

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

AIR/W/35

24 September 1982

Special Distribution

Agreement on Trade in Civil Aircraft

Original: English

UNITED STATES INTERNATIONAL TRADE COMMISSION INVESTIGATION REGARDING CERTAIN COMMUTER AEROPLANES FROM FRANCE AND ITALY

Information Paper Submitted by the United States

In view of the considerable discussion, at the 1 July 1982 meeting of the Committee, of a countervailing duty petition filed 27 May 1982 with the United States Department of Commerce and the United States International Trade Commission by Counsel on behalf of Commuter Aircraft Corporation of Youngstown, Ohio, the Delegation of the United States provides, for the information of members of the Committee, the following report as to the disposition of the case.

On the basis of the record developed in investigations Nos. 701-TA-174 and 175 (preliminary), the United States International Trade Commission determined in a 4-1 vote on 7 July 1982, pursuant to Section 703(a) of the Tariff Act of 1930 (19 USC 1671B(a)), that there is no reasonable indication that an industry in the United States is materially injured or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from France and Italy of certain commuter aeroplanes (for the purposes of this investigation, "commuter aeroplanes" were aeroplanes having a seating capacity of fewer than sixty seats), as provided for in item 694.41, of the Tariff Schedules of the United States (TSUS), upon which subsidies are alleged to be paid.

The countervailing duty petition alleged that certain commuter aeroplanes imported from France and Italy receive, directly or indirectly, bounties or grants within the meaning of Section 701 of the Tariff Act of 1930 (The Act). Accordingly, the Commission instituted a preliminary investigation under Section 703(a) of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of the importation of such merchandise into the United States.

The embassies of France and Italy were notified that a petition had been filed: the United States advised the Chairman of the Committee on Trade in Civil Aircraft on 7 June 1982 of the petition, as well as advising the representative of the Delegation of the European Communities. Notice of the institution of the Commission investigations and of the conference to be held in connexion therewith was given by posting copies of the notice in the Office of the Secretary, United States International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register on 9 June 1982 (47 F.R. 25077). The conference was held in Washington, D.C. on 23 June 1982, and all persons who requested the opportunity were permitted to appear in

person or by counsel. An unedited transcript of the 1 July 1982 discussion in the Committee on Trade in Civil Aircraft was made available to the Commission on an expedited basis. The Commission voted on these cases in public session on 7 July 1982, and as a consequence of that vote, both the United States International Trade Commission and the United States Department of Commerce terminated the case.

In its determination the majority of the Commission provided the following reasoning, which is quoted from the Commission's report:

"Prior to consideration of the impact of the imports under investigation on the affected domestic industry, the commission must first define the appropriate scope of that industry. According to Section 771(4)(a) of the Tariff Act of 1930, the domestic industry consists of "the domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." The term "like product" is defined by statute as a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation..."

Both the petitioner and the respondents are in general agreement on the characteristics and uses that they contend define a like product. The parties contend that 40-60 seat aeroplanes constitute a distinctly identifiable segment of the market and do not in any significant way compete with smaller commuter aeroplanes. Additionally, they contend that the like product would be pressurized and would incorporate advanced technology. Under the definition used by the parties only one US designed aeroplane - petitioner's CAC-100 - would qualify as a like product, and therefore CAC would constitute the entire relevant US Industry.

The record suggests that domestic aircraft other than the CAC-100 may also have characteristics and uses that make them competitive with the ATR-42 in the view of many potential purchasers. There is information available suggesting that smaller aeroplanes of from 30-40 seats may be competitive with the ATR-42. The seating capacity of an aircraft is a major consideration in a purchaser's decision. Other specifications, such as weight, power capability and other performance characteristics, dimensions, cargo capacity, and pressurization also play a part in determining whether the characteristics and uses of a particular aircraft are suitable for a buyer's needs. There is not sufficient information on the record to allow us to make an adequate comparison of various aircraft with the ATR-42 based on these specifications.

