

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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Sub-Committee of the Committee
on Trade in Civil Aircraft

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ELEMENTS OF THE FRAMEWORK FOR NEGOTIATIONS

Communication from the United States

The United States believes that the 1979 Agreement on Trade in Civil Aircraft (Aircraft Agreement) has resulted in improved market access through the elimination of tariff barriers for covered civil aircraft products and services among parties to the agreement. The agreement has not, however, fulfilled its promise of achieving the maximum freedom of world trade in civil aircraft through the elimination of other practices that restrict and distort trade in this sector.

In the areas covered by Article 4, "Government-Directed Procurement, Mandatory Sub-Contracts and Inducements", the Aircraft Agreement has not freed buyers of civil aircraft products, as defined by the agreement, to make their decisions strictly on commercial and technological considerations without government pressure. And in the areas covered by Article 6, "Government Support, Export Credits and Aircraft Marketing", the Aircraft Agreement has not resulted in the elimination of subsidies or of the adverse trade effects resulting from government support of the development, production, and marketing of civil aircraft. This has had detrimental consequences not only for the manufacturers and users of civil aircraft goods in parties to the agreement, but may also have resulted in adverse effects on non-signatory purchasers of aircraft products and their potential trade and investment participation in this advanced technology sector.

Governments have interfered in the decisions of domestic airlines as well as unreasonably pressured foreign governments with regard to their purchase of aircraft products. Those practices are detrimental to rational economic activity based on strictly commercial criteria and, when either positive or negative inducements are offered to influence sourcing decisions, are also destructive to international political and economic relationships. Article 4 of the existing Aircraft Agreement was intended to provide disciplines on these practices, but has generally been considered ineffective. Therefore, there is a need for the prompt clarification of obligations under the existing agreement with regard to government interference in aircraft marketing and procurement decisions, as well as for the consideration of the strengthening of those obligations where it would promote the freedom to purchase civil aircraft based solely on commercial and technological criteria.

Government support for aircraft manufacturing has been extensive, and subsidies in this sector have been huge. However, due to the long-term nature of new aircraft programs, the amount of subsidization and its effects may not become evident until many years after the initial decisions by governments to grant support. Therefore, there is a need for rules to address these decisions at their inception by establishing the conditions and maximum levels for the use of such support. Our ultimate objective should be the progressive reduction and eventual elimination of trade-distortive government support.

In order to begin to remedy some of these deficiencies in the area of large civil aircraft, the United States entered into an agreement with the European Community. The bilateral agreement is, as is clearly stated in that agreement, without prejudice to our rights and obligations to other parties under the GATT and other GATT instruments, including the Agreement on Trade in Civil Aircraft. It is a "GATT-plus" agreement, in which both parties recognized and have acted on the need to promote a more favourable environment for international trade in large civil aircraft and to reduce trade tensions in the sector by strengthening or clarifying the obligations of the existing Aircraft Agreement.

The United States, joined by the European Community, has been pleased to explain to Aircraft Committee signatories and interested observers in detail, the elements of that agreement. The bilateral agreement has also served as a catalyst for ongoing Aircraft Committee discussions which resulted in initiation of negotiations within this Sub-Committee for improving and expanding the current Aircraft Agreement. Some sections of the bilateral agreement may additionally establish principles that should be embodied in any revision of the Aircraft Agreement. However, the United States wishes to hear, and is open to considering, the views on these matters of other Aircraft Agreement signatories and other participants in these negotiations.

In this regard, we believe it is particularly encouraging that the Aircraft Committee decided to open the work of the Sub-Committee to the broadest feasible participation. As in the case of other GATT instruments, it is only when a greater number of participants undertake expanded international obligations that the benefits of a more open trading system and of lessened government intervention in market decisions can be fully realized. We therefore envision that any new agreement should include as signatories all countries that have an aircraft or aircraft component industry.

It is in this spirit that the United States expresses the following preliminary views with regard to the possible elements of a revised Aircraft Agreement in accordance with the checklist of elements provided by the Chairman as a framework:

Preamble

While we do not consider it particularly useful to suggest preambular language at this early point in the discussions, we believe that any such

language should clearly reflect the purposes for which the substantive obligations are being strengthened.

