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INTERNATIONAL CIVIL AVIATION ORGANIZATION

ASSEMBLY - 32ND SESSION

ECONOMIC COMMISSION

Agenda Item 31: Regulation of international air transport services

REPORT BY THE COUNCIL ON TRADE IN SERVICES

SUMMARY

This paper reports on the Council's work on trade in services since the 31st Session of the Assembly, focussing on developments with respect to the World Trade Organization and the General Agreement on Trade in Services. The Assembly is invited to take the action indicated in paragraph 5.

REFERENCES

Doc 9662, *Assembly Resolutions in Force*

Doc 9656, A31-EC

Doc 9644, AT Conf/4

1. INTRODUCTION

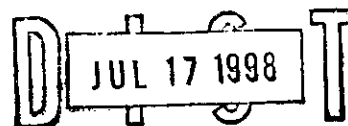
1.1 The Organization's current policy on trade in services is contained in Assembly Resolution A31-12 which requests the Council, *inter alia*, to continue to monitor developments in this area which might impinge on international air transport and to promote continued effective co-operation and co-ordination among ICAO, the World Trade Organization (WTO) and other intergovernmental and non-governmental organizations dealing with trade in services. Trade in services is a key activity in the Organization's Strategic Action Plan.

1.2 This paper summarizes the developments since the 31st Session of the Assembly and addresses the co-ordination and co-operation among ICAO and other bodies, principally the WTO, involved with trade in services.

2. WORLD TRADE ORGANIZATION (WTO)

2.1 Formally coming into existence on 1 January 1995 following extensive negotiations under the Uruguay Round, the WTO has grown from 81 to 132 Members by the beginning of 1998, 128 of which are also ICAO Contracting States. Thirty of the 32 observer governments have applied to become WTO Members; 29 of the applicants are also ICAO Member States. All but three of the 111 signatories of the Final

(6 pages)



Act of the Uruguay Round in April 1994 which established the WTO have become Members; thus the recent growth in membership has come from States which were not part of the original founding group. The WTO is developing into a fully global organization, although several major trading States, notably China and the Russian Federation, are not as yet Members.

2.2 Since 1995 the WTO's Council for Trade in Services has focussed its efforts on completing negotiations on three services – financial, telecommunications and maritime – which were not completed when the General Agreement on Trade in Services (GATS) was negotiated at the conclusion of the Uruguay Round. At its first regular biennial Ministerial level meeting, held at Singapore from 9 to 13 December 1996, the WTO acknowledged that the results of efforts to improve market access in services had been below expectations, noting that in the three aforementioned areas it had been necessary to prolong negotiations beyond the original deadlines. In February 1997 the WTO successfully concluded nearly three years of extended negotiations on market access for basic telecommunications services with commitments by 69 WTO Members. In December 1997 negotiations on financial services were successfully completed with commitments by 70 governments to either maintain or expand the market access they currently offered to foreign financial service suppliers. However, with respect to maritime services, in June 1996 negotiations were suspended until 2000 when the WTO is to begin a further round of comprehensive negotiations on trade in services.

2.3 Of principal interest to ICAO is the GATS Annex on Air Transport Services which presently excludes traffic rights, however granted, or services directly related to their exercise but applies to three air transport services (aircraft repair and maintenance, selling and marketing of air transport and computer reservation systems). Paragraph 5 of that Annex states that the Council for Trade in Services, "shall review periodically, and at least every five years, developments in the air transport sector and the operation of this Annex with a view to considering the possible further application of the Agreement in this sector". WTO has advised ICAO that as of the date of preparation of this paper the Council for Trade in Services had not yet addressed the questions of the timing or conduct of the review process. Consequently it is not yet known how the review of the Annex will be undertaken nor what its possible outcome or consequences may be.

2.4 In terms of the review of developments in the air transport sector, ICAO has informed the WTO Secretariat of the conclusions and recommendation of the World-wide Air Transport Conference as well as the follow-up work to that Conference (described in A32-WP/9). With regard to the operation of the Annex the Secretariat is preparing some preliminary analysis of the effects of the GATS with respect to international air transport and this will be made available to ICAO Member States and the WTO before the review of the Annex begins. In general terms, the Council intends to monitor closely the situation leading up to and including the review process and will provide States and, if appropriate, the WTO with any other information or analysis which could assist the discussions on international air transport in the GATS.

