Further US Views on the Renegotiation of the Agreement on Trade in Civil Aircraft

In its December 1992 submission, the US presented its preliminary views on all elements of the Aircraft Agreement based on the checklist prepared by the Chairman. This submission focuses on the disciplines to be negotiated concerning government support, which has been the crux of discussion in the negotiating group. Reflecting on these discussions, and with the aim of facilitating negotiations in this crucial area, the U.S. has developed several proposals, including some draft text, for consideration by this group.

In the December submission, and in previous discussions, the US has spelled out the reasons why it believes strong new disciplines on government support to the Aircraft sector, complementary to those now embodied in the Subsidies Code and contemplated in the Draft Final Act, should be put into place through the vehicle of the Aircraft Code. We have also set forth the reasons why a support-based rather than a subsidy-based discipline is appropriate. Two key points should be emphasized:

- Due to the long-term nature of new aircraft programmes, 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. A support-based discipline would achieve this.

- If the burden of providing funds for the development of new aircraft programmes falls predominantly or heavily on the government rather than the private sector, the character of these programmes and, of the decisions to undertake such programmes, is fundamentally changed from a commercial one, informed or driven by market principles, to one of a public or governmental nature.
This is true regardless of the extent of subsidy provided or the conditions for repayment of the support provided. It is particularly true with respect to large civil aircraft where the development costs associated with new programmes tend to be enormous and, consequently, the advantage conferred by, and the distortive effect resulting from, access to government funding or government-backed or arranged funding is correspondingly great. If we are to establish an environment in which trade and production is to take place on the basis of commercial acumen and economic competitiveness rather than government dictate, it is essential to place constraints on the extent to which the government, in effect, underwrites such programmes. As the US has stated earlier, we believe the ultimate objective of these negotiations should be the progressive reduction and eventual elimination of such trade-distortive government support.

After reviewing and reflecting on the lengthy discussions of these issues, and the papers submitted by several countries, the US remains convinced that a support-based discipline is the best, and probably the only, way to attain our mutual objective - achieving the maximum freedom of world trade in civil aircraft through the elimination of government practices that restrict or distort trade in this sector.

We believe the situation is particularly clear with respect to large civil aircraft (LCA) where the sums required for new programmes are enormous, the number of parties involved is relatively small, and the nature of the government support programmes fairly well-known and already the subject of extensive review and discussion. Moreover, the fact that the two key players in this market, the US and the EC, have already bound themselves to far-reaching and very specific disciplines in this area lends some urgency to the negotiation of multilateral rules. Unless other participants, actual or potential, undertake the same, or equivalent, disciplines, the result of these bilateral commitments could be a distortion in trade flows and production patterns.

With respect to the other products covered by the Aircraft Agreement, the situation is complicated by two factors:

1. A much greater range of products is involved and a much greater number of countries are involved in the production and export of these products. Many of these countries have not yet participated in the work of this negotiating group; very few have presented their views regarding renegotiation of the Aircraft Agreement.

2. We know relatively little about the nature and extent of government support for these other products.

Consequently, the US believes that this group should adapt its approach to the renegotiation of the Aircraft Agreement as follows:

1. We should move ahead with utmost dispatch to conclude negotiations on the disciplines which would apply to government support provided to
LCA. We suggest a target date of July 31, 1993, for the conclusion of such negotiations after which they could be applied on an interim basis until overall renegotiation of the Aircraft Agreement is concluded.

Specific proposals for the LCA support disciplines are discussed below. We would also point out that we believe that the conclusion of negotiations on LCA, and the attendant problem-solving, should prove instructive to, and facilitate, the negotiation of disciplines on other aircraft products.

2. With respect to the other products covered by the Aircraft Agreement, we believe that the group needs to do several things before the negotiation of appropriate disciplines can proceed effectively:

- Exchange information on government support provided for these products. We would propose that each participating government submit a brief paper describing its support programmes for these products before May 31, 1993.

- Determine which countries are significant, or potentially significant, producers/exporters of such products and develop an effective plan for involving those countries not already actively participating in these negotiations.

In considering the last point, the group needs to give greater attention to the "free rider" problem, which has been touched upon in previous discussions, and to develop approaches which would both provide incentives to broaden membership and avoid distortions and inequities that might result from the unwillingness of other countries to accept the support disciplines or market access commitments of the Agreement. Toward that end, the U.S. would suggest the following ideas for consideration:

- Develop provisions that would discourage firms in signatory countries from taking advantage of excessive government support provided by non-signatories - for example, by limiting, under certain circumstances, their access to government support provided by Signatories consistent with the Aircraft Agreement.

