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Committee on Trade in Civil Aircraft

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"DUAL-USE" PRODUCTS

Submission by the United States on the Implementation of the WTO Agreement on Trade in Civil Aircraft

The following communication, has been received on 21 July 1999, from the Permanent Mission of the United States.

At a 30 November 1998 meeting of the WTO Committee on Trade in Civil Aircraft, the Chairman of the Committee requested delegations to submit information concerning their end-use customs administration with respect to the Agreement on Trade in Civil Aircraft. These submissions were requested to update information Signatories previously provided on how they distinguish between civil and military aircraft (AIR/TSC/W/49). The United States provides the following information pursuant to this request.

Relevant provisions in the Agreement on Trade in Civil Aircraft

Article 1.1 of the Agreement on Trade in Civil Aircraft, *Product Coverage*, states:

This Agreement applies to the following products:

- (a) *all civil aircraft,*
- (b) *all civil aircraft engines and their parts and components,*
- (c) *all other parts, components, and sub-assemblies of civil aircraft,*
- (d) *all ground flight simulators and their parts and components,*

whether used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification or conversion of civil aircraft.

The Agreement explicitly excludes military aircraft from the definition of "civil aircraft". Article 1.2 states:

For the purposes of this Agreement "civil aircraft" means (a) all aircraft other than military aircraft and (b) all other products set out in Article 1.1 above.

The Agreement contains an annex of covered products. The annex currently lists 248 Harmonized System product codes. Raw or unfinished products are excluded from coverage. Article 2.1.1 requires that Signatories eliminate customs duties and other charges for products listed in the annex "... if such products are for use in a **civil aircraft**, and incorporation therein, in the course of its manufacture, repair, maintenance, rebuilding, modification or conversion." (Emphasis added).

Historical setting

"Civil" aircraft appears to have been defined in the negative, i.e. an aircraft that is not "military" is "civil". Because "military" is not defined in the Agreement, discussions have taken place among the Signatories on the precise application of product coverage.

Complete aircraft which are unequivocally military in nature, such as bombers, fighters, and attack aircraft, clearly would seem to be outside the Agreement's coverage.

The status of "dual-use" aircraft has been less clear. "Dual-use" refers to aircraft which may be operated in both civil and military applications, with little or no need to modify the aircraft. Examples of such aircraft include those that are used for executive transport, surveillance, and cargo operations. For instance, in the United States, the Department of Defence operates Gulfstream GIV aircraft for transporting senior military officers. The identical aircraft is used by corporations and individuals.

For any aircraft parts and components and ground flight simulators that could be used in both military or civilian aircraft and may be otherwise identical, treating these differently for tariff purposes because of the nature of the end-user could also be problematic.

Questions have arisen over how some Signatories define "military". The United States understands that some Signatories have defined "military" solely by the nature of the end-user, as did the United States before 1996. The United States welcomes Signatories' clarification of their policies and the description of their military end-users.

US implementation

The key principle in how the United States implements the Agreement is that "civil" is no longer defined solely by the nature of the aircraft operator or end-user (airline vs. defence unit) but in addition by whether the aircraft is certificated by the Federal Aviation Administration (FAA) directly or pursuant to the recognized approval by the FAA of the airworthiness authority in the country of exportation. Except in limited circumstances, FAA certification is not required of aircraft operated exclusively by the Department of Defence or Coast Guard. (These circumstances include the operation of aircraft for the transport of passengers or property for "commercial" purposes.)

Dual-use aircraft, and their parts, components and subassemblies, purchased for use by military entities such as the Department of Defence and the Coast Guard may enter the United States duty-free under the Agreement on Trade in Civil Aircraft, provided that the aircraft is certificated by the FAA, or a recognized foreign airworthiness authority, or an FAA certificate is pending.

Application of these provisions is liberal. Aircraft parts which could be used in both a civil aircraft and a military aircraft (such as a bomber) are considered "civil" by the United States Customs Service for purposes of the Agreement. Only parts which clearly have no application in a civil aircraft (such as aiming devices used to target bombs) are deemed to be "military" by the United States.