2.5 The further application of the Annex in the air transport sector could occur in two ways. The most immediate would be for States to remove exceptions to most-favoured-nation treatment and/or to make specific commitments to market access or national treatment for the three services which are presently included in the Annex. The other means of expanding coverage would be to include additional air transport services in the Annex. In addition to the review of the Annex, the next comprehensive round of negotiations on services could serve as a vehicle for either or both types of expansion in the application of the Annex.

3. ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

3.1 With respect to other intergovernmental organizations which deal with trade in services, the principal one has been the Organization for Economic Co-operation and Development (OECD). In the early

days of development of the GATS, the OECD had worked on some of the trade in services concepts and principles which were later incorporated in the GATS. In mid-1994 the OECD initiated a study entitled "The Future of International Air Transport Policy - Responding to Global Change", which was published in February 1997. The study concludes with a number of proposals for substantive steps towards the liberalization of international air transport which, while directed primarily at the 29 member countries of the OECD, may well have a significant influence beyond that organization, notably in the context of future trade in services negotiations.

3.2 In 1995, the OECD began negotiating a comprehensive Multilateral Agreement on Investment (MAI) based on such trade in services principles as non-discrimination and most-favoured-nation treatment for foreign investors in the form of a free-standing treaty open to accession by non-OECD members who are willing to accept its obligations. Final agreement will depend on achieving a satisfactory scope and balance of commitments among the negotiating parties, including agreement on general exceptions, temporary safeguards and country-specific exceptions or reservations. Although the negotiating draft of March 1998 did not include air transport as a general exception, parties may still include it in their country-specific exceptions.

3.3 An MAI which permits country-specific exceptions that could cover air transport, but which is nevertheless premised on liberalizing cross-border investment generally and is open to accession by non-OECD States, could have significant long term implications for the structure and ownership of the international airline industry. But, notwithstanding this long term potential, and whether or not the OECD-sponsored MAI comes to fruition, or even if the WTO takes up the liberalization of foreign investment in a wider context, the fact remains that a trend towards foreign investment in the airline industry is already underway. By the end of 1997, some 50 carriers have stakes in foreign airlines while about 65 airlines have equity owned by foreign investors. Furthermore several countries now permit more than 50 per cent foreign ownership in their airline industry.

3.4 Should States assume obligations with respect to air transport in an MAI, they can use the ICAO guidance on broadened airline ownership and control criteria (para. 3.1, A32-WP/9) to adjust to this new situation concerning foreign ownership of airlines.

4. CO-OPERATION AND CO-ORDINATION WITH TRADE IN SERVICES ORGANIZATIONS

4.1 ICAO has continued the good working relationship with the WTO which was established with its predecessor, the General Agreement on Tariffs and Trade (GATT). Since the beginning of the Uruguay Round the Secretariat has enjoyed a constructive and co-operative working-level relationship with personnel in both the Group of Negotiations on Services Division of the GATT during the early years of the trade in services negotiations and with the Services Division of the WTO since then.

4.2 One example of ICAO co-operation and co-ordination with the WTO is computer reservations systems (CRSs). Assembly Resolution A31-13 on computer reservation systems requests the Council, *inter alia*, to bear in mind the particular need for close and effective collaboration between ICAO and the WTO in view of the inclusion of computer reservation systems in the GATS. Consequently, the views of the Services Division of the WTO were sought on the draft revised ICAO CRS code of conduct produced by the Secretariat Study Group on Computer Reservation Systems; in January 1996 an official of the WTO indicated that in his view and that of their legal expert the language in the market access and exemption provisions of the ICAO Code was not inconsistent with the provisions of the GATS. Consequently ICAO Member States which are also WTO Members may follow the revised ICAO CRS Code consistent

with their obligations under the GATS. Since the adoption of the Code, ICAO personnel have exchanged information with personnel of the World Trade Organization on several aspects of the question of exempting developing countries from CRS market access provisions as well as on the nature and extent of CRS operations in developing States.

4.3 Insofar as formal relations between ICAO and WTO are concerned, Article XXVI of the GATS provides that the General Council shall make appropriate arrangements for consultation and co-operation with the United Nations and its specialized agencies. In June 1997, ICAO formally applied to the WTO to be designated as an observer to meetings involving international air transport. The WTO advised that this request would be acted on as soon as the General Council established criteria for intergovernmental observers. To date, no decision has been taken on these criteria and consequently, on the requests for observer status from ICAO and other intergovernmental (including most United Nations) bodies.

4.