- Make membership in the Aircraft Agreement a condition of GATT accession.

- Explore the possibility of seeking a waiver of MFN obligations with respect to the commitments undertaken in this Agreement.

While we are, in effect, advocating a somewhat slower track for negotiations of disciplines on government support for these other products, we believe it is important that we continue to move forward expeditiously in the negotiation of disciplines on these products. To that end, we have briefly outlined our current thinking on disciplines for these other products later in this paper. We would also underline our commitment to securing an improved discipline which encompasses all of the products covered by the
Aircraft Agreement. We think that the conclusion of this and all other outstanding aspects of the renegotiation of the Aircraft Agreement should be accomplished before the end of 1993.

Large Civil Aircraft (LCA)

The US believes that the provisions of the bilateral agreement concerning direct and indirect supports provide a sound model for the development of multilateral disciplines for LCA's. However, in light of questions raised about the provisions of the bilateral agreement on indirect support, the US is reviewing the language of those provisions with the aim of ensuring their correct application. We also believe that there are fundamental qualitative differences between direct and indirect supports, which cause them to have quite different economic and commercial effects. We believe that this subject will require additional close examination by the group.

Attached for consideration of the group is draft language for Article 7 as it would apply to LCA's (using the enumeration of the Chairman's draft). This text is based on the bilateral agreement but has been adapted to reflect the broader multilateral application intended.

Given the lengthy discussions in this group concerning the concepts of support and subsidies, we have also provided a draft definition of direct government support which we hope will be helpful in clearing up any confusion and in moving the negotiations forward.

Although, as noted above, the proposed provisions are based on the US-EC bilateral agreement, several new ideas have been introduced into this text:

(1) Article 7.2.4. This provision commits the signatories to the objective of progressive reduction of trade-distortive government support and provides for a semi-automatic tightening of disciplines.

(2) Article 7.3. Reflecting concerns expressed, on the one hand, about the possible adverse effects of prior support commitments and, on the other, about the need to avoid trade friction or confrontation arising from such concerns, we have incorporated a new concept into this Article. We believe that signatories which have provided "prior supports" should provide assurances either that there will be payback of such supports on terms reasonably close to those prevailing in commercial markets, or that such supports will not result in adverse effects on the trade or condition of the industry of the other signatories. We regard our draft language on this point as a "bare-bones" exposition of the concept; the precise nature of these assurances would need to be developed more fully after thorough discussion. However, we believe that such assurances would significantly lessen the prospects for trade confrontation.

(3) Article X. We have introduced a provision making clear the relationship between this Agreement and the Subsidies Code. We would,
of course, envision that this provision would be applicable to the entirety of the renegotiated Aircraft Agreement.

(4) Article Y. This is identical to Article 6.2 of the current Aircraft Agreement. We believe there should be further discussion of this provision.

With respect to government equity infusions and the issue of temporary derogations, we would reiterate our view, expressed in the United States' December submission, that the provisions contained in the bilateral agreement need to be improved in the multilateral context - with respect to both LCA's and other products. We are still reviewing these issues and hope to provide proposals for the group's consideration at a future session.

Also attached is draft language on notification. (Article 11 of the Chairman's draft). This draft text seeks to merge the concepts/ideas of the notification procedure proposed in the Dunkel text with the special information needs that the type of disciplines on support that we have proposed above for LCA's would engender. Obviously, these articles would have to be reviewed and modified to reflect the disciplines finally agreed upon and, if distinctive disciplines were developed for other products, additional and possibly quite different provisions concerning notification and transparency might be required.

We have not prepared text on dispute settlement at this time, but would bring to the attention of the group the following points which we believe should be thoroughly discussed and considered for possible incorporation into the Aircraft Agreement. These points are relevant both to LCA's and to the other products covered by the Agreement.

Any dispute settlement mechanism for aircraft should be based on the Dunkel dispute settlement text. However, we should consider the extent to which that text should be modified by certain special provisions. For example:

- We should consider whether GATT contracting parties not signatories to this Agreement should have a role in the dispute settlement process.

- We should consider whether a special roster of panellists for the Aircraft Agreement should be developed.

- The timetable should be faster than that provided in the Dunkel text.

