Code, and these subsidies are prohibited by Article 9 of the Subsidies Code, subject to the limited exception contained in the second paragraph of Item K of the Annex. Export credit subsidies applied to signatories' trade in civil aircraft are, therefore, likewise prohibited by Article 6.1 of the Aircraft Agreement.

### Issues for Discussion

We suggest that the following questions are particularly pertinent for discussion:

1. Are questions regarding export credit subsidies and whether a particular practice or transaction concerning Civil Aircraft is consistent with obligations under the Subsidies Code and the Aircraft Agreement appropriate for discussion within the Aircraft Committee, the Subsidies Committee, or some other body?
2. Are there interest rate provisions in the 1975 "Aircraft Standstill" (OECD/TC/ECG/M/65.1, Item 6 and Annex III A)?
3. Are the undertakings on official export credits references in paragraph 2 of Item (K) of the Subsidies Code Annex limited to those containing interest rate provisions?
4. Does paragraph 2 encompass the "Standstill" Understanding with respect to officially supported export credits for aircraft?
5. If the answer to Question 2 is negative, then does paragraph 1 of Item (K) govern in regard to officially supported export credits for Civil Aircraft?
6. If the answer to Question 2 is affirmative, then what standard governs officially supported export credits for Civil Aircraft for signatories of the Aircraft Agreement or of the Subsidies Code who are not party to the "Aircraft Standstill"?

### Discussion of Questions

The purpose of including Item (K) in the illustrative list of export subsidies during the negotiation of the subsidies code was to emphasize the fact that interest rates on official export credits should approximate market interest rates. Official export credits at interest rates below financial market rates were, therefore, to be considered as prohibited export subsidies. This approach was fully consistent with that reflected in the 1960 illustrative

list which prohibited "the grant by Governments (or special institutions controlled by Governments) of export credits at rates below those which they have to pay in order to obtain the funds so employed."

However, in recognition of the then ongoing negotiations within the OECD export credit group to modify the International Arrangement on Export Credits, an exception was made to the rigorous standards of the 1960 list. This exception is reflected in paragraph 2 of Item (K) which makes reference to international undertakings on export credits. As an exception to paragraph 1 of Item (K), the following general considerations regarding paragraph 2 should be accepted by the Committee.

1. The provisions in paragraph 2, since they involve an exception, should be interpreted restrictively; and
2. The rights of signatories to the Subsidies Code and to the Aircraft Agreement should be the same whether or not such signatories are parties to the Arrangement or the Aircraft Standstill.

In support of the view that paragraph 2 should be narrowly interpreted is the ratification at both the 1980 OECD Ministerial meeting and the 1980 Venice Economic Summit of language which urged that minimum official export credit interest rates be brought closer to current financial market terms and conditions. Indeed the Arrangement on Guidelines for Officially Supported Export Credits, approved 20-22 February 1978, while explicitly excluding aircraft, contains the statement (paragraph 10.C): "Participants agree that the scope of the "Standstill" requires further clarification and will discuss this question in due time."

Unfortunately, the results of the OECD Export Credit Group negotiations in 1980 did not fulfill the commitments made by the OECD Ministers or the Heads of Government at the Venice Economic Summit in regard to the Arrangement, nor has progress been made on the required further clarification of the "Aircraft Standstill". In fact, export credit subsidies were larger in 1980 than they had been when the Arrangement's interest rate restrictions first came into effect in 1978. These subsidies as regards aircraft have similarly

become increasingly burdensome. Anticipation of progress in the OECD negotiations had been the rationale for the limited exception noted in paragraph 2 of Item (K); this anticipation was not borne out.

In view of these general observations, it is appropriate to examine the Item (K) provision in detail.

Item (K) addresses questions of interest rates. As paragraph 1 makes clear, the offering of official export credits at interest rates below the cost of funds to governments (or the costs they would pay if the funds were borrowed) is what causes an officially supported export credit to become a prohibited export subsidy.

#### Discussion of Paragraph 2, Item (K)

Paragraph 2 of Item (K) states: "Provided, however, that if a signatory is a party to an international undertaking on official export credits to which at least 12 original signatories to this Agreement and parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original signatories), or if in practice a signatory applies the interest rate provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Agreement."

The presumption underlying the first subordinate clause in paragraph 2 of Item (K) is that the subject international undertaking on export credits contains provisions on interest rates. The second subordinate clause - which was incorporated to address the export credit practices of Subsidies Code signatories who were not participants in an appropriate international undertaking on export credits - makes explicit the concern with interest rates, and clearly specifies that a nonparticipant's practices are not to be considered prohibited export subsidies if they are in accord with the interest rate provisions of the relevant undertaking.

Within the OECD framework, there are several undertakings on export credits other than the Arrangement on Guidelines for Officially Supported Export Credits. These include understandings on ships, aircraft, and nuclear power plants. Only one of these (the OECD Understanding on Ship Financing) is relevant for the purposes of paragraph 2 of Item (K) as it is the only one containing specific provisions on

interest rates. For those product sectors (aircraft and nuclear power) where export credit understandings do not include specific interest rate provisions, the prohibition of export credits with interest rates below the cost of money to the offering government is the operative portion of the Subsidies Code. That is, official export credits for aircraft and nuclear power plants are governed by paragraph 1 of Item (K).