



**United Nations  
Conference  
on Trade and  
Development**

Distr.  
LIMITED

TD/B/COM.1/EM.9/L.1  
25 June 1999

Original : ENGLISH

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TRADE AND DEVELOPMENT BOARD

Commission on Trade in Goods and Services, and Commodities  
Expert Meeting on Air Transport Services: Clarifying Issues  
to Define the Elements of the Positive Agenda of Developing  
Countries as Regards both the GATS and Specific Sector  
Negotiations of Interest to Them  
Geneva, 21-23 June 1999  
Agenda item 3

**CLARIFYING ISSUES ON AIR TRANSPORT SERVICES TO DEFINE THE ELEMENTS OF  
THE POSITIVE AGENDA OF DEVELOPING COUNTRIES AS REGARDS BOTH THE GATS  
AND SPECIFIC SECTOR NEGOTIATIONS OF INTEREST TO THEM**

Agreed conclusions

The Expert Meeting reached the following conclusions on issues which should be taken into account in building the positive agenda for developing countries in the air transport sector:

**Progressive liberalization under current arrangements**

1. The current Annex on Air Transport in the General Agreement on Trade in Services (GATS) rules out its application to traffic rights and services related to traffic rights. The Annex does, however, list three services related to air transport to which the rules of the GATS do apply. Commitments so far in these three sectors are limited.
2. With a view to identifying possible benefits from further commitments in the areas already listed in paragraph 3 of the Annex, the GATS signatories are urged to review their commitments and to consider the options for including these sectors in their packages of offers and requests.

3. In a number of other areas, the application of the GATS may be unclear. There is a need to clarify the coverage under the existing wording by considering a more detailed classification of the air transport sector, including related activities. The coverage of the Agreement can then be tested more easily.

4. Options for extending the coverage of items similar to those now listed in paragraph 3 of the Annex could then also be considered.

5. This work, involving cooperation among the International Air Transport Association (IATA), the International Civil Aviation Organization (ICAO) and the World Trade Organization (WTO), should include the comparison of the sectoral classifications now used in the GATS with those in common use in the industry.

#### **Considering ways of extending the coverage**

6. Options for the inclusion of air transport in the GATS should continue to be explored in order to understand more completely the role that the GATS can play in resolving the issues outlined above. In order to have an impact on the debate on air transport in the WTO Council for Trade in Services, participants must have an appreciation of the options and their implications.

7. Under the GATS, WTO members may claim exemptions from most-favoured-nation (MFN) treatment for some parts of the sector. Commitments on market access and national treatment apply only to those parts of the sector that are bound in each country's schedules.

8. In preparing for the review of the Annex, WTO members might wish to explore, among others, the following options:

(a) It may be the case that a large number of economies wish to exclude, in particular, mode 1 (that is, supply across a national border, which means that the airline provides the service from its home base). If so, the current Annex could be amended to:

(i) specify that the exemption applies only to this mode; and

(ii) make clear which elements of the activity are included (related only to traffic rights, but to be defined more precisely as a consequence of the work done on the definition of the sector);

- (b) Mode 2, which refers to consumption abroad, may be less controversial, but its scope has to be tested in the negotiation process;
- (c) Mode 3, which refers to commercial presence, is increasingly common. Coverage of this mode by the GATS adds to the adjustment options of airlines based in developed economies and also adds to the modes of participation by developing economies. There is evidence that rules on establishment that are applied in the bilateral system are becoming more flexible and more open. Scheduling this mode of delivery would recognize this fact and provide the benefits of the GATS, in terms of MFN, market access and national treatment;
- (d) Commitments with respect to the movement of persons under mode 4 would also be relevant;
- (e) This approach to treatment of air transport would have to consider the consistency between the GATS approach to defining national identity and that applied in the bilateral air transport system. Dealing with competition policy issues also requires the identification of the home base of the airline, since it will be important to be able to identify a jurisdiction to which a complaint may be taken. The flexibility already evident in the definition of carrier identity in the bilateral agreements indicates that this issue need not be a significant constraint.

9. Members may also wish to consider including under paragraph 3 of the Annex additional specific air transport services and activities, as well as reducing the list of specific services, activities and/or traffic rights under paragraph 2 of the Annex, taking into account the results of the work set out in paragraphs 2 to 5 above.

#### **Treatment of developing countries**

10. In recognition of the concern expressed by developing countries on the need to improve their participation in air transport markets on a level playing field, a number of suggestions have been developed by ICAO, IATA, specialized regional organizations and member States for mechanisms to achieve that goal. These mechanisms represent transitional measures, and it is recommended that they be studied and considered. The organizations responsible for air transport should be invited to take part in the development and management of these options.