- The recommended remedies for violations of the Agreement should seek to eliminate a violation of the Agreement and to offset any support to producers received from a violation. Such remedies should provide for a Signatory: (a) to collect from its aircraft producers the amount of support (plus interest) received in violation of the Agreement; or (b) to accept the suspension of tariff concessions on exports of the violating Signatory equivalent to the amount of support.
Other Products Covered

As noted earlier, the US believes that further discussion and exchange of information is required before we can effectively develop appropriate disciplines on government supports for the other products covered by the Aircraft Agreement. However, we would make the following general observations:

- The disciplines agreed should result in a strengthening of rules on direct government support. They should result in an immediate reduction in the level of support and a tightening of the conditions under which such support is granted. They should also, as in the case of LCA, provide for the progressive reduction of such support.

- We still believe that a support-based discipline is the best way of achieving this objective. In particular, we believe the prohibition on production supports should be extended to all products covered by the Agreement. However, we are willing to consider a subsidy-based discipline for these other products if it can be clearly demonstrated to achieve the above objectives.

- With respect to indirect supports, we would reiterate the concerns expressed in our December submission regarding the administrative burden of extending the provisions of the bilateral agreement to the broad range of companies and products covered by the Aircraft Agreement as well as the important qualitative and practical distinctions between direct and indirect supports - which, as noted earlier, we believe requires further discussion.

Article 7 Direct Government Support: Large Civil Aircraft (LCA)

7.1 Production Support

As of entry into force of this Agreement, Signatories shall not grant direct government support other than what has already been contractually committed for the production of LCA or derivatives (hereinafter referred to as "programmes") or for subassemblies or key structural components of LCA's (except primary propulsion systems) (hereinafter referred to as "products"). This prohibition shall apply both to existing and future programmes.

7.2 Development Support

7.2.1 Signatories shall provide direct government support for the development of a new large civil aircraft programme only where a critical project appraisal, based on conservative assumptions, has established that there is a reasonable expectation of recoupment, within 17 years from the date of first disbursement of such support, of all costs as defined in Article Y of this Agreement, including repayment of
government supports on the terms and conditions specified below.

7.2.2 As of entry into force of this Agreement, direct government support committed by a signatory for the development of a new LCA programme or derivative or for subassemblies or key structural components of LCA's (except primary propulsion systems) of such a programme shall not exceed:

(a) 25 percent of that programme's or product's total development cost as estimated at the time of commitment (or of actual development costs, whichever is lower); repayments, on this tranche, whether on a royalty or fixed repayment basis, shall be set at the time of commitment of the development support so as to repay this support at an interest rate no less than the cost of borrowing to the government within no more than 17 years from first disbursement, plus

(b) 8 percent of that programme's or product's total development cost as estimated at the time of commitment (or of actual development costs, whichever is lower); repayments on this tranche, whether on a royalty or fixed repayment basis, shall be set at the time of commitment of the development support so as to repay such support at an interest rate no less than the cost of borrowing to the government plus 1 percentage point within no more than 17 years from first disbursement.

In the case of royalty repayments, these calculations shall be made on the basis of the forecast of aircraft deliveries in the critical project appraisal.

7.2.3 Repayment schedules shall be calculated at the time of commitment of the development support to be repaid on a basis no more favourable to the beneficiary of such support than the following:

(a) At least 20 percent of aggregate repayments calculated in accordance with Article 7.2.2. above are payable on the basis of the delivery of a number of aircraft corresponding to the first 40 percent of forecast deliveries;

(b) At least 70 percent of aggregate repayments calculated in accordance with Article 7.2.2. above are payable on the basis of the delivery of a number of aircraft corresponding to first 85 percent of forecast deliveries.

7.2.4 Progressive Reduction of Development Support

Signatories agree that the disciplines governing direct development support should be periodically reviewed with a view towards their strengthening and towards the progressive
reduction and eventual elimination of trade-distortive support. To this end, a review shall be initiated by the Committee on Trade in Civil Aircraft not later than two years after the entry into force of this Agreement and completed within six months after its initiation. Unless otherwise agreed by the Signatories by consensus, the following changes will be made, effective three years after the entry into force of this Agreement:

With respect to support for the development of new large civil aircraft programmes as specified in Article 7.2.2(b), the limit on government support shall be 20 percent in total; the interest rate charged for, or used to calculate repayment of, this support shall be no less than cost of borrowing to the government plus 2 percentage points. Moreover, the following requirement will be added to subparagraph 7.2.3:

"b) At least 40 percent of aggregate repayments calculated in accordance with Article 7.2.2. above are payable on the basis of the delivery of a number of aircraft corresponding to the first 50 percent of forecast deliveries."

