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GENERAL AGREEMENT ON TARIFFS AND TRADE

Agreement on Trade in Civil Aircraft

COMMITTEE ON TRADE IN CIVIL AIRCRAFT

Minutes of the Meeting held in the Centre William Rappard on 6-7 October 1982

Chairman: Mr. M. Lagorce (France)

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1. Matters under Article 1.2 - Military entities

1. The Chairman said that the outstanding notifications under this item had been received from Canada and from France (AIR/36 and AIR/37), and as noted at the previous meeting, the matter of coverage of the Agreement, with respect to military entities, was finally settled.

2. The representative of the United States repeated the concerns he had expressed at earlier meetings of the Committee to the effect 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. The representative of the EEC repeated the statement he had made at the previous meeting to the effect that the footnote to the definition of military aircraft gave the competent authorities 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 note to the CCCN), regarding military and similar authorities.

3. The Chairman noted that the Committee would be informed when such a new explanatory note would be introduced. He concluded, as at the previous meeting, that the matter of coverage of the Agreement, with respect to military entities, was settled.

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

Canadian sales tax

4. The Chairman recalled that regarding the Canadian sales tax on civil aircraft and parts exported for repair and subsequently returned to Canada, the Canadian representative had informed the Committee at the previous meeting that the decision on amendment to the domestic legislation was on the Minister's agenda.

5. The representative of Canada informed the Committee that the decree amending the previous legislation and described by him at the previous meeting had been adopted on 30 June 1982.

Duties and other charges on repairs - Article 2.1.2 (AIR/W/31 and Addenda 1-8)

6. The Chairman recalled the discussions at the two previous meetings from which had emerged a divergence of interpretation of Article 2.1.2. He recalled that he had circulated a questionnaire to clarify Signatories' customs treatment of both the material and labour content of civil aircraft repairs. The replies were contained in documents AIR/W/31 Addenda 1-8.

7. The representative of the United States said that after examination of the replies to the questionnaire it seemed to him that three approaches to this problem were possible; the first was to remain in technical default of the obligations under Article 2.1.2; it seemed to be most Signatories' practice to levy duties on repairs of dutiable items not contained in the Annex to the Agreement, while repairs of duty-free items covered in the Annex to the Agreement were duty-free. The second approach would consist of changing every Signatory's customs practices in order to eliminate duties on repairs of dutiable items not covered in the Annex to the Agreement. The third approach consisted of amending the Agreement as his delegation had proposed in document AIR/W/34, i.e. to replace the term "civil aircraft" in Article 2.1.2 by the term "products classified for customs purposes under their respective headings listed in the Annex". He explained that during the negotiation of the Agreement it had been thought that the United States was the only country to levy duties on repairs; only later did it become apparent that other Signatories also had provisions for levying duty on repairs of dutiable products. In his view the problem could be easily solved by adopting the proposal he had just made which would track Article 2.1.2 with Article 2.1.1.

8. The representative of Japan said, regardless of the solution adopted, it was necessary that a consensus be reached within the Committee on the interpretation of Article 2.1.2. He pointed out that in Japan there were no charges or duties on repairs.

9. The representative of Canada said that amending the Agreement as proposed by the United States would be a long-term solution to the issue. However, in the meantime the Committee could clarify the position by inserting, in the Minutes, a Committee decision along the lines of the text proposed by the representative of the United States.

10. The representative of the EEC said that the issue deserved further thought. In his view there was not only a matter of technical default at stake. The way Article 2.1.2 read at present was quite clear: it called for elimination of all duties and other charges on repairs on civil aircraft. To restrict the interpretation of this Article to mean the elimination of duties and other charges on repairs only of those products listed in the Annex, would amount to restricting the scope and the coverage of the Agreement. He recalled that the purpose of the Agreement was to dismantle tariffs in the field of civil aircraft. He did not feel that the Committee would be taking the right course by adopting a solution which would diminish the coverage of the Agreement. He invited Signatories to reflect further on this matter.

