

WORLD TRADE ORGANIZATION

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Committee on Trade in Civil Aircraft

MINUTES OF THE MEETING HELD ON 12 NOVEMBER 2003

Chairperson: Mr. Didier Chambovey

1. The Committee on Trade in Civil Aircraft (the "Committee") held a regular meeting on 12 November 2003.
2. The representative of the United States informed the Committee that he would raise a question concerning Article 9 under "Other Business".
3. The Committee adopted the following agenda:

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- A. CONSIDERATION OF THE STATUS OF THE 1979 AGREEMENT ON TRADE IN CIVIL AIRCRAFT UNDER THE WTO

4. The Chairperson recalled that in April 1999 he had sent to Signatories a draft protocol concerning technical rectifications needed to bring the Agreement on Trade in Civil Aircraft into the WTO framework. Since then, certain Signatories had remained unable to adopt this draft protocol but had indicated the utility of continuing to revert to this item in the Committee. The Chairperson thus asked Signatories whether there had been any new developments.

5. The representative of the United States recalled that the matter of rectification and the Chair's proposal on this issue had been on the table for approximately four years. This exercise was in line with the agreement in the Committee to have a technical rectification and updating of the Agreement

without addressing any substantive changes. As stated in the past, his delegation considered that the Chairperson's proposal was generally acceptable. It wished to note a relatively small technical concern relating to the manner in which this rectification might possibly change the relationships between various agreements of the WTO. He suggested that this could be resolved with language similar to the language inserted in the Protocol updating the Product Coverage Annex some two years ago.

6. He further renewed his request that whatever proposals other Signatories could have with regard to changing the language, such proposals should be put in writing or presented orally in the Committee in order for those concerns to be addressed and for the matter to be resolved. He indicated that his delegation was of course available to discuss matters bilaterally as well.

7. The delegate of the European Communities reiterated his delegation's interest in finding a solution and its willingness to discuss the issue with the United States.

8. The Chairperson encouraged Signatories to talk to each other on this issue and to try to find a mutually agreeable solution. He considered that the main issues and the main problems had been identified and that it appeared that certain Signatories would at least try to find an appropriate date to get together to address the issue. He reiterated his willingness to hold consultations if Signatories so desired.

9. The Committee took note of the statements made and agreed to revert to this matter at its next regular meeting.

B. "END-USE" CUSTOMS ADMINISTRATION

1. Updating information regarding civil/military identification for customs purposes

10. The Chairperson noted that no new information had been received from Signatories since the last regular meeting of the Committee.

2. Military vs. Non-military Definition

11. The Chairperson recalled that Canada had made a proposal concerning the definition of civil aircraft for the purposes of the Agreement which was circulated in document TCA/W/4. He recalled that at the November 2002 meeting of the Committee, Canada had circulated as a room document a revised wording of its proposal and that at the spring meeting of the Committee, Signatories had agreed to revert to this item.

12. The representative of Canada stated that at the last meeting his delegation had received several questions concerning its idea to develop a better definition of civil aircraft for the Agreement, which would reflect the basic design and manufacture of the aircraft and would be independent of the user. One question his delegation had received concerned planes that were originally certified as civilian but had later been adapted for military use. His delegation agreed that it could occur that an aircraft originally certified as civilian was adapted later on for military use and that Canada's suggested approach could initially include military aircraft that had been historically excluded from the Agreement. He stated that this issue would need to be addressed with more precision in order to minimize unintended effects. It had been suggested that this problem could be overcome through a certificate that would be issued by the importing country based on the final use of an aircraft without any reference to the initial manufacture of the aircraft. It seemed that a civilian plane converted to military use would therefore have no need for a certificate or would not be subject to the Agreement.

13. His delegation was ready to look at such an idea more closely but had some concerns about this approach. He considered that the problem with this arrangement was that when military entities purchase aircraft that are legitimately civil or even dual use, such as executive transport, water bombers, helicopters, cargo planes etc. Signatories would still not benefit from the provisions of the Agreement that would require the purchase of aircraft to be on a competitive price, quality and delivery basis.

14. He considered that the central problem with the current Agreement was that the benefits of the Agreement were not applied to purchases of all civil aircraft, and therefore, in his view, any new method for classifying an aircraft as "civil" should ensure that this happened. He was of the view that, rather than excluding certain aircraft upfront, because of the absence of a certificate, it would be preferable from a trade perspective to exclude military aircraft through other methods, such as a national security exception, if necessary. Canada would continue to think about this issue and he hoped that the Committee could revert to this issue again at the next meeting.

15. The representative of the European Communities considered that it would be useful if the delegate of Canada could provide the explanation in writing since that would be helpful in addressing the issue. In his view, the Canadian explanation contributed to answering part of the first question that his delegation had raised at the last meeting, i.e., how the Canadian proposal would address the question of military use or adaptation. Another question his delegation would like to see addressed by the delegation of Canada was the question of how this new proposal would be integrated in the Agreement, and how it would interplay with the Agreement on Government Procurement and with the basic GATT rules.

