

14 October 2022

(22-7752)

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Committee on Trade in Civil Aircraft

Original: English

COMMUNICATION FROM BRAZIL TO THE COMMITTEE ON TRADE IN CIVIL AIRCRAFT**SUBMISSION OF RELEVANT INFORMATION FOR ACCESSION OF BRAZIL TO THE
AGREEMENT ON TRADE IN CIVIL AIRCRAFT***Supplement*

The following communication, dated and received on 13 October 2022, is being circulated at the request of the delegation of Brazil.

I would like to inform this Committee that I have received instructions from my government to submit relevant information on Brazil's application for accession to the WTO Agreement on Trade in Civil Aircraft.

Please find attached Brazil's submission with further clarifications and additional information on how it will implement the commitments provided in the Agreement on Trade in Civil Aircraft in the event of its accession.

I would be grateful if you circulate this communication to the Members and Observers of the Committee on Trade in Civil Aircraft.

Please accept the assurances of my highest consideration.

Yours sincerely,

Permanent Representative of Brazil to the World Trade Organization

Brazil submitted its application for accession to the Agreement on Trade in Civil Aircraft, hereinafter referred to as "the Agreement", to the Committee on Trade in Civil Aircraft on 14 June 2022 (document TCA/19), together with its proposed tariff commitments (document TCA/19/Add.1). At this point, Brazil welcomes the opportunity to present relevant additional information on the implementation of the commitments provided in the Agreement.

After the Committee on Trade in Civil Aircraft agrees to the terms of the accession of Brazil according to the Guidance Note on the Implementation of Article 9.1.3 of the Agreement, Brazilian Government will submit the instrument of accession of the Agreement to the Brazilian National Congress for deliberation. Once approved in the Congress, Brazil will be able to deposit the instrument of accession with the Director-General of the WTO. As a general rule, international trade agreements, after approval by the National Congress and ratification/accession at the international level, are incorporated into the Brazilian legal system, in Portuguese language, as legislation at the same hierarchical status as ordinary laws.

For the sake of clarity and transparency, Brazil has divided this document in topics, in line with the obligations set out in Articles 2 to 7 of the Agreement. Each topic details the implementation of the obligations of the respective Article.

Customs duties and other charges

Brazil's proposed tariff commitments under the obligations of Article 2.1 of the Agreement were submitted to the Committee on Trade in Civil Aircraft on June 14, 2022 (document TCA/19/Add.1). Once the discussions relating to Brazil's tariff commitments are concluded within the Committee and the list of tariff lines reflecting these obligations is settled, Brazil would be ready to incorporate in due course the duty-free treatment to the referred products in its GATT Schedule.

As already mentioned, as soon as Brazil's accession procedures within the WTO are completed, the Agreement will undergo internal procedures for its internalization and entry into force in Brazil. It is important to point out, nevertheless, that - irrespective of the internalization of the Agreement - Brazil already applies duty-free treatment to all the products listed in Brazil's proposed tariff commitments, when for use in civil aircraft. As a Member of MERCOSUR, Brazil is bound by MERCOSUR's Tariff Regulation for Aeronautical Products. Under this regulation, the listed tariff lines receive duty free treatment on imports. Only a very reduced number of tariff lines covered by the Agreement are not in the scope of Mercosur's Tariff Regulation for Aeronautical Products. These tariff lines either have 0% Common External Tariff (CET) or Brazil unilaterally has reduced their custom duties to 0% (Resoluções GECEX ns. 306 and 310/2022).

Concerning the obligations under Article 2.1.2, Brazil's current legislation already grants duty-free treatment to products used for repairing aircrafts.

Regarding the commitments of Article 2.2 of the Agreement, Brazil already has an end-use system of customs administration that provides duty-free treatment comparable to the treatment provided by other Signatories and that is not an impediment to trade nor inconsistent with applicable provisions of the GATT and under other multilateral agreements negotiated under the auspices of the GATT.