11. The ICAO secretariat has developed a number of recommendations for mechanisms through which this support could be provided. These refer to the terms of market access, the application of criteria on ownership and control, processes of slot allocation, and doing business matters. These recommendations should be re-examined. Implementation of these options is a matter for individual economies.

12. In addition, there are important contributions which can be made to capacity-building, for example, with respect to competition policy, standards (including those related to environmental issues, such as noise and industry doing-business standards) and human resource development. It is recommended that cooperation for these purposes be pursued in a number of modes, including under the auspices of ICAO and IATA, where relevant.

13. Consideration of the application of the GATS to air transport should also cover its implications for special provisions for developing country participation. Article IV obliges members to facilitate the increasing participation of developing countries in world trade in services through negotiated specific commitments, such as those relating to access to technology on a commercial basis and improvement of access to distribution channels and information networks. It would be useful to evaluate how Article IV has worked in general as well as its possible application to the air transport sector.

14. Article XXV refers to the scope for the WTO Council for Trade in Services to provide technical assistance by the WTO secretariat. This will be valuable in the context of making choices about documenting commitments if and when the air transport exemption is removed.

#### **Dealing with competition policy and other regulatory issues**

15. It is important to deal with competition policy problems and with the application of domestic regulation, which can lead to demands for conflict resolution. Difficulties have been experienced in conflict resolution in the bilateral system. Conflicts could arise from commercial decisions by airlines or from government practices which have a direct effect -- for example, on access -- or an indirect effect -- for example, as a result of sanctioning some form of airline behaviour in the marketplace. While a multilateral consensus on competition policy issues is being pursued, other options for arrangements which are specific to air transport could be pursued while safeguarding the industry cooperation needed to set standards and maintain interlining worldwide so as to preserve the integrity of the global network.

16. The GATS has provisions which can be used to deal with competition and regulatory issues. Various articles are relevant, but especially those on domestic regulation (VI), monopoly and exclusive service suppliers (VIII), business practices (IX), safeguard measures (X) and subsidies (XV). These provisions, however, can only be invoked by States and in situations where States are involved, be it directly through their action (subsidies, safeguards, domestic regulation) or indirectly through their jurisdiction over service suppliers, monopolies or exclusive service suppliers. Furthermore, these provisions have generally not been tested or developed, and further attention should be given to ways of strengthening the contribution of the GATS through them.

17. The WTO Reference Paper on basic telecommunications should also be examined as a model for how competition policy issues in particular could be dealt with in air transport. This paper refers to competitive safeguards (e.g. anti-competitive cross-subsidies, denial of access to services), rules on interconnection (in the case of air transport, access to infrastructure), treatment of universal service obligations, transparency, rules on the allocation of scarce resources such as frequencies (in the case of air transport, landing slots or gates) and the value of having regulators who are independent of service providers. Similar work on other transport modes should also be examined.

18. An important suggestion by ICAO, based on its earlier work, was for States to use a safeguard mechanism on anti-competitive practices, including a dispute settlement and conciliation process which could also be applied at enterprise level.

19. ICAO can work with WTO on clarifying various regulatory practices.

20. States are invited to implement expeditiously their National Communication Navigation Surveillance and Air Traffic Management Systems(CNS/ATM), which have been included in their regional air navigation plans, so as to alleviate airport and airspace congestion and to facilitate reform of regulatory policy.

#### **The regional route to reform**

21. The number of active regional arrangements is increasing. There are at least 11 such arrangements in various stages of development.

22. A regional approach to reform has a number of advantages, such as the development of cooperation among participants, competition within the region, the development of service to subregions, the consolidation and restructuring of airlines, greater efficiency within the region, making a contribution to

competitiveness on routes outside the region, and so on. A regional approach can also affect market access.

23. The GATS provisions in Article V apply to regional arrangements only when they are part of a larger structure which has substantial sectoral coverage. Developing countries do have some flexibility in the application of regional arrangements, but it may not be sufficient to support arrangements which apply to one sector. Some of the existing air transport arrangements are part of larger economic integration arrangements which are covered by Article V. In such cases the application of the GATS to air transport would impose disciplines on these arrangements.

24. There is not yet sufficient information to make a judgement about the effects of these arrangements. It is recommended that further work be completed on the costs and benefits of the regional approach to reform. Regional arrangements could be characterized by their rules (e.g. transparency, accession, terms of market access for non-members, human resource development, etc.), and the links between these rules and economic outcomes could be analysed. The results could be used to design some principles for this route to reform in the absence of GATS rules, or to facilitate the reporting of such arrangements to the WTO Council for Trade in Services if the GATS does apply.

#### **Preparation for negotiations**

25. UNCTAD, in collaboration with ICAO, its regional agencies and other relevant international and regional bodies, should work with developing countries on these options and the construction of the positive agenda.