

TARIFFS AND TRADE

Special distribution

Committee on Trade in Civil Aircraft

MINUTES OF THE SPECIAL MEETING
HELD IN THE CENTRE WILLIAM RAPPARD
ON 19 AND 20 MARCH 1987

Chairman: Mr. Ch. Manhusen (Sweden)

Request for Review of Articles 4 and 6 (AIR/W/63)

1. The Chairman said that as indicated in the airgram of 2 March 1987 (GATT/AIR/2387) this meeting had been called at the request of the United States under the provisions of Article 8.7 of the Agreement. The agenda therefore carried only one item for which document AIR/W/62 had been circulated. He was advised that intensive informal consultations were taking place; to facilitate their completion he adjourned the meeting. On reconvening the meeting the Chairman asked the United States to introduce its request for review by the Committee of the matter referred to in its submission in document AIR/W/62.

2. The representative of the United States said his delegation had called this special meeting under Article 8.7 of the Aircraft Agreement because it believed that Articles 4 and 6 were in urgent need of clarification. Normally in GATT processes, where there might be disagreements with respect to the nature of obligations imposed by GATT agreements, interpretation of the provisions in question could be provided through either a dispute settlement proceeding or through a process of consultation and collaboration. It was certainly the United States' position that, when difficulties arose, a process of dialogue was a far preferable mode of operation than a process of adjudication. There had been questions raised as to why the United States had invoked Article 8.7 of the Agreement. The United States preferred amicable solutions to its differences with its trading partners. His understanding was that Article 8.7 was to be used as a dispute avoidance mechanism. He had understood that this provision was meant to be used to avert potential crises among Signatories. The United States believed that there was indeed a potential crisis at hand. It wanted to avert such a crisis and wished to do it rapidly and co-operatively within the Committee. In its communication to the Committee (AIR/W/62), the United States had set forth its views of how Articles 4 and 6 of the Agreement should be interpreted and would like the Committee to pursue this matter expeditiously. His delegation preferred to continue discussing this matter under Article 8.7 but was also willing to consider discussing it on some other basis as long as it was done in a way that effectively addressed the US concern about the urgent need to clarify Articles 4 and 6.

3. The representative of the EEC said that if he understood the United States position correctly, it desired that the Committee attempt to clarify, to the extent possible, Articles 4 and 6 of the Agreement. While the EEC considered that Article 8.7 was not the appropriate provision for conducting such a discussion, the EEC was willing to pursue this matter expeditiously in the Committee but would suggest that this be done on some other basis.

4. In light of the statements made, the Chairman suggested that the Committee recess briefly to allow him time to consult with delegations further on the matter.

5. After reconvening the meeting, the Chairman said that following consultations between himself and interested delegations, he understood that the United States had decided not to pursue the present request under Article 8.7 of the Agreement and therefore had replaced its paper of 25 February 1987 with a new proposal - AIR/W/63. This United States initiative and its acceptance by members of the Committee was without prejudice to the rights of Signatories to the Agreement. He now reconvened the Committee on his own initiative and it was his understanding that all Signatories were willing to continue discussions on the matter of interpretation of Articles 4 and 6 on that basis. He invited the United States delegation to present its new proposal.

6. The representative of the United States said his delegation appreciated the Chairman's initiative in convening this meeting. The United States' interpretation of Articles 4 and 6, contained in document AIR/W/63, was self-explanatory. He hoped that it represented a basis on which Articles 4 and 6 could be interpreted. This was a matter that concerned all Signatories. In viewing this document he wished to make several general introductory observations.

7. The United States believed that provisions of the Agreement and its major articles, particularly Articles 4 and 6, should be read as a whole, with the objective of making the document work coherently. While his delegation fully recognized that the Agreement, like all international agreements, was a negotiated document, he felt that after seven years of attempting to apply its provisions, there was room for providing greater precision to Articles 4 and 6 without in any way changing the basic obligations contained therein.