US implementation of the Agreement on Trade in Civil Aircraft was changed in 1996 following enactment of a US law, the Miscellaneous Trade and Technical Corrections Act of 1996. That law liberalized implementation of the Agreement by the United States in several ways.

Elimination of separate importer's statement: Prior to 1996, US law required that US importers file a separate statement with the US Customs Service with each entry document claiming duty-free importation of a product under the Agreement on Trade in Civil Aircraft. That statement attested to the product's use in civil aircraft and to the FAA's approval of the product in the sense of its airworthiness. The 1996 law eliminated this requirement, reducing the paperwork burden on US importers.

New definition of "civil": Prior to 1996, the United States defined "civil aircraft", for purposes of the Agreement on Trade in Civil Aircraft, as "all aircraft other than aircraft purchased for use by the Department of Defence or the United States Coast Guard." Changes in the 1996 US law facilitate the operation of the Agreement for US importers in two ways.

- (a) Aircraft components imported for use in an aircraft purchased for use by the Department of Defence (DOD) or the US Coast Guard were not eligible for duty-free entry prior to 1996, under the Agreement, even if the aircraft to be used by DOD or the US Coast Guard was the same model of aircraft the manufacturer provided to airlines and other private operators (such as small aircraft used for executive transportation). Following enactment of the 1996 law, such components may be imported into the United States duty free, provided that the aircraft used by DOD and the US Coast Guard are aircraft certificated by the FAA.
- (b) The pre-1996 regime led to complications for both exporters and for companies which imported aircraft components, some of which were used in the assembly of aircraft sold to airlines and other private operators, and some of which were used in the assembly of the same aircraft sold to DOD or the United States Coast Guard. Since the importer could not know at the time of importation which components would be used in which aircraft, the importer either had to pay duties on the entire importation of components or request that the entry not be finalized, or "liquidated". In the case of the latter, the importer could be required to post a bond for the full tariff liability. Upon liquidation of the entry, the importer could receive a credit on the tariff for those components used in "civil" aircraft, provided that the importer took care to carefully track the components through the various stages of aircraft assembly, segregating those that were used in aircraft sold to private operators from those used in aircraft sold to DOD and the US Coast Guard, and the importer could document this tracking of components to the US Customs Service. Following the 1996 law, no segregation of the aircraft components is necessary. All the components would be eligible for duty-free entry into the United States under the Agreement.

Description of "civil aircraft" for US Customs purposes

Under United States law, "civil aircraft", for the purposes of implementing the Agreement on Trade in Civil Aircraft, is defined as any aircraft, aircraft engine, or ground flight simulator (including parts, components, and subassemblies thereof) that meets two tests:

- A. It is used as original or replacement equipment in the design, development, testing, evaluation, manufacture, repair, maintenance, rebuilding, modification, or conversion of aircraft. This prevents duty-free treatment being required of products, listed on the product coverage annex, when they are imported into the United States for use other than in civil aircraft. (For example, "windshields, of laminated safety glass" [HS Code 7007.21] would not be eligible for duty-free entry into the United States if the glass were imported for use in automobiles.)
- B. It is manufactured or operated pursuant to an FAA certificate attesting to the product's airworthiness. This certificate may be any one of three different types of certificates issued by the FAA:

Type Certificate: this is issued for an aircraft (or aircraft engine or propeller) attesting that the design of the aircraft conforms with FAA-approved standards.

Production Certificate: this authorizes the production of aircraft the design of which has been approved by the FAA through a type certificate. Among other things, a production certificate indicates FAA approval of a manufacturer's quality control system.

Airworthiness Certificate: this is issued for a specific aircraft (not model of aircraft) following manufacture to ensure that it conforms to the type certificate and is in condition for safe operation.

Satisfaction of test B can be met through a number of variations on the above requirements. These include that for the aircraft, engine, or ground flight simulator (including parts, components and subassemblies thereof):

- there is approval by the airworthiness authority of the country of export, provided that such approval is recognized by the FAA and the FAA certifies the product;
- for aircraft under development in the United States, there is an application for type certification pending with the FAA; or
- an application for type certification will be submitted to the FAA, pending the completion of design or other technical requirements stipulated by the FAA. This option allows for the duty-free entry into the United States of foreign-produced parts that may be used in the production of aircraft while the aircraft is still being designed – and for which it is not possible to have an FAA certificate. This option applies only to such quantities of the parts, components and subassemblies as are required to meet the design and technical requirements stipulated by the FAA.

