

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Special Distribution

Agreement on Trade in Civil Aircraft

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REQUEST FOR REVIEW ARTICLE 8.7 OF THE AGREEMENT

The following communication, dated 20 February 1987, has been received by the Chairman of the Committee from the Permanent Mission of the United States.

The United States requests an immediate meeting of the Committee on Trade in Civil Aircraft, in accordance with the provisions of Article 8.7 of the Agreement on Trade in Civil Aircraft. The United States considers that its trade interests in civil aircraft manufacture have been or are likely to be adversely affected by actions of certain Signatories to the Agreement, including but not necessarily limited to the Governments of the Federal Republic of Germany, France, Spain, and the United Kingdom, and the Commission of the European Communities. The United States believes those actions with regard to the development, production, and marketing of aircraft produced by the Airbus Industrie Consortium are inconsistent with the obligations of Signatories under Articles 4 and 6 of the Agreement. Therefore, the United States requests that the Committee convene a meeting within thirty days of today's date, to review the matter with a view to resolving the issues involved as promptly as possible. Our preference would be to schedule the meeting for March 5 and 6, 1987. I have reason to believe that Signatories will find this timing acceptable.

All Signatories to the Agreement share a common interest in ensuring that aircraft sales and component vendor procurement decisions are made on the basis of commercial and technological factors and in ensuring that Signatories' governmental supports in the aircraft sector do not cause adverse affects to the trade of other Signatories.

To facilitate the Committee's review and to aid Signatories in understanding the U.S. position with respect to the application of Articles 4 and 6 of the Agreement to this matter, the attached communication is submitted for circulation to all Signatories. It represents our understanding of the intent of Articles 4 and 6 of the Agreement. We believe other Signatories share these views and trust they will so indicate at the meeting.

This request is without prejudice to the rights of the United States under the provisions of the General Agreement and the Agreement on Trade in Civil Aircraft.

Communication from the United States on Articles 4 and 6
of the Agreement on Trade in Civil Aircraft

APPLICATION OF ARTICLES 4.1 AND 4.2 OF THE AGREEMENT
ON TRADE IN CIVIL AIRCRAFT

Articles 4.1 and 4.2 of the Agreement require Signatories to avoid intervention or pressure, express or implicit, in airline procurement decisions, including pressure on airlines, aircraft manufacturers, or other entities to procure civil aircraft from a particular source; and require that competitive price, quality and delivery terms be the criteria on which purchase of products covered by the Agreement should be made. It should be clear that these principles apply to the purchase of aircraft by the domestic and international airlines of individual Signatory countries, as well as to the purchase of aircraft by airlines in other countries.

Signatories are not to intervene with the purchasing decisions of airlines of their country nor with airlines of other countries, nor seek other governments to intervene directly or indirectly.

It also should be clear that Signatories may not engage in or use pressure, buy-national preferences or other factors to influence or direct procurement decisions in commercial aircraft competitions.

APPLICATION OF ARTICLE 4.3 OF THE AGREEMENT ON TRADE
IN CIVIL AIRCRAFT

Article 4 obliges Signatories not to require airlines, aircraft manufacturers, or other entities engaged in the purchase of civil aircraft, engines and parts to purchase from any particular source in a way that would adversely affect the trade interests of any other Signatory, or discriminate against vendors of any other Signatory; nor to exert direct or indirect governmental pressure on airlines, aircraft manufacturers and other purchasers of civil aircraft, parts and components to influence their purchase decisions; and, to allow the purchase of civil aircraft, parts and components to be made only on a competitive price, quality and delivery basis.

Signatories must recognize that Article 4.3 provides a limited exception to the general principles stated above. Such exception provides that, with regard to awarding or approval of procurement contracts for products covered by the Agreement, a Signatory may

require that its qualified firms be given access to business opportunities on a competitive basis and on terms at least equivalent to those given qualified firms of other Signatories.

Signatories must recognize that efforts to intervene, directly or indirectly, to obtain favored treatment favoring or disfavoring particular firms are forbidden and they may not interfere in the selection of vendors.

Article 4.3 provides that Signatories may not require vendors of other Signatories to enter into joint ventures, licensing arrangements, or other forms of industrial compensation outside the vendors' own countries as a prerequisite for bidding for, or award of, contracts. In addition, Signatories should not dictate conditions for participation by vendors in civil aircraft programs, such as requiring that subcontractors or suppliers be of a particular national origin.

APPLICATION OF ARTICLE 4.4 OF THE AGREEMENT ON TRADE IN CIVIL AIRCRAFT

Article 4.4 of the Agreement requires Signatories to avoid the use of any inducements, express or implicit, including political or economic, to affect the sale of civil aircraft. Prohibited inducements include, but are not limited to, linkage to sales of civil aircraft of: landing rights, route rights, bilateral development assistance, grant aid, import policies in unrelated sectors, infrastructure financing, policies on alien workers, debt rescheduling, or government barter arrangements. In accordance with the Agreement, Signatories will resist requests for such linkage by procuring entities or their governments, when such requests are a condition for purchase of civil aircraft, engines or parts.

Signatories should restrict their support of aircraft sales to noting with the purchasing airline and its government that a sale was about to take place and urging that the decision be made on commercial and technological factors.

Signatories should avoid even the appearance of having attached an inducement to influence the sale of civil aircraft. They should also take reasonable measures to ensure the observance of Article 4.4 by the regional and local governments and authorities within their territories.

APPLICATION OF ARTICLE 6 OF THE AGREEMENT ON TRADE IN
CIVIL AIRCRAFT

Article 6 obliges Signatories to avoid the use of subsidies for civil aircraft programs and to notify those subsidies that are given. Article 6.1 is a commitment by the Signatories to avoid causing adverse effects upon trade in civil aircraft through their participation in, or support of, civil aircraft programs. Article 6.2 obliges Signatories to assume certain responsibilities for the conduct of civil aircraft programs in which they participate or provide support. Those obligations are with respect to the pricing of the affected products and, by implication, also with respect to launch of new aircraft products. Article 6.2 requires that pricing and launch of civil aircraft be in accordance with normal commercial considerations, including cost recovery and financing. (Factors to be assessed in evaluating whether governments are in conformity with their obligations include generalized industry cost data, published market projections and available pricing data.)

While Article 6.1 recognizes the special factors that may apply in the aircraft sector, including the national security of Signatories, those factors do not legitimize otherwise proscribed subsidies. Taken together, the provisions of Article 6 amount to a commitment to participate in or provide support to civil aircraft programs only on the basis of commercial considerations. In order to give effect to these understandings, Signatories must avoid participation in or support of civil aircraft programs on other than a commercial basis, that is, under terms and conditions no more favorable than those available at the time from commercial financial sources. Moreover, no further supports should be provided for current civil aircraft programs unless they also are in full conformity with commercial considerations.

To demonstrate compliance with Article 6, Signatories should provide full transparency of all their participations in and supports of civil aircraft programs, direct and indirect. Such transparency should entail written disclosure of each such activity to other Signatories (and to the public, though sensitive business information may be provided to Signatories only, without public disclosure). Past, present and future participations and supports including direct funding, equity infusions, loans, guarantees, interest subsidies, etc., if any, should all be encompassed. Disclosure should be timely, i.e., within 30 days on all past participations/supports and at time of commitment on all future participations/supports, and should include the dates and amounts of each funding, its terms and conditions, and the amounts of recoupment planned and received. Upon request, each Signatory should discuss with other Signatories the basis on which it decided to provide these participations and supports.