

# GENERAL AGREEMENT ON

## TARIFFS AND TRADE

RESTRICTED

AIR/W/90

2 October 1992

Special Distribution

Committee on Trade in Civil Aircraft

Original: English

### US-EEC AGREEMENT CONCERNING THE APPLICATION OF THE GATT AGREEMENT ON TRADE IN CIVIL AIRCRAFT

#### Questions Submitted to the US and EC by the Delegation of Switzerland

Switzerland acknowledges the conclusion of a bilateral agreement between the EC and US and congratulates the parties to this agreement for the resolution of a long-lasting dispute. The Swiss Delegation is grateful for the full and comprehensive information on this agreement to the Committee. The Swiss Delegation welcomes the effort for a multilateralization of the bilateral agreement in the context of the GATT.

As agreed at the meeting held on 16 July 1992 the Swiss Delegation would like to raise the following questions:

#### 1. General questions

Switzerland assumes that any multilateralization of the bilateral EC/US agreement does not change the product coverage of the multilateral Civil Aircraft Agreement (Article 1) as well as the liberalized trade system (no customs duties and other charges, Article 2, and quantitative restrictions Article 5). Is this assumption correct?

Signatory/Party resp. signatories/Parties: there are different terms used throughout the bilateral agreement. Do the terms have different meanings? (e.g. Article 1: Parties, Interpretation ad. Article 4: signatories, Article 9: Parties).

#### 1. Article 1: government-directed procurement, mandatory sub-contracts and inducements

1. The interpretation of Article 4 of the multilateral Aircraft Agreement as contained in Annex I of the bilateral agreement reads "... must abstain from imposing preference policies". Could the term "preference policies" be clarified? What is the difference between this and the similar provision contained in the Draft Agreement on Government Procurement (Article III:3) which contains the following formulation: "Parties shall not enact nor maintain any law, regulation, procedure or practice, nor take any measures, which have the effect of directly or indirectly requiring or encouraging entities within their territories to act in a manner inconsistent with this Agreement"?

2. What is the meaning of the formulation of "one or more signatories"? (Annex 1, p.13, ad Article 4:2, paragraph 2).
3. Could the parties please illustrate the meaning of "government decisions concerning safety and environmental considerations"? How would the transcription to a multilateral agreement be constructed? (Annex 1, p.14, 2nd indent).
4. ad Article 4:3: What is the difference between the meaning of "supplier" and "vendor" as both terms are used within the same Article (Annex 1, p.14, paragraph 1).
5. Could the parties clarify what is meant by "government-mandated offsets"? (Annex 1, p.14, paragraph 2).
6. Are the principles enunciated under the interpretation of Article 4.3 valid for sub-contractors and suppliers? Please clarify the extension of the scope of Article 4.3 to mandatory sub-contracts.
7. What is the meaning of the sentence "signatories shall not therefore impose conditions requiring sub-contractors or suppliers to be of a particular national origin" in relation to the interpretation of Article 4:2, paragraph 1? Is there a difference in the interpretation of the non-discrimination principle?
8. Could the parties comment on the interpretation given to "access to business opportunities on a competitive basis", i.e. "any bid opportunities and to the evaluation of any competitive bids made." Is it correct, that "access to business opportunities" be defined as "any bid opportunity and evaluation of any competitive bid made"? (Annex 1, Article 4:3, paragraph 4).
9. Ad. Article 4:4 (p.15, paragraph 3 end): what is the scope of the formulation "in any other area which might affect the interest of the importing country"? Could the parties clarify the meaning of this particular formulation?
10. Ad Articles 4:2 and 4:4 (p.15): what is the scope of the "domestic political decision-making process"? Does it contain all levels of the policy-making process, at horizontal (legislative, executive level) and vertical (central, regional, communal) level? How is the concrete implementation of this provision foreseen in the bilateral relationship? What is the relation to Article 7 of the Civil Aircraft Code?

2. Article 2: Prior government commitments

1. How does the term "government support" relate to the definition of a subsidy as contained in the Draft Final Act MTN.TNC/W/FA page I.1? What is the difference between the two terms?