For the purposes of these preliminary investigations, we find the like product definition as developed by the parties to be appropriate based on the information available. Therefore, we determine that the domestic industry consists of CAC.

No material retardation of the establishment of a domestic industry.

Petitioner's position in these investigations rests on the claim that sales of the ATR-42 in the United States have resulted in material retardation of the establishment of an industry in the United States. Since the industry definition we have adopted includes only a single firm that has yet to begin production of commuter aeroplanes, material retardation, not material injury or threat of material injury, is the proper issue to be considered.

Commission precedent establishes that when a domestic industry has not yet undertaken production, it must show, as a threshold matter, that it has made a substantial commitment to commence production. We find that, based on the record developed, the nascent commuter aeroplane industry represented by CAC has made a substantial commitment to commence production of commuter aircraft in the United States. CAC has obtained substantial loans and loan guarantees from private lenders and federal, state and local government agencies, and has negotiated for further financing for working capital. It owns 95 acres of land bordering the Youngstown, Ohio Airport on which it plans to build its manufacturing facility, and has obtained re-zoning and arranged for utility connexions. Construction of the 225,000 square foot plant, projected to cost US\$14 million, is now underway and is projected to be completed by the end of 1982. CAC employs a staff of engineers and technicians, and has contracted for assistance from outside consulting firms. Design specifications for the CAC-100 have been developed and published, and CAC has begun initial efforts to market the aeroplane. Actual production of the aeroplane is slated to begin by 1984.

Although CAC has demonstrated a commitment to begin production, the record does not provide a reasonable indication of a causal link between the allegedly subsidized sales of the ATR-42 in the United States and any difficulties CAC may be experiencing in becoming established as a producer of a competitive aircraft.

In the aircraft industry, it is common for sales of a newly designed aeroplane, like the ATR-42 and the CAC-100, to take place far in advance of actual production. For example, orders have already been taken for the ATR-42, even though no models presently exist and none are projected to be completed until late 1984 or early 1985. Airlines must therefore make their purchase decisions on the basis of a number of factors in the absence of the actual performance experience of the aeroplane. Among these factors are the performance characteristics of the aeroplane, operational costs, pressurization, quality of technology used, reputation and proven record of the seller, the seller's ability to provide service, the acquisition cost and financing. Because of the high debt-to-equity ratio of most commuter airlines, a new equipment decision can often determine the success or failure of a carrier. Often, the cost of a single aircraft exceeds the net worth of the airline itself.

The buyer's ability to evaluate the performance and quality of a new aircraft is therefore essential and is acutely dependent on the availability of detailed technical specifications regarding the aeroplane. Without such specifications a buyer could not be expected to commit itself to a purchase, and the negotiation of the sale would not proceed to the question of financing. A seller who does not provide detailed specifications cannot be said to be in head-to-head competition for the sale.

Information obtained by the Commission establishes that to date CAC has made very limited efforts to market the CAC-100. Calls on potential customers have been relatively few, and detailed specification documents have not been provided. CAC has informed the Commission that it did not have preliminary detailed specifications ready to supply to its customers until after 15 May 1982, a date subsequent to the orders from Wright, Ransome and Command for the ATR-42. In addition, confidential marketing documents submitted by CAC indicate that as of early 1982 CAC was aware that other manufacturers were

making better sales presentations and that CAC needed aircraft specification and performance documents in order to compete effectively. Representatives of the three US airlines that have purchased the ATR-42 have all told the Commission that the CAC-100 was never seriously considered at the time of their purchasing decisions. Prominent among the reasons given for the lack of consideration was CAC's failure to provide specification documents. Responses to the Commission's purchaser questionnaires further confirm that other potential purchasers have not been provided with firm, reliable data on the CAC-100.

Based on the record of this investigation, we find no reasonable indication that the allegedly subsidized sales of the ATR-42 have resulted in material retardation of the establishment of CAC as a US producer. The limited nature of CAC's sales efforts, particularly the unavailability of specification documents, has strongly restricted CAC's access to the market and has prevented it from competing for sales to date."