8. The United States believed that the paramount requirement of Article 4 was stated in 4.1: "Purchases of civil aircraft should be free to select suppliers on the basis of commercial and technological factors." While it was true that Article 4.2 forbade "unreasonable" pressure by governments upon civil aircraft purchasers, it was difficult to conceive of more than a very few types of such pressure that might deserve to be called "unreasonable". This adjective "unreasonable" should be read in light of the overall goal of liberalizing aircraft trade, perhaps through a presumption that any proven form of pressure was unreasonable until shown otherwise. His delegation remained open to comments and suggestions on this question.

9. Article 4.4 of the Agreement forbade "attaching inducements of any kind" to civil aircraft sales "which would create discrimination against (other) suppliers". This language appeared straightforward but gave rise to a number of questions.

10. The Agreement established an international framework specific to the civil aircraft sector although the Subsidies Code laid the foundations for disciplines governing civil aircraft supports. Much of the previous discussion in the Committee had been centred on Articles 6.1 of the Agreement which should be read in conjunction with Article 6.2. Article 6.2 stated that the "pricing of civil aircraft should be based on a reasonable expectation of recoupment of all costs". Unless this language was taken into account, the meaning of 6.1 could not be fully appreciated. Interpretations of Article 6 which did not fully consider Article 6.2 rendered that provision meaningless which could not have been the intention of Signatories. The test for determining whether a particular government support was inconsistent with Article 6 should be whether, at the time of providing government assistance (which presumably was at the launch of an aircraft, the point of greatest government involvement), there was a reasonable expectation that all direct and indirect costs would be recovered. Under this approach, models that could not reasonably be expected to recover their full costs should not receive any type of government support, whether through grants, loans or equity investments. This approach emphasized the importance of commercial considerations at the time of launch, and also recognized that government support for any new aircraft that lacked commercial prospects adversely affected trade in civil aircraft.

11. This proposed interpretation of Article 6 would preclude government supports not consistent with commercial considerations. In his delegation's view, to be consistent with commercial considerations, broadly speaking, government supports would have to be based upon recognized commercial lending practices or be comparable to commercially sound equity investment practices. In the first instance (lending practices) repayment of both principal and interest should be assured and required to be made on a timely basis. In the second instance (equity investments) cash infusions should be deemed inconsistent with commercial considerations if private investment had not or would not be made on comparable terms.

12. As for the adverse effects test of Article 6.1, consideration should be given, inter alia, to impacts on market share, prices and profits. In looking at effects on market shares to determine adverse effects, it should be borne in mind that the "market" for a particular aircraft type was limited by demand factors to relatively narrow segments of the broad category known as "commercial aircraft". Therefore, the question of whether existing or new models had or would have adverse effects, should be considered with reference to the market segments in which those planes actually competed, and not with reference to all commercial aircraft. The effect of a support for a particular commercial aircraft would normally be greater on the specific sector in which that aircraft operated than on the commercial aircraft market in general.

13. In order to effectuate the substantive provisions of Article 6 it was also necessary to provide meaningful transparency commensurate with the Agreement's objectives. The Agreement addressed notification and disclosure of measures affecting civil aircraft trade, including non-recoupable government supports. The Preamble of the Aircraft Agreement expressly mentioned surveillance of Signatories' conduct:

"seeking to eliminate adverse effects on trade in civil aircraft resulting from governmental support in civil aircraft development, production and marketing ...

"Recognizing the need to provide for international notification, consultation, surveillance and dispute settlement procedures with a view to ensuring a fair, prompt and effective enforcement of the provisions of this Agreement and to maintain the balance of rights and obligations among them;"

14. In addition to the Preamble the heading of Article 8 explicitly mentioned surveillance, although surveillance procedures were not detailed in that Article. Therefore, in the spirit of these provisions the United States was tabling a procedure that would give full effect to the requirements of Article 6 on a timely basis. The proposed procedure was one which would ensure that the best information on a support practice was available regularly and quickly. Quite clearly a Signatory ought not to be required to present a full case as to the existence and unfair effects of a benefit before the Signatory possessing the most complete information about that practice was required to disclose the facts.

15. His delegation wished to have a reaction to the views of the United States as to how Articles 4 and 6 should be interpreted as contained in the United States document circulated to the Committee.

16. The representative of the EEC said that his delegation did not at this stage intend to discuss in detail the US interpretation of Articles 4 and 6, all the more so as these interpretations were now submitted in a new context. The basic debate was about the operation of the Agreement as it had been negotiated in 1979 and as it was in force in 1987. There seemed to be divergent opinions on this.