7.3 Prior Government Support Commitments

1. Direct government support to current programmes contractually committed prior to the date of entry into force of this Agreement is not subject to the provisions of paragraphs 7.1 and 7.2 of this Article. The terms and conditions on which such support is granted shall not be modified in such a manner as to render it more favorable to any recipient; however, de minimis modifications shall not be deemed inconsistent with this provision.

2. Governments notifying supports provided under the above provision shall also provide specific detailed assurances to other signatories that there are provisions for repayment of such support on terms reasonably close to those prevailing on commercial markets or that such support will not cause adverse effects to the trade or condition of the industry of other signatories.

Article X - Relationship to the Subsidies Agreement

Signatories note that the provisions of the Subsidies Code apply to trade in civil aircraft and that the disciplines provided in this Agreement are intended to complement those of the Subsidies Code. Nothing in this Agreement shall be construed as prejudicing or superseding the rights and obligations of any Signatory under the GATT, the GATT Subsidies Code or any other instrument multilaterally negotiated under the auspices of the GATT.
Article Y

Signatories agree that pricing of civil aircraft should be based on a reasonable expectation of recoupment of all costs, including non-recurring programme costs, identifiable and pro-rated costs of military research and development on aircraft, components, and systems that are subsequently applied to the production of such civil aircraft, average production costs, and financial costs.

Article Z - General Purpose Loans

Signatories shall assume no liability for specific loans that large civil aircraft manufacturers make or make available, through direct loans, guarantees, or otherwise, to airlines or other purchasers of large civil aircraft, other than through official export credit financing consistent with the Large Aircraft Sector Understanding of the OECD Understanding on Official Export Financing.

Article 11 - Notification

11.1 Signatories agree to notify the Committee of all government support programmes or other actions covered by this Agreement in accordance with the procedures provided in paragraphs 2-8, below. Unless otherwise provided below, these notifications shall be made on a calendar year basis and shall be submitted and/or updated not later than June 1 of each year.

11.2 Any Signatory that intends to provide a support programme or action covered by Article 7 shall promptly notify the Committee in advance of its commitment. The content of notifications should be sufficiently specific to enable other Signatories to understand the operation of notified programmes or actions and to determine whether they are consistent with the provisions of this Agreement.

11.3 With regard to prior government commitments described in Article 7.3, a complete list of such commitments by the Signatories to this Agreement already disbursed or committed shall be provided prior to the entry into force of this Agreement, including a description of the operation or purposes of the programme or action, information on the type of repayment obligation, annual disbursements already planned or effected under these programmes as well as annual repayments already made, and the planned period and schedule of repayment. Any Signatory providing such support shall also notify the Committee on an annual basis of annual disbursements and repayments relating to these programmes after the entry into force of this Agreement.

11.4

11.4.1 With regard to future programmes described in Article 7.2, each Signatory shall provide, at the time of government commitment, the following specific information regarding development support for the programmes or products covered by
Article 7.2 for each of the governments providing such support:
- the total amount of government support;
- the share of government support as a percentage of estimated total development cost;
- the anticipated return to the government;
- the planned period of repayment of government support; and
- if the programme involves royalty repayments, the forecast number of planes on which the calculations made in accordance with Article 7.2 are based.

11.4.2 Signatories shall also provide at the time of commitment of new development support all information necessary to evaluate the critical project appraisal in so far as this relates to the provisions of Article 7.

11.5 Signatories shall immediately notify the Committee of any changes in prior government commitments or future programmes under Article 7 made since the previous notification or update, including inter alia: changes in the repayment period; failure to repay the support; reduction of the scheduled repayments; or, in the case of new programmes, an increase in the percentage share of government support above that previously estimated. Signatories shall also notify the Committee annually of annual disbursements and repayments on a per programme basis for new programmes launched in accordance with Article 7.

11.6 Signatories shall provide information on new infusions of equity or changes in equity positions by governments or government-controlled entities with respect to firms engaged in civil aircraft production, including the amount and type of equity provided as well as a statement outlining the anticipated use of such funds.

11.7 [To be provided later - concerns indirect supports]

11.8 [To be provided later - concerns indirect supports]

11.9 Where specific points in paragraphs 2 through 8 above have not been included in a notification, an explanation of the omission shall be provided in the notification itself.