Technical barriers to trade

Concerning the obligations under Article 3, regarding Technical Barriers to Trade (TBT), Brazil participates actively in the discussions of the TBT Committee in the WTO and does not adopt any policy contrary to the TBT Agreement.

The civil aviation regulatory authority in Brazil is the National Civil Aviation Agency (ANAC), created by Law 11,182, on September 27th, 2005. ANAC is responsible for the regulation and control of civil aviation activities and airport and aeronautics infrastructure. ANAC also presides the Brazilian delegation in the International Civil Aviation Organization (ICAO), the specialized agency of the United Nations Organization for the promotion of safe and ordered development of international civil aviation.

Government-directed procurement, mandatory sub-contracts and inducements

Brazil's procurement practices, guidelines and procedures are already in line with the requirements of the Agreement. They ensure that non-discriminatory standards are applied in relation to firms of ATCA Signatories and that business opportunities are provided on a competitive basis. As a general principle, several provisions of the Public Procurement Law - Law 14,133/2021 - prohibit different treatment between national and foreign suppliers. As the current law already promotes this alignment, operational changes provided by the Secretariat of Management of the Ministry of Economy through Normative Instruction No. 10, of February 2020 ensured that even foreign companies not established in Brazil could access procurement opportunities.

Trade restrictions

Brazil does not apply quantitative restrictions or import licensing requirements to restrict imports of civil aircraft in a manner inconsistent with applicable provisions of the GATT and under other multilateral agreements negotiated under the auspices of the GATT. Similarly, there are no quantitative restrictions or export licensing requirements aimed at restricting, for commercial or competitive reasons, exports of civil aircraft to other Signatories in a manner inconsistent with applicable provisions of the GATT and under other multilateral agreements negotiated under the auspices of the GATT.

Government support, export credits, and aircraft marketing

In 2007, Brazil became a Participant to the "Sector Understanding on Export Credits for Civil Aircraft" (ASU), which is an annex to the Arrangement of Officially Supported Export Credits of the Organization for Cooperation and Economic Development (OECD). Therefore, the Brazilian official export credit support programs strictly follow the ASU guidelines, meaning that they do not provide officially supported export credits in more favourable terms and conditions than those set out on the ASU.

It should be noted that the Brazilian government provides three different official export credit support schemes for aircraft sales: 1) official export credit insurance (SCE), backed by a public guarantee fund; 2) direct export financing by the National Bank of Economic Development (BNDES-Exim credit lines); and 3) interest rate support by the National Treasury, through a program called "Proex-Equalização". These three schemes can be combined, so that, for example, a single transaction can be supported by a loan provided by the BNDES with risk coverage by the SCE and interest support by the National Treasury. In every case, though, the Brazilian government makes sure that the final terms and conditions of the loan, including interest and premium rates, repayment term and risk mitigants, are strictly in line with the ASU provisions, and submits a form with the details of the supported transaction to all Participants to the ASU, with a copy to its Secretariat.

Finally, it should be highlighted that the ASU provisions are legally binding for the three export credit support schemes. In this sense, the Resolution of the Foreign Trade Council (Camex) no. 15/2011 establishes that "Brazilian official support for civil aircraft exports, either through direct financing or refinancing, credit insurance, interest rate support, or any combination of these modalities, shall follow the terms, conditions and procedures set out in the new ASU of the OECD". Moreover, the Resolution of the National Monetary Council no. 4.897/2021, which sets the conditions for the interest rate support provided by the National Treasury, explicitly states that "in the case of export financing for civil aircrafts and related parts, components and services, interest rate support shall be set according to the particular features of each transaction, following the terms, conditions and procedures set out on the Aircraft Sector Understanding, whenever applicable."

Regional and local governments

According to the Brazilian constitution, the President of the Republic has the exclusive power to conclude international treaties, ad referendum of the National Congress. Additionally, as previously mentioned, the publication of the legislation with the terms of the Agreement by the Federal Government in Brazil after the international ratification or accession means this Agreement is a binding legal instrument in the country.