11. The representative of the United States said that it was not a matter of restricting the coverage of Article 2.1.2, but a matter of recognizing the realities of customs practices. He doubted that many dutiable civil aircraft items not covered by the Annex to the Agreement were ever shipped abroad for repair; therefore, in practice the duties on repairs that could be levied would be insignificant. He invited other Signatories' comments on his proposal.

12. The representative of Japan recalled that there was a Japanese proposal before the Committee on this matter. However if a consensus on the interpretation of Article 2.1.2 emerged in the Committee, his delegation would be flexible and would follow the consensus. The representative of Norway said that the United States' interpretation seemed reasonable, however, they too were flexible and would follow a consensus if it emerged in the Committee. The representative of Switzerland recalled that his authorities had no problem with Article 2.1.2 as it stood as no duties were ever levied on repairs.

13. The Chairman noted that there was a divergence of views on whether to interpret Article 2.1.2 textually, i.e. to eliminate duties and other charges on repairs of all civil aircraft and components, or whether to restrict this interpretation to the elimination of duties and other charges on repairs of only those products covered by the Annex to the Agreement. He said the matter would be reverted to at the next meeting after delegations had reflected further.

Binding of the duties and other charges on repairs - Article 2.1.3

14. The representative of the United States proposed that a text be adopted for the purpose of binding the elimination of duties on repairs, regardless of whether there was an agreed interpretation of Article 2.1.2. He further suggested that this could be achieved by inserting the following text in Signatories' respective GATT Schedules, as a headnote, regarding the Agreement

on Trade in Civil Aircraft: "duty free or duty exempt treatment is provided for all repairs on civil aircraft in accordance with Article 2.1.2 of the Agreement on Trade in Civil Aircraft, (the term "repairs" includes maintenance, rebuilding, modification, and conversion)."

15. The representative of Japan suggested the following headnote to be inserted in Signatories' respective loose-leaf GATT Schedules: "it is noted that [...], as a Contracting Party to the Agreement on Trade in Civil Aircraft, is bound by Article 2.1.2 of the Agreement, which provides that Signatories agree to eliminate by 1 January 1980, or by the date of entry into force of this Agreement, all customs duties and other charges of any kind levied on repairs on civil aircraft."

16. The representative of the EEC said that it was not possible to agree on a text for binding of duties on repairs as long as there was no agreement on the substance of the issue, i.e. on the interpretation of Article 2.1.2. He repeated his invitation to Signatories to reflect on the point of substance, i.e. whether duty free treatment should be extended to all repairs or only to repairs of those products in the Annex.

17. The representative of the United States pointed out that the United States Schedule XX would be issued shortly in its loose-leaf form. The question his administration would have to face was what to include with respect to binding of duties on repairs. His delegation would advise the administration to remove all reference to duties on repairs in Schedule XX. He stressed that the United States would not stand alone to be obliged under Article 2.1.3.

18. The representative of Canada said that his delegation was prepared to examine all proposals.

19. The Chairman invited members of the Committee to reflect further on the matter which would be reverted to at the next meeting.

3. Matters under Article 8.6 (AIR/38)

20. The Chairman recalled that at the last meeting the Committee had spent considerable time on a consultation under Article 8.6 concerning a subsidy investigation by the United States. The Committee had before it now an information paper by the United States on this matter.

21. The representative of the United States recalled that the issue of officially supported export credits remained a major outstanding problem. The matter would be discussed shortly in the OECD's export credit group which would take up the question of export credits for small and commuter-sized aircraft. He recalled that at the last meeting of that group it had been decided to invite some non-OECD producer countries to participate. It was his understanding that Israel had accepted this invitation.

22. He then drew attention to the US information paper contained in document AIR/38 in which the development and conclusion of the countervailing duty petition filed on 27 May 1982 with the United States Department of Commerce and the International Trade Commission, was related in detail. He added that two additional petitions alleging unfair subsidized export credit financing had been filed since then; however, neither of them concerned this Committee.