1. Product Coverage

Product coverage should, at the minimum, encompass all those products and services currently covered by the existing Aircraft Agreement. We are reviewing possible candidates for proposed addition to the present coverage and are willing to consider proposals from other participants.

2,3. Market Access (duties and non-tariff barriers)

These provisions should remain as in the current agreement. If there is any need for a phase-out of tariffs or non-tariff barriers by new signatories, this can be handled by the procedures provided under the existing accession provisions.

4. Technical Barriers to Trade

Article 3 of the Aircraft Agreement states that the Agreement on Technical Barriers to Trade (Standards Code) applies to civil aircraft. In addition, it provides that certification requirements and specifications on operating and maintenance procedures (e.g., certification of foreign or foreign-owned repair stations) be treated amongst signatories to the Aircraft Agreement as if covered by the Standards Code. Since, the Standards Code applies to goods but not services, application of Article 3 might be clarified.

5. Government Interference in Purchaser's Decision

The United States believes that the provisions of Article 4 of the existing Agreement should be strengthened and clarified along the lines of Annex I of the US-EC bilateral agreement. In addition, increased transparency of government policies and activities in these areas would promote confidence that the obligations of this article are being met.

6. Direct Government Support

6.1. Export Support

The prohibitions on export subsidies provided by the current Subsidies Code and the rules on subsidies contained in the Draft Final Act apply to all sectors and should, therefore, be expressly reflected in this agreement.

6.2. Production Support

The United States believes that the prohibition on production support provided in the US-EC bilateral agreement should be extended to all signatories and all products covered by the Aircraft Agreement.

6.3. Development Support

With respect to large civil aircraft, disciplines comparable to those in US-EC bilateral agreement should be incorporated into the Aircraft Agreement - i.e., a stringent maximum cap should be set on the share of direct development support provided by governments and rules should be established providing conditions for repayment of such support to ensure that their operation approximates commercial conditions as closely as possible.

Furthermore, an essential element of any successor Aircraft Agreement is a mechanism to ensure the progressive reduction and eventual elimination of such development support. This could be accomplished both through the progressive reduction of the maximum allowable proportion for government support and through the tightening of terms and conditions on that support.

With respect to the products, other than large civil aircraft, covered by the Aircraft Agreement, the Subcommittee should carefully examine whether a prohibition on direct government development support can be established immediately. Where this is not feasible, strict provisions on the level of development support and the terms and conditions of that support should be established - again with provisions facilitating its progressive reduction.

Several delegations have expressed concerns that development support provided by governments under programs which operate in a different fashion than that covered by the bilateral agreement might not be adequately addressed by the adoption of the disciplines contained in that agreement and that modified or different disciplines might be needed to deal with development support provided by other mechanisms. We are still examining this question and would be interested in concrete information on such programs and the views or proposals of other delegations on this point.

6.4. Equity Infusions

As several delegations have already pointed out, the infusion of equity by governments could serve as a substitute for provision of other forms of government support prohibited or disciplined by the agreement and, thus, seriously undermine a new agreement. We believe that this problem requires careful examination and that it will be necessary to establish strict criteria governing government infusions of equity.

6.5. Loans and Loan Guarantees

Provisions similar to those in the US-EC bilateral agreement should be incorporated into the Aircraft Agreement to ensure that parties do not provide general purpose loans to purchasers, guarantees for any such loans or assume any specific liability for airline or customer financing (except for export credits provided in accordance with the OECD Arrangement on Guidelines for Officially Supported Export Credits).

6.6. Relationship to the GATT Subsidies Agreement

The reasons for a supplementary discipline for the aircraft sector focusing on support provided by government rather than subsidies were outlined at outset of this submission. While this proposed discipline is different from, and in some cases, goes beyond the disciplines contained in the current Subsidies Code and the rules on subsidies contained in the Draft Final Act, it does not in any way eliminate the need for remedies for injurious subsidization. Obviously, the need for action under the provisions of the Subsidies Code will diminish with effective implementation of the improved disciplines on government support envisaged by the Aircraft Agreement negotiations.

7. Indirect Government Support

With respect to large civil aircraft, the United States believes that disciplines similar to those contained in the US-EC bilateral agreement could be incorporated in the Aircraft Agreement. Several delegations have, however, raised questions and concerns about the operation of these disciplines, which merit further examination. We are willing to explore with other delegations the nature of indirect government support disciplines that would be acceptable in a revised Aircraft Agreement.

