PROCEDURES FOR CHANGES TO THE ANNEX TO THE AGREEMENT

Proposals submitted by Japan

The following paper has been received on 21 April 1986 from the Permanent Mission of Japan.
1. With regard to changes in the authentic text of the Annex to the Agreement, two different categories, namely, Amendments and Rectifications are to be considered. The former is made where substantial changes take place from negotiations under Article 8.3 or any other relevant Article of the Aircraft Agreement, while the latter which is not related to any particular provision in the Agreement, is made for changes of formal character (for example, changes in names an order or grouping of items in the Annex.).

2. Amendments to the Annex to the Agreement (the Annex is an integral part of the Agreement as provided in Article 9.8, therefore, an amendment to the Annex to the Agreement is an amendment to the Agreement) shall be made in accordance with the provisions of Article 9.5 of the Agreement, which states that an amendment, (1) once the Signatories have concurred (have finalized the content of an amendment) in accordance with the procedures established by the Committee, (2) shall not come into force for any Signatory until it has been accepted by such Signatory.

3. The Committee established Certification procedure (AIR/41) on 7 October, 1982. However, if this procedure is employed as it is it has the following problems in light of Article 9.5.

(1) In Certification procedure, no explicit acceptance is necessary for a Signatory to accept the
amendment, since the content of amendment is made, and, at the same time, come into force upon the date of expiration of the period specified in the Certification, provided no objection is made within the said period.

(2) In order to have the said Certification procedure in harmony with Article 9.5, it may be possible to regard that a Signatory which had not made objection has made an implicit acceptance upon the expiration of the said period. (All Signatories but Japan are considered to have made such acceptance of the Amendment to the Annex to the Agreement decided on March 22, 1984.)

In Certification procedure, however, the content of the amendment will not be decided until such implicit acceptance is made, in other words, the Signatories have only unstable contents of the amendment as an object for their acceptance till the expiration of the said period. If a Signatory makes an objection during the said period which might require a renegotiation, the content of the amendment cannot be decided and, therefore, the above-mentioned concurrence provided in Article 9.5 may not be made till the settlement of such renegotiation.

(3) With respect to the Certification procedure, it may be of some use to examine how it is actually employed and implemented to modify the GATT
Schedules. In case of substantial changes such as concessional customs tariff, legal instruments such as "Agreement under Article 28" or "Protocol" which have been finalized (meaning not open for renegotiation) and are the objects of an explicit acceptance shall be made before the GATT Schedules are modified by means of Certification. These instruments shall come into force among the countries concerned after these countries have gone through their national procedures for acceptance of these instruments. Certification procedure, in this case, are applied simply to have them come into force formally as the GATT concessions.

4. Considering the above, we propose two types of amendment procedures, which are to be decided by the Committee, explained below. As the procedures provided in the Attachments 1. and 2. are drafted as a procedure substituting the procedures provided in AIR/41 and AIR/W/43, paragraph 2. of the Attachments 1. and 2. respectively are concerning the rectification procedure. Accordingly the paragraph is not related to an amendment procedure.

PROPOSAL I (See Attachment 1)

To solve the problems mentioned above 3(2), some sort of "Decision" by the Committee, such as the Committee Decision adopted on March 1984, which has an effect to decide the content of amendments, shall be taken in order
to ensure the concurrence prescribed in Article 9.5. (Not only the "Committee Decision" above, "Committee Resolution" or "Committee Adoption" are also applicable as long as they have an effect to decide the content of amendments.) Such "Decision" by the Committee, or Signatories' concurrence as provided in Article 9.5 (finalizing the content of an amendment), is followed by "acceptance" by a Signatory in Article 9.5. A Signatory may accept either explicitly or implicitly, namely by accepting the decided amendment or by not making any objection to the amendments put down in the Certification. (Therefore, objections in Certification procedure shall not be of substantial character but only shall be made with regard to editorial errors such as typographical mistakes.)

PROPOSAL II (Attachment 2)

With respect to the acceptance in Article 9.5, it may be considered that it means explicit acceptance rather than implicit acceptance. From this viewpoint, it is desirable that the Certification procedure is applied only for changes of purely formal characters in the text of the Annex (which are regarded not to be covered by Article 9.5). On the other hand, in case of substantial changes in the text of the Annex, such as extension of product coverage (which are regarded as the amendments provided in Article 9.5), Protocol shall be made and come into force for the Signatories which accept it.
AMENDMENT AND RECTIFICATION TO THE ANNEX TO THE AGREEMENT
Decision of (Date)

The following procedures of the Amendment to and the Rectification of the Annex to the Agreement on Trade in Civil Aircraft (hereinafter referred to as "the Agreement") have been accepted by the Committee on Trade in Civil Aircraft on (Date).

1. (1) Amendment to the authentic text of the Annex to the Agreement resulting from negotiations under Article 8.3 or any other relevant Article of the Agreement, or any relevant Article of the General Agreement, shall be made by means of the Committee's Decision.

(2) The decided Amendment (hereinafter referred to as "the Amendment") shall be promptly communicated by the Committee to the Director-General, who shall without delay furnish a certified copy of the Amendment to all Signatories to the Agreement.

(3) Signatories to the Agreement shall accept the Amendment by:

(a) depositing with the Director-General the instrument of their acceptance of the Amendment, provided in the Committee's Decision.

or (b) not making objections to the Certification containing the Amendment, which shall be circulated by the Director-General to all Signatories to the Agreement.

If no objection by a Signatory to the Agreement is made within the period specified in the Certification, the Amendment shall come into force on the date of the expiration of the said period for all Signatories to the Agreement except for those Signatories who have accepted the Amendment as provided in above (a) on an earlier date or who have made reservations with regard to the entry into force of the Amendment for them.

2. (1) Rectification of the authentic text of the Annex to the Agreement, which is of purely formal character, shall be made by means of a Certification containing such Rectification.
(2) The Rectification shall be communicated to the Director-General, who shall circulate the Certification to the Signatories to the Agreement.

(3) Rectification shall come into force upon the date of expiration of the period specified in the Certification, provided no objection by a Signatory to the Agreement is made within the said period.

(4) No objection shall be made except for the grounds that the Certification contains editorial errors and/or the Rectification is not of a purely formal character.
AMENDMENT AND RECTIFICATION TO THE ANNEX TO THE AGREEMENT
Decision of (Date)

The following procedures of the Amendment to and the Rectification of the Annex to the Agreement on Trade in Civil Aircraft (hereinafter referred to as "the Agreement") have been accepted by the Committee on Trade in Civil Aircraft on (date).

1. (1) Amendment to the authentic text of the Annex to the Agreement resulting from negotiations under Article 8.3 or any other relevant Article of the Agreement, or any relevant Article of the General Agreement, shall be made by means of Protocol amending the Agreement on Trade in Civil Aircraft (hereinafter referred to as "the Protocol").

(2) The Protocol shall be deposited with Director-General who shall promptly furnish a certified copy thereof to the Signatories to the Agreement.

(3) The Protocol shall come into force for those Signatories to the Agreement who have deposited the instrument of acceptance with the Director-General.

2. (1) Rectification of the authentic text of the Annex to the Agreement, which is of purely formal character, shall be made by means of a Certification containing such Rectification.

(2) The Rectification shall be communicated to the Director-General, who shall circulate the Certification to the Signatories to the Agreement.

(3) Rectification shall come into force upon the date of expiration of the period specified in the Certification, provided no objection by a Signatory to the Agreement is made within the said period.

(4) No objection shall be made except for the grounds that the Certification contains editorial errors and/or the Rectification is not of a purely formal character.