Both of them had been accepted by the Department of Commerce; in one case the International Trade Commission had terminated the investigation and in the second case it was pursuing it. He took this occasion to reiterate that the United States was opposed to the subsidization of export credit financing for capital goods. It had made this position very clear. Signatories should therefore not be surprised if American firms and corporations availed themselves of the remedies available to them.

23. The representative of the EEC recalled that Article 8.6 of the Aircraft Agreement provided that consultations should take place with Signatories in the Committee prior to the initiation of an investigation of alleged subsidies. It was regrettable that in that particular case the consultations in the Committee had been late and he hoped that next time consultations, bilateral and in the Committee, would take place earlier.

24. The representative of the United States pointed out that the Committee had been notified through the Chairman within the time limits provided by the Agreement. This had been followed by a consultation in the Committee under Article 8.6. He also recalled in detail the procedures and timing for filing a petition of alleged subsidies under US domestic law.

25. The representative of the EEC said that his reading of Article 8.6 "prior to the initiation of an investigation" meant that the consultation should take place prior to the twenty-day period during which the Department of Commerce had a first examination of the petition.

26. The representative of the United States said that the Aircraft Committee was not the correct forum to discuss alleged inconsistencies of US Trade Law with the Agreement.

4. Matters under Article 8.3 - Further negotiations (AIR/W/34 and AIR/W/36)

27. The representative of Canada introduced his paper (AIR/W/36) and explained that the first part concerned the extension of the Annex to include testing equipment, as had been discussed in the Technical Sub-Committee. The second part of the paper concerned OECD negotiations on officially supported export credits; he pointed out that an important meeting would be taking place shortly in the OECD and, should agreement be reached at that meeting, the results should be cross-referenced in the Aircraft Agreement. The third part concerned parts, and parts of parts, not yet covered in the Annex to the Agreement. He stressed, in particular, that inclusion of modular parts of new motors, which were different from traditional engines insofar as they could be assembled separately were now an important item in civil aircraft. When the Agreement had been negotiated this technological development had not been taken into account, and he suggested that this should be seriously considered now in the context of further negotiations.

28. The representative of the United States said that his authorities were prepared to review this matter. He then introduced the discussion paper by the United States (AIR/W/34) and gave an account of its contents. He recalled that Article 2.1.2 should be amended according to the results of discussions going on under another item of the agenda. Generally he felt that the Committee should be used as an international forum for international co-operation, and to exchange information with a view to enhance understanding between Signatories rather than dispute settlement. With respect to subsidies

he proposed that export credits should be subject to an effective international discipline. When the negotiations currently under way in the OECD would be concluded, the results should be incorporated in the Agreement as a new Article 6.3. He also suggested that a new Article 6.4 could be drafted referring to the obligations of notification under Article 7 of the Subsidies Agreement.

29. Referring to the discussions on expanded product coverage he said that the US had been viewed for two years as resisting any expansion of the product coverage. However, the United States was prepared to make some substantial progress in this area; it would not accept all proposals but it would consider many, and such progress as could be made would go hand-in-hand with the broadening of the Agreement on a mutual and reciprocal basis.

30. The representative of the EEC said that indeed there existed an obligation to broaden and improve the Agreement but that the objective was to remove trade and tariff barriers, it was not the objective to cover subject areas which were adequately dealt with in the OECD or in the GATT Agreement on Subsidies. There were many possibilities to improve and enlarge the Agreement; there had been a long discussion on product coverage, and yet little progress was made in that direction. There was improvement to be achieved in the interpretation of parts of engines, as the representative of Canada had pointed out. Referring to Article 8 he said that the operation of the Agreement could be improved and greater transparency achieved by having timely consultations in order to avoid situations such as the one that had arisen on the countervailing petition on the ATR 42. There were a number of other enquiries underway in the United States on export credits and subsidies to airlines. This was a matter of concern to the EEC which felt that such problems should first be consulted on in this Committee. There was also the possibility to improve the Agreement by enlarging the number of Signatories. He cited as an example the recent countervailing petition against a Brazilian aircraft and added that had Brazil accepted the Agreement, it would have contributed to allay Signatories' concerns. Referring to the United States' paper on further negotiations he felt that it was premature to attempt to impose a time-table or any calendar on such negotiations. It would be preferable to decide what negotiations would bear on before fixing a calendar. Concerning the US suggestions on the improvement of Article 6 on subsidies he invited the Committee members to re-examine the EEC's position contained in document AIR/29. This position had not changed.