17. The 1979 negotiation had been carried out in the spirit of the Tokyo Round to expand and liberalize world trade. That spirit had been reflected in the Preamble of the Aircraft Agreement i.e. to ensure maximum freedom of world trade in civil aircraft, which included the elimination of customs tariffs as well as the reduction or elimination to the fullest extent possible of trade restricting or distorting effects; to encourage the continued technological development on a world-wide basis; and to provide fair and equal competitive opportunities to Signatories' aircraft industries so that they could participate in the expansion of the world civil aircraft market. In the context of these aims the Preamble stressed the special factors which applied in the aircraft sector, which was an important component of economic and industrial policy. It further noted that the relation between states and their aircraft industry varied from

one Signatory to the other. While one of the objectives stated in the Preamble was to eliminate adverse effects resulting from government supports in civil aircraft, the support itself was not deemed to be a distortion of trade.

18. Looking at seven years of operation of the Agreement it was clear that important progress had been made toward realizing these objectives. One of the aims, competitive opportunities for civil aircraft, had been to eliminate the customs duties that had existed in civil aircraft, a task for which the Technical Sub-Committee had greatly contributed. The expansion of the world civil aircraft market had also taken place in the years 1980-1987, benefitting all manufacturers. Yearly growth of air traffic had averaged more than 3 per cent and peaked at 8 per cent in 1985; this had led to increased civil aircraft order and the prospect in this market remained very good. Technological progress had also been achieved in avionics and in the development of new engines. The Agreement had contributed to this progress by eliminating obstacles to trade. A look at market shares between 1979 and 1987 for large commercial aircraft provided a good assessment of the operation of the Agreement. Orders received (excluding general aviation and commuter aircraft) had been as follows: for European industry 1979: 20.7 per cent, 1986: 22 per cent. For the United States industry 1979: 70 per cent, 1986: 68 per cent (with a peak at 86 per cent in 1982).

19. In terms of value of total sales on the world market the figures were even more significant: for European industry 1979: 24.7 per cent and 1986: 17.7 per cent, for the United States industry 1979: 66 per cent, 1986: 78 per cent (with a peak of 93 per cent in 1982).

20. The European civil aircraft industry was competing to obtain and maintain an economically and technologically vital share of the world civil aircraft market. It had started under unfavourable circumstances in the postwar years and had had to compete with well-established dominant suppliers. To do so it had had recourse to numerous international and intercontinental co-operations. He concluded that the operation of the Agreement since 1980 had been satisfactory and had respected the careful balances that had been achieved in 1979.

21. The United States was submitting its request for review of Articles 4 and 6 in a new context and he repeated that the EEC was prepared to examine it carefully in the light of this new context.

22. The representative of Canada said that he was pleased to see that a process of dialogue has been engaged involving all Signatories. His delegation was sympathetic to proposals to broaden and improve the Agreement and prepared to participate in a process aimed at agreed interpretation of the Agreement as negotiated, or the negotiating of improvements to the Agreement, whether through new provisions or interpretations of current provisions, including Articles 4 and 6. With reference to document AIR/W/63, he did have some preliminary comments to make. His delegation strongly supported the objectives of Article 4. The United States communication in this regard appeared generally reasonable, but the high degree of detail and the use of more restrictive

language went beyond the text of the Agreement. With regard to Article 6 the US communication clearly went beyond pure interpretation of the existing text of the Agreement. For example, AIR/W/63 stated "Article 6 obliges Signatories to avoid the use of subsidies for civil aircraft programmes", which Article 6.1 of the Agreement stipulated that Signatories "affirm that in their participation in or support of civil aircraft programmes they shall seek to avoid adverse effects on trade in civil aircraft." The US proposal seemed to propose a higher level of obligation. This was something his delegation was prepared to discuss. The reference in AIR/W/63 to "terms and conditions no more favourable than those available at the time from commercial financial sources" raised the issue, for example in the case of government loans, of the appropriate benchmark in measuring subsidies, an issue for which there had not yet been a consensus in the Subsidies Committee. Furthermore, the US interpretation did not seem to recognize that the high risk factor and relatively large size of budgets required for the development of new aircraft could, in most countries, preclude purely or exclusively commercial financial sources. Finally, the US interpretation with respect to notification and transparency seemed ambitious. In his delegation's view, details of military and space budgets would need to be reported since potential spin-off benefits to the civil aircraft sector certainly existed. Restricting transparency to civil aircraft programmes only could produce an uneven balance of obligations. Finally, he stressed that Canada was prepared to participate in a process to examine these proposals and other proposals relating to improvements to the Agreement.