16. The delegate of the United States recalled that his delegation was generally supportive of this initiative and agreed with the approach of having things categorized as civil aircraft through certification by authorities, pretty much the way this was being done in the United States at present. However, his delegation also noted, as did other delegations, that there were certain problems in terms of circularity of the definition. He recalled that currently the definition provided that things that were not purchased by military entities which had been notified were considered civilian. This would imply that things that were certified by civilian authorities were civilian. He wondered however what that central characteristic was and how this would work operationally. He further recalled that since this would be a substantive change, some textual change to the Agreement itself was required to accomplish this. He considered that without a rectified agreement or the prospect of such a rectification in the near future, it would be difficult to carry this out. Nevertheless, he considered it useful to continue discussing the matter in the Committee and to try to move this along as was done with ground maintenance simulators in respect of which Signatories informally agreed to accord to their best ability duty-free treatment, even though it was not formally part of the Agreement.

17. He then referred to Canada's specific answer at the meeting concerning excluding essentially civilian aircraft used for military purposes through some national security exception. His delegation had some problems with this idea, as it considered that the matter should be handled in a definitional sense rather than on an ad hoc basis.

18. The representative of Japan considered that the explanations provided by the Canadian delegation gave some food for thought about the circumstances in which the certificates would be given to civilian aircraft and the relationship between this process and the definition of civil aircraft or what should be regarded as military use. In his delegation's view, this was a very substantive issue on which it needed to reflect further. He agreed with the delegate of the European Communities that it would be appreciated if the Canadian delegation could provide a written version of the explanations given at the meeting.

19. The delegate of Canada promised to provide a written version of his delegation's intervention to those Signatories interested. He agreed with the United States that there was a link between the matter raised by Canada concerning the definition of civil aircraft and the technical rectification exercise and that it would be helpful if there could be some progress on the latter issue so that Signatories would be able to address the matter raised by Canada and the concerns expressed by other delegations on this question as part of that process.

20. The Committee took note of the statements made and agreed to revert to the matter at its next regular meeting.

C. MATTERS CONCERNING IMPROVED OPERATION OF ARTICLE 4

21. The delegate of the United States informed the Committee that the United States government continued to be concerned about the allegations of inducements and other activities covered by Article 4 of the Agreement concerning the sale of civil aircraft. He recalled that he made such concerns known to Signatories at the last meeting of the Committee and that at that time he had also suggested discussing at this meeting ways to avoid the appearance of actions inconsistent with Article 4 and how best to quickly resolve allegations that were false. Upon good recommendation of the Committee Chairperson, his delegation had drafted a short outline of some of the relevant issues in order to help structure the discussion. This document was available in the back of the room. It only intended to facilitate discussion in the Committee and among Signatories as well as within Signatories, including the United States. He stated that because of the importance attached by the United States to full compliance with all the provisions of this Agreement, and in particular compliance with the Agreement's prohibitions on inducements, his delegation welcomed any further discussion on this issue.

22. The representative of the United States affirmed that the United States did not exert unreasonable pressure on foreign governments or airlines concerning civil aircraft purchases and did not engage in inducements, or made positive or negative linkages to other government actions, consistent with its obligations. He expressed the hope that all Signatories would adopt a similar attitude and that the governments of the purchasers of civil aircraft would also resist any representations inconsistent with Article 4 of the Agreement.

23. The delegate of the United States then summarized the United States paper. He noted that the first section of the United States paper described the objective of the paper which he just reviewed verbally with the Committee. The second section of the paper reviewed the Article 4 provisions of the Agreement and sought to provide some of the historical objectives of including this language in the Agreement. This section also identified some of the consequences of inducements for both the buyers and the sellers involved in the transaction. It noted that inducements were disfavoured under the Agreement because they skewed purchasing decisions to reflect considerations other than the commercial and technological factors. Inducements could have negative consequences because they gave a higher priority to potential positive or negative government activities outside the sale than to the pure commercial interests of the buyer and the seller within the sale. The paper further recalled that both the buyers and the sellers of aircraft could be harmed by activities that could be inconsistent with Article 4. Such behaviour could also lead to recriminations by the parties not selected in the competition and to a possible deterioration of political or economic relationships among interested parties.

24. The representative of the United States then explained that "inducements" was not a fully defined term under the Agreement. Over the years the lack of a detailed definition had proven to be a source of difficulty in the implementation of the Agreement. The United States and the European Communities had in the past attempted to clarify the concept of inducements, and more broadly the

provisions of Article 4, but such proposals had not been adopted by all Signatories. Appendix A of the United States' document provided further information on this bilateral effort.