Almost all of the products listed in the product coverage annex to the Agreement on Trade in Civil Aircraft are components of aircraft or aircraft engines. The FAA does not provide any certification for components *per se*, except for complete engines and propellers. The United States allows for duty free entry of the components on the product coverage list if they are incorporated or are to be incorporated in a complete aircraft (or engine) which is certificated by the FAA, or meet any of the other certification options discussed above.

US law provides that the term "civil aircraft" does not include any aircraft, aircraft engine or ground flight simulator (or parts, components and subassemblies thereof) purchased for use by the Department of Defence or the Coast Guard, unless such aircraft, aircraft engine or ground flight simulator (or parts, components and subassemblies thereof) satisfies the requirements of test A and test B, above, except that the option related to the future submission of an application for an FAA certificate does not apply. (This is the option that addresses the importation of components to be used in an aircraft being designed for which no application can be submitted.)

Legal citation

The 1996 law which liberalized US administration of the Agreement on Trade in Civil Aircraft is Public Law 104-295, Miscellaneous Trade and Technical Corrections Act of 1996. Section 12 of that act deals with the Agreement on Trade in Civil Aircraft. Pursuant to this law, General Note 6 of the US tariff schedule was changed. The text of the revised general note is attached.

HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (1998)

General Note 6

Articles Eligible for Duty-Free Treatment Pursuant to the Agreement on Trade in Civil Aircraft.

- (a) Whenever a product is entered under a provision for which the rate of duty 'Free (C)' appears in the 'Special' subcolumn and a claim for such rate of duty is made, the importer –
 - (i) shall maintain such supporting documentation as the Secretary of the Treasury shall require; and
 - (ii) shall be deemed to certify that the imported article is a civil aircraft, or has been imported for use in a civil aircraft and will so be used.

The importer may amend the entry or file a written statement to claim a free rate of duty under this note at any time before the liquidation of the entry becomes final, except that, notwithstanding section 505 (c) of the Tariff Act of 1930 (19 U.S.C. 1505(c)), any refund resulting from any such claim shall be without interest.

- (b) (i) For purposes of the tariff schedule, the term 'civil aircraft' means any aircraft, aircraft engine, or ground flight simulator (including parts, components, and subassemblies thereof) –
 - (A) that is used as original or replacement equipment in the design, development, testing, evaluation, manufacture, repair, maintenance, rebuilding, modification, or conversion of aircraft, and
 - (B) (1) that is manufactured or operated pursuant to a certificate issued by the Administrator of the Federal Aviation Administration (hereafter referred to as the 'FAA') under section 44704 of title 49, United States Code, or pursuant to the approval of the airworthiness authority in the country of exportation, if such approval is recognized by the FAA as an acceptable substitute for such an FAA certificate;
 - (2) for which an application for such certificate has been submitted to, and accepted by, the Administrator of the FAA by an existing type and production certificate holder pursuant to section 44702 of title 49, United States Code, and regulations promulgated thereunder; or
 - (3) for which an application for such approval or certificate will be submitted in the future by an existing type and production certificate holder, pending the completion of design or other technical requirements stipulated by the Administrator of the FAA.
- (ii) The term 'civil aircraft' does not include any aircraft, aircraft engine, or ground flight simulator (or parts, components, and subassemblies thereof) purchased for use by the Department of Defence or the United States Coast Guard, unless such aircraft, aircraft engine, or ground flight simulator (or parts, components, and subassemblies thereof) satisfies the requirements of subdivisions (i)(A) and (i)(B) (1) or (2).

- (iii) Subdivision (i)(B)(3) shall apply only to such quantities of the parts components, and subassemblies as are required to meet the design and technical requirements stipulated by the Administrator. The Commissioner of Customs may require the importer to estimate the quantities of parts, components, and subassemblies covered for such purposes of such subdivision.
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