We also recognize that with respect to other products covered by the Aircraft Agreement, where a much broader range of companies is involved, the administrative burden may make the disciplines contained in the US-EC bilateral agreement impracticable. A more general provision aimed at ensuring that indirect government support does not undermine the disciplines of the agreement or provide unfair advantage, combined with less burdensome transparency obligations, might be more appropriate.

8. Prior Government Commitments

It would be difficult to subject government support for which firm commitments of a contractual nature have already been made to the new disciplines envisaged under the Aircraft Agreement. The terms and conditions of such support should, however, be "frozen" - for example, any relaxation or forgiveness of repayment obligations should not be permitted. Effective implementation of this provision will require the notification of outstanding commitments and information with respect to the operation of these support programs sufficient to determine compliance. Prior government support would, of course, continue to be subject to the provisions of the current Aircraft Agreement and the Subsidies Code in so far as they violate any of the provisions of those instruments (e.g., the prohibition on export subsidies) and where they cause adverse effects or injury within the meaning of the instrument.

9. Regional and Local Governments

The new disciplines on government support should encompass support provided by regional and local governments.

10. Temporary Derogation

Care should be taken that any ability to derogate from the disciplines of the Aircraft Agreement be circumscribed as tightly as possible to discourage unnecessary resort to such a provision. Such derogations should be exercised only in extreme circumstances, should be limited in scope and duration to the maximum extent possible, and in such a way that the adverse effects on other parties are minimized. The provisions of the US-EC bilateral agreement provide a useful starting point for elaborating the conditions that must be established to permit exercise of a derogation and the constraints governing its use. In a multilateral context, these rules must be as clear and stringent as possible so as to minimize potential abuse, to allow effective review of the conditions put forward justifying use of this provision and the actions taken by the party, to discourage repeated recourse to this provision, and to promote swift adjudication in case of dispute.

11. Committee on Trade in Civil Aircraft

The provisions of the current agreement appear adequate in regard to the establishment of this Committee. Those provisions dealing with dispute settlement will, of course, have to be modified to reflect changes negotiated in the dispute settlement mechanism.

12. Transparency

Transparency provisions should be adequate to ensure the effective monitoring and implementation of the disciplines and rules of the agreement. Provisions involving notification, the regular exchange of certain types of information, and the furnishing of additional information where necessary to ensure effective implementation should be contemplated. In order to facilitate monitoring of the disciplines on government support and lessen the administrative burden of the Aircraft Agreement, governments should make their support actions public and firms receiving government support or equity infusions should be required to regularly publish financial accounts based on internationally accepted accounting principles.

A more thorough discussion of transparency requirements should be conducted after further progress is made in elaborating the concrete disciplines under discussion. However, the U.S.-E.C. bilateral agreement gives some guidance as to how the need for transparency might be handled.

The confidential, or business proprietary, nature of some of the information that will be needed to ensure effective implementation of the agreement is a special problem, particularly in a multilateral context. It might be useful to have the Secretariat review this issue and provide some analysis as to how it might be handled.

13. Avoidance of Trade Conflicts

The United States believes that parties should employ the dispute settlement procedures provided by the revised Aircraft Agreement with

respect to problems or disputes involving the disciplines established by the agreement. The application of national trade laws, including the right of private parties to petition and seek redress under national trade laws - in accordance with internationally agreed rules - must, however, be preserved.

14. Dispute Settlement

The United States believes that the new Aircraft Agreement should employ the unified dispute settlement mechanism envisaged in the MTO. There may, however, be a need for some special provisions and procedures for the informed adjudication of such disputes - given the special characteristics and problems of the aircraft sector. For example, given the long-term damage that can result from provision of government support, it would be appropriate to require, as the remedy of choice, full rescission of a new support granted that is found to be inconsistent with the provisions of the Aircraft Agreement or, if more appropriate, modification of the levels and/or terms and conditions of such support in such a way as to render it in compliance with the agreement.

15. Final Provisions

The United States believes that existing Aircraft Agreement provisions with respect to amendment and withdrawal are adequate.