25. The delegate of the United States recalled that a number of discussions had taken place in the past in the Committee regarding actions that may have been inconsistent with Article 4, including inducements, but efforts to resolve those concerns through these discussions had not been effective. Therefore, the United States was proposing that the Committee would seek to identify which factors could facilitate the effectiveness of Article 4 and to discuss specific suggestions for improving its operation. In order to facilitate discussion in the Committee, the United States had offered one way the Committee might do this. While recognizing that the Agreement did have consultation provisions, he stated that perhaps one way to improve the operation of the Agreement could be to improve communication between the parties by creating more effective mechanisms for exchanging information and addressing concerns. Instead of making accusations in the press, or in other fora, Signatories could agree to provide timely and factual clarifications about their actions when questions arose. He added that this information exchange could take place directly between Signatories, perhaps via designated contact points for each Signatory. Another option would be for the exchange to take place indirectly, perhaps through a neutral third party such as the Chairperson of the Committee who would facilitate the information exchange. He considered that this could assist the transparency and the effectiveness of the exchange of information as well as to provide the Committee itself with further information on the operation of the Agreement's Article 4 provisions. Representatives of procuring entities, particularly if they were Signatories to the Agreement, should perhaps also be co-participants in this communication since these matters would affect them as well as the competing sellers. Finally, he stated that Signatories might consider developing common principles or factors that may assist in evaluating the information exchanged.

26. The delegate of the European Communities noted that at this stage his delegation could only make some general comments. The European Communities shared the United States' concerns about incidents of inducement, and was therefore in principle not opposed to setting up some kind of early warning system which would allow Signatories to express concerns in cases of suspected inducement. While open to the idea in principle, the European Communities was of the view that such a mechanism would have to provide added value to existing possibilities to address such issues inside or outside the Agreement. The delegate of the European Communities stated that his delegation still had to assess whether the United States' paper provided an answer to these concerns and, in that regard, his delegation was wondering whether such a mechanism would have been able to avoid such situations such as the very recent engine procurement involving China Airlines. The representative of the European Communities reiterated his delegation's astonishment and concern about a decision by China Airlines regarding engine equipment for its recently acquired Airbus aircraft, a decision which risked being taken on grounds other than relevant commercial and technological ones. The European Communities reminded the competent authorities of Chinese Taipei of their obligation to refrain from any interference with commercial decisions which would be incompatible with Article 4.4, i.e., prohibition of inducement and Article 4.1, i.e., that purchasers of civil aircraft should be free to select suppliers on the basis of commercial and technological factors.

27. The representative of Chinese Taipei stated that he was somewhat surprised to hear from the delegate of the European Communities for the first time about the allegations regarding China Airlines' recent engine procurement. His delegation considered that the allegations were completely groundless, while welcoming the opportunity to give his delegation's preliminary response and reiterating the assurance of its full and faithful compliance with the Agreement. The delegate of Chinese Taipei further recalled that while the issue revolved around what was by nature a purely private commercial decision of the specific airline in question, the authorities of Chinese Taipei had nevertheless engaged over the last few months in a number of bilateral discussions with the European Communities in order to clear up any lingering doubts the European Communities may have had.

28. The Committee took note of the statements made and agreed to revert to this issue at the next regular meeting.

D. OTHER BUSINESS

1. **United States – EU enlargement and Article 9 of the Agreement**

29. The delegate of the United States recalled that there would be ten new members of the European Communities on 1 May 2004 and that amongst those members were certain governments which were already Signatories to the Agreement, others which in their accession process to the WTO had indicated that they would become Signatories and others which had not expressed any views on this matter. He further noted that the representatives of the European Communities had on other occasions indicated that parties that are becoming members of the European Communities would undertake the same level of obligations as the current members of the European Communities. His delegation was wondering if the representative of the European Communities could comment on the expectations with regard to all ten new members of the European Communities becoming Signatories to the Agreement on Trade in Civil Aircraft.

30. The delegate of the European Communities explained that he was not in a position at this stage to provide specific answers to the question posed by the United States, but promised he would refer the question to his capital and provide some answers as soon as possible.

31. The Committee took note of the statements made and agreed to revert to this matter at the next meeting.

E. DATE OF NEXT REGULAR MEETING

32. The Chairperson proposed that the date of the next regular meeting was Wednesday, 2 June 2004.

33. The Committee so agreed.

F. ADOPTION OF ANNUAL REPORT

34. The Chairperson recalled that under Article 8.2 of the Agreement on Trade in Civil Aircraft and Article IV.8 of the Marrakesh Agreement establishing the WTO, the Committee reported annually to the General Council, and that this year, because the General Council had met before the regular fall meeting of the Committee, the Chairperson had submitted a brief report to the General Council on his own responsibility. He further noted that that brief report, which had been sent to Signatories by fax on 9 July 2003, contained information concerning the activities of the Committee since the adoption of its 2002 Annual Report, but that, of course, the brief report did not replace the Annual Report of the Committee.

35. The Committee adopted the annual report¹, as amended.

36. The meeting was adjourned.

¹ Circulated as document WT/L/544.