23. The representative of Japan stressed the importance his Government attached to the Agreement which had provided the international civil aircraft community with a unique and favourable business environment by setting ground rules for achieving maximum freedom of trade. He noted that the US delegation wanted clarification of Articles 4 and 6 and his Government was prepared to participate in the discussions. He pointed out that the Preamble stated that the Agreement was designed to provide Signatories with fair and equal competitive opportunities for civil aircraft activities, and for their producers to participate in the expansion of the world civil aircraft market. He believed that this aim has been substantially materialized, especially if one looked at the business world in which international co-operation was progressing very rapidly. Intercontinental co-operation, mentioned by the EEC, was an important development in which Japan participated. International collaboration at the manufacturers' and business level was reducing the adequacy and need for political conflict. These developments, which were positive, should be borne in mind when working on the clarification of the provisions of the Agreement.

24. The representative of Sweden said that the Nordic countries (Sweden and Norway) were in principle in favour of increased transparency and improved disciplines on both government-directed procurement and government supports in the civil aircraft sector. Thus, they welcomed initiatives in this field but felt that such initiatives dealing with the general functioning of the Agreement should best be handled within the regular framework of the Civil Aircraft Committee.

25. The text in AIR/W/63 was not altogether transparent; the Nordic countries would have to analyse its content and implications carefully before giving a more detailed opinion. However, it did appear that some of the interpretations suggested went far beyond the present wording of the Agreement and would therefore have to be subject to negotiations. It was not something which could be handled under Article 8.7. There were many examples of language that implied a strengthening of the Code; for instance under Article 4.2 Signatories shall not exert "unreasonable pressures". The Nordic countries agreed that the word "unreasonable" could and indeed did give rise to differing opinions. However, deleting it altogether and prohibiting all kinds of pressures undoubtedly restricted the Code language.

26. Another example concerned the language in Article 4.4; in the Agreement Signatories "agreed to avoid" discriminatory inducements. The US text was generally stronger and expressly prohibited certain inducements. With regard to Article 6 the suggested language was also considerably stronger and introduced a new notification requirement. However, the text in itself was not altogether transparent. The Nordic spokesman wondered what for example the implications of the examples given under the interpretation of Article 6.2 were, as compared to the wording of the Article itself. The interpretation seemed more sweeping and general than Article 6.2 itself. He also asked what the omission of military research costs meant in this context.

27. The Nordic Signatories felt that the suggested text confused the interpretation of the Agreement. In order to start a constructive discussion on these matters, a more analytical background paper dealing with perceived inadequacies in the Agreement would provide a better basis for discussion. Finally, although certainly not rejecting further discussions on the matter, the Nordic Signatories felt that the issues on the table should not be dealt with hastily. They were of significance to the negotiated balance of the Agreement.

28. The representative of Switzerland said that his delegation appreciated the possibility of dialogue between all Signatories. Regarding the content of document AIR/W/63 he said that Switzerland, like other delegations, would examine it carefully. At this stage he could say that Switzerland would join any consensus to examine and review the Agreement. An interpretation of its provisions would have to be considered not only for its impact on the Agreement itself but also in the general context of GATT and would have to take into account the different positions of Signatories. Finally, he reserved his delegation's position with regard to the work that should be undertaken in the Committee.

29. The representative of the EEC said that his delegation had not yet analysed the United States suggested interpretation of Articles 4 and 6. The EEC shared certain views expressed but felt that the United States had gone beyond the text and spirit of the Agreement and had disregarded the carefully balanced language in Articles 4 and 6. For instance in Article 4 the United States proposed to prohibit any intervention at governmental level in the sale of civil aircraft; this disregarded the

