



ASSEMBLY — 35TH SESSION

ECONOMIC COMMISSION

Agenda Item 27: Regulation of international air transport services, and outcome of the fifth Worldwide Air Transport Conference

GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

(Presented by Cuba)

SUMMARY

This paper puts forward our thoughts and experiences with regard to the consequences and impact that the inclusion of air transport services in the General Agreement on Trade in Services (GATS) has had.

Action by the Assembly is in paragraph 5.

REFERENCES

Convention on International Civil Aviation
Doc 9626, *Manual on the Regulation of International Air Transport*
Doc 9644, *Report on the World-wide Air Transport Conference on International Air Transport Regulation: Present and Future*
Resolutions of the 33rd Session of the ICAO Assembly
Doc 9587, *Policy and Guidance Material on the Economic Regulation of International Air Transport*
General Agreement on Trade in Services
World Trade Organization (WTO-OMC)) Council for Trade in Services, S/C/W/59, 120, 129, 163, 188, 41, 59, 42, 92 and Job No. 2451
Paper presented by Cuba at the Commission on Trade in Goods and Services, and Commodities
United Nations Conference on Trade and Development (UNCTAD), Expert Meeting on Air Transport Services, Geneva, 21 to 23 June 1999
Working Paper presented by Cuba at the fifth Worldwide Air Transport Conference
Paper presented by Cuba at the Seminar preceding the fifth Worldwide Air Transport Conference

1. INTRODUCTION

1.1 We wish to present to you our thoughts and experiences with regard to the consequences and impact that the inclusion of various international air transport services in the General Agreement on Trade in Services (GATS) has had for Cuba. This paper was presented at the fifth Worldwide Air Transport Conference, which was held from 24 to 29 March 2003. More than a year has passed since that important event and we believe that the circumstances that led to the drafting of this paper still exist. We therefore submit this paper for consideration by the Assembly, whose agreements and decisions shape the terms of reference for detailed, comprehensive analysis by the appropriate bodies of ICAO.

1.2 We shall refer to the services offered by computer reservation systems (CRSs). This service is included in the GATS Annex on Air Transport Services (hereinafter referred to as the Annex), together with two other services, aircraft repair and maintenance and sales and marketing of air transport services. We shall also refer to a difference with respect to which ICAO acted as an intermediary and which is very much related to this subject.

1.3 Before describing those experiences, we would like to reflect with you upon our views with respect to extending the air transport services within the Annex and the role that we give to ICAO in this field.

2. CONSIDERATION OF THE EFFECTIVENESS OF THE ANNEX WITH A VIEW TO ITS EXTENSION

2.1 The present trend in air transport services and their regulatory framework is directed towards liberalization, globalization and privatization.

2.2 This global trend was, among other items, one of the bases for the General Agreement on Tariffs and Trade (GATT), which was signed in the city of Havana, Cuba, on 24 March 1948, to first start to consider the services activity and, among them, partially, the air transport activity. This consideration ended with the signing of the GATS and with this new agreement, the establishment of the World Trade Organization (WTO). There is an Annex on Air Transport Services in the GATS.

2.3 During the consideration of this Annex, it was noted that there are still serious doubts about what are considered air transport services directly related to the exercise of traffic rights. There is no definition for these services that would be operationally unquestionable to exclude them from the application of the GATS. Then we do not know which are not related; neither do we know with which services we would extend the Annex on services.

2.4 In relation to the exemptions applied to the principle of Most Favoured Nation (MFN), we note that there are two exemptions in the maintenance and repair services, 17 in sales and marketing and 16 in computer reservation services.

2.5 These exemptions, totalling 35 in only three services, clearly limit real market access, so what liberalization are we talking about in WTO with the appearance of these new obstacles that are added to the already existing ones?

3. EXPERIENCE WITH OBSTACLES TO GRADUAL AND REAL LIBERALIZATION OF AIR TRANSPORT

3.1 The embargo imposed by the United States of America on Cuba is an obstacle and one of the contradictions of those who proclaim free market access as a philosophy while they block, pressure and prevent our developing country from exercising its right.

3.2 At present, Cuban airlines do not have access to the most important CRSs in the world, such as SABRE and GALILEO, due firstly to this embargo and secondly to the fact that in its list of specific commitments, the United States of America has invoked an exemption to MFN treatment for access to those systems.

3.3 What is stated in paragraphs 3.1 and 3.2 is in frank contradiction to the principles of the GATS and its articles since it limits and restricts the objectives of this Agreement with respect to the progressive elimination of the obstacles that interfere with liberalization of trade in services.

3.4 The Council of ICAO adopted a Code of Conduct for CRSs on 25 June 1996 which was discussed with States, carriers, travel agents, CRS vendors and international organizations such as WTO which also has a code of conduct for these systems which provides in principle for the need for fair participation and non-discrimination therein.

3.5 There are therefore two different organizations regulating the same activity. This may create conflict and confusion in differentiating between the relations between States within the same framework. In our case, we cannot analyse this problem in WTO since that exemption exists; however, we also consider that no maturity exists in that organization in the handling of those matters. We have therefore preferred to analyse the matter within ICAO where the approach in relation to air transport takes into account the problems of development and establishes special features with a view to achieving fair, uniform and equitable participation in accordance with what is stipulated in the Convention on International Civil Aviation.

3.6 In this regard, we have experience in how ICAO, as a mediator and applying its principles, regulations, standards and structure, was able to resolve a difference between Cuba and the United States of America with regard to the discrimination that our airlines were subjected to by not being allowed to overfly the territory of that country on its routes to Canada, both countries being signatories to the International Air Services Transit Agreement.

3.7 This was once again a demonstration of ICAO's ability to understand and its competence in matters related to air transport services, as well as its leading role, authority and prestige in the field of civil aviation, together with the applicability of the Chicago Convention.

4. CONCLUSIONS

4.1 ICAO has created, over its 60 years of existence, a whole system of regulations and guidelines on economic policies for the regulation of international air transport. This has made it possible, in close coordination and collaboration with International Air Transport Association (IATA), to achieve considerable development of air transport since its creation.

4.2 Today ICAO is made up of 188 States. There are hundreds of airlines that offer their services to more than 1.5 billion passengers annually, on the basis of an extensive network of bilateral agreements (more than 3 500) which is an important tool that our countries use in negotiations.

4.3 We consider that there should not be two organizations, WTO and ICAO, regulating the same system of international air transport regulation. We are convinced that ICAO must continue governing the destiny of this activity.

4.4 The GATS, as a result of the examination undertaken, has not reached a consensus with respect to whether the task of extending the Annex should be undertaken and the form in which this would be done. This is evident in view of the complexity of this activity that is handled in a purely commercial framework. We consider that the Annex should not be extended.

4.5 Within the framework of ICAO, steps are being taken for the liberalization of air transport in a gradual, progressive and orderly manner, preserving exchanges for market access and achieving an appropriate balance with the interests of States to maintain effective and substantial participation.

4.6 We cannot accept access to our markets automatically (application of the MFN principle, the basic tenet of WTO). This does not always correspond to the potential and magnitude of the economic/commercial resources of the airlines of the developing countries.

4.7 The present and the future of air transport lie within ICAO, an organization competent to assume the complex challenges and to take advantage of the enormous opportunities offered to us by air transport in the development of the economies of our countries.

5. ACTION BY THE ASSEMBLY

5.1 The Assembly is invited to:

- a) examine and adopt the conclusions that appear in paragraph 4;
- b) recommend that the Council of ICAO take the ideas presented in this paper into account in their analysis of the impact of GATS on civil aviation.

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