11.10 Signatories that consider that there are not programmes or actions in their countries requiring notification under this Agreement shall so inform the Committee in writing.
11.11 Signatories recognize that notification of a programme or action does not prejudge its legal status under the General Agreement or this Agreement, the effects under this Agreement, or the nature of the measure itself.

11.12 Any Signatory may, at any time, make a written request for information on any support programme or action it believes covered by this Agreement or any aspect of the functioning of this Agreement, including the nature and extent of any support granted or maintained by another Signatory. Signatories so requested shall provide such information promptly, and in no case more than 60 days after the receipt of the request, and shall be ready on request to provide additional information to the requesting Signatory. Each Signatory shall be responsible for the accuracy and completeness of its response and provide a copy to the Committee. The information provided shall be comprehensive and sufficiently detailed to allow Signatories to evaluate compliance with the Agreement. Any Signatory that considers that such information has not been adequately provided may request consultations or bring the matter to the attention of the Committee.

11.13 Any interested Signatory that considers that any measure or practice of another Signatory having the effects of a support programme or action covered by this Agreement has not been notified within accordance with this Article may bring the matter to the attention of such other Signatory. If the alleged programme or action is not thereafter notified within 30 days, such Signatory may itself bring the alleged programme or action in question to the notice of the Committee. Moreover, a Signatory may request consultations on such programme or action at any time.

11.14 Information a Signatory provides on a confidential basis shall not be disclosed by other Signatories without the specific written consent of the Signatory or private entity providing such information. If a Signatory provides confidential information or information that cannot be disclosed outside the Committee, that Signatory shall also distribute a public version of its response at the same time. Information shall normally be classified as confidential information only if it is specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter.

11.14.2 Signatories shall ensure that information provided on any aspect of the functioning of this Agreement will be classified as public information if it is factual information of a type that has been published or otherwise made available to the public, information that will not reveal confidential business information regarding a particular entity, or information that is contained in publicly available laws, regulations, decrees, orders, and other official documents of a Signatory. At a minimum, public information shall include the total amount of government support for new development
projects for large civil aircraft and or derivatives or other products covered by Article 7 and its share of total development costs, aggregate data on disbursements and repayments relating to direct government supports for all LCA programmes or products covered by Article 7, and with respect to new programmes the information called for in paragraphs 11.4.1 (excepting the forecast number of planes), 11.4.2, and 11.5, the annual commercial turnovers of the large civil aircraft industry as specified in Article 8, and the aggregate amounts of identifiable indirect benefits received by large civil aircraft manufacturers.

11.14.3 Signatories will encourage firms engaged in the manufacture of the products covered by this Agreement to increase the public disclosure of disaggregated financial results of their civil aircraft operations through the separation of reporting on military and civilian aircraft operations and the adoption of lines of business financial reporting. These disaggregated financial results would at a minimum be expected to include information on sources and uses of funds including specific information on revenue, operating income, net assets, capital investment and government equity infusions. Signatories shall, in any event, ensure that firms engaged in the manufacture of the products covered by this Agreement publish financial results which meet internationally accepted accounting standards.

11.15 Nothing in this Agreement shall be construed to require any Signatory to furnish any information the disclosure of which it considers contrary to its essential security interests.

11.16 The Secretariat shall promptly distribute to all Signatories copies of all notifications and responses received from any Signatory, with the exception of information submitted as part of a panel review.
Definition of Direct Government Support

For the purpose of this Agreement, the term "direct government support" includes, but is not limited to, the following measures and practices when provided, by law or in fact, for specific large civil aircraft programmes or derivatives, or to specific companies to the extent that large civil aircraft programmes or derivatives directly benefit, by a government or any public body within the territory of a Signatory or through public resources or public intervention in any form (hereinafter referred to as "government"): 

a. grants (i.e., direct cash payments);

b. loans from the government or loans from private lenders guaranteed by the government;

c. forgiveness of debt;

d. tax policies and practices, such as tax credits, deductions, exemptions and preferences including accelerated depreciation;

e. any other financial contribution or equivalent assistance directly supporting operations, investments, restructuring, or development.

The amount of direct government support committed by a Signatory for purposes of Article 7.2 (Development Support) shall be quantified as the total amount or value of the financial contribution or equivalent assistance provided or guaranteed by the government. In the case of loans from the government or loans from private lenders guaranteed by the government, the total amount of the loan granted or guaranteed shall be counted.