31. The representative of Japan said that as a Signatory Japan had the obligation to undertake negotiations under Article 8.3 and it was prepared to do so. He stressed the importance of the fourth and eighth paragraphs of the Preamble to the Agreement, which called for the encouragement of the continued technological development of the areonautical industry on a world wide basis, and the elimination of adverse trade effects resulting from government supports in civil aircraft, while recognizing that such supports, of themselves, would not be deemed a distortion of trade. The Agreement as a whole had functioned well, in particular Articles 4 and 5. With respect to an amendment of Article 2, his authorities would join any consensus that would emerge in the Committee. Generally he would prefer that an agreed interpretation be recorded in the Minutes rather than by a formal amendment of the Agreement. Referring to Article 6 and the matter of export credit subsidies, he said he looked forward to the results that might emerge from the meeting in the OECD. In his view it was premature to comment on such a

delicate matter. He agreed that the question of transparency was an important matter and asked the US for a clarification of what was meant by "trade data" in their paper (AIR/W/34, paragraph 3). Finally, he stressed that his authorities attached importance to the provision in Article 6.1 that account be taken of the special factors which applied in the aircraft sector.

32. The representative of the United States said that what they had in mind with respect to trade data was to add a provision, possibly in Article 8 of the Agreement, along the following lines "in order to assist the Committee in its review of the operation of the Agreement, each Signatory agrees to collect trade data on products covered by the Agreement and to submit such data to the secretariat, no later than 31 March each year, in a format which to the extent possible provides uniformity, compatibility and comparability of data among Signatories."

33. The representative of Israel speaking as an observer commented on the EEC's suggestion that other countries should be invited to join the Agreement and asked what Signatories could do to encourage developing countries to accept the Agreement. The problems encountered by developing countries with respect to acceptance of the Aircraft Agreement were not limited to issues of export credits.

34. The Chairman said that this was a matter which should be studied. It was desirable to have the participation of developing countries producing aircraft. He added that it would be useful to have their views on the terms they would need in order to accept the Agreement.

5. Report to the Contracting Parties

35. The Chairman recalled the provisions of Article 8.2 of the Agreement which called for an annual report to the Contracting Parties to the GATT.

36. The Committee adopted its third report to the Contracting Parties contained in document L/5376.

6. Modification and rectification to the Annex (AIR/W/33 and AIR/34)

37. The Chairman said that at the request of the Committee the secretariat had prepared a paper (AIR/W/33) to illustrate the application of the procedures for modification and rectification to the Annex.

38. The Committee accepted the modalities of application mutatis mutandis of the procedure for modification and rectification of changes to the Annex to the Agreement contained in document AIR/W/33. The Chairman said that the draft rectification submitted by the United States in document AIR/34 would be subject to this procedure.

7. List of Panelists (AIR/14 and Add.1)

39. The Chairman drew the Committee's attention to document AIR/14 and Addendum 1, listing the names of persons available to serve on panels related to the Aircraft Agreement. The list dated from the summer of 1980 and should be brought up to date. He therefore invited delegations to review their nominees and communicate any changes to the secretariat.

8. Dates of next meetings

40. The date of the next meeting was set for 8 and 10 March 1983.

41. The date of the following meeting was set for the week of 6 or 13 June 1983.