2. What is meant by "de minimis modifications"?
3. What are the exact criteria to define "firmly committed"? (contract basis?)
4. How should the definition of "large civil aircraft" as contained in Annex 2 be translated in a multilateral agreement?

3. Article 3: Production support

1. Does the term "production support" include research activities? (reference Annex 2: definitions)
2. Would any support, authorized under the Draft Subsidies Agreement of the Uruguay Round negotiations (e.g. regional development) be prohibited under this provision? The same question relates to Article 4 (development support). How would any support be authorized under the Draft Subsidies Agreement of the Uruguay Round negotiations be treated under the present Agreement?

4. Article 4: Development support

1. Article 4:1 refers in general to the "development of large civil aircraft programmes". Please specify what elements are normally included in such programmes. Does the programme include, for example, all steps from research and development to marketing of the product?
  2. Does Article 4:1 cover direct and indirect government support?
  3. What is meant by "conservative assumptions"? (Article 4:1)
  4. Please clarify the criteria for the use of the terms "critical" and "reasonable expectation". (Article 4:1)
  5. Increase of interest rate on royalty payment (tranche 2): what does 1 per cent mean? is it 1 per cent of the interest rate or an increase of 1 percentage point? (Article 4:2)
  6. How does the definition of "total development costs" (Article 4:2 reference in Annex II) relate to the definition in Article 6:2 of the Civil Aircraft Code?
  7. What is meant by "aggregate payments"? (Article 4:3a and b)
5. Article 5: Indirect support
1. "unfair advantage upon manufacturers": how is this provision to be interpreted in the light of the specificity concept contained in the Draft Agreement on Subsidies (MTN.TNC/W/FA, P.I.2)? What is the definition of "manufacturers"? Is this the whole branch or may it be specific manufacturers?

2. Results of R&D have to be made available on a non-discriminatory basis to large civil aircraft manufacturers of the Parties. Please confirm our understanding that any multilateralization of this provision will be on a non-discriminatory basis for all Signatories.

3. What is the meaning of "early access to ... the results of such research"?

6. Article 6: General purpose loans

Who decides on the consistency with the Large Aircraft Sector Understanding of the OECD Understanding on Official Export Financing? How would a multilateralization of this provision function concerning non-OECD members?

7. Article 8: Transparency

An extension of the transparency provisions within the framework of a multilateral agreement is useful. Nevertheless, further work is needed in order to find a balanced result between transparency requirements, confidentiality of business data and degree of detailed information necessary to achieve greater transparency. The exchange of information and the notification process through the Committee has to be discussed.

8. Article 9: Exceptional circumstances

1. According to paragraph 9:1, temporary deviations from the disciplines may be tolerated, if the financial viability of the company is put in jeopardy, paragraph 9.3(b) obliges the Party that specific measures shall be designed to return as quickly as possible to "commercial viability". What is the difference in the concepts of the terms "financial viability" and "commercial viability"?

2. Is it correct that there is no maximum duration of specific measures taken under Article 9?

3. Specific measures taken by a Party shall take due account of the possible implications for other manufacturers. How is the term "possible implications" to be interpreted? Usual Code language (Civil Aircraft Code and Subsidies Code) reads "adverse effect on"? Could you please explain the difference in coverage of the two terms?

4. A multilateralization of a provision concerning exceptional circumstances needs to specify exact and strong disciplines for derogations. The draft Understanding on Article XXV of the Draft Final Act may be a basis for further discussions.

9. Article 10: Avoidance of trade conflicts and litigation

In the light of the ongoing discussion concerning the improvements of the Dispute Settlement System of the GATT and the work which has been achieved during the Uruguay Round Negotiations, discussion should clarify the relationship between the Civil Aircraft Code and the development of an Integrated Dispute Settlement System. The Swiss Delegation does not raise any question on this issue at this time and will revert to it in the context of the Committee process.

10. Concluding remarks

Switzerland appreciates the initiation of the clarification process which will eventually contribute to the strengthening of the GATT rules. Nevertheless, it will be of crucial importance to ensure a proper integration of the Multilateral Agreement on Trade in Civil Aircraft into the GATT, taking into account the institutional aspects resulting from the Uruguay Round negotiations. Switzerland reserves the right to put forward additional questions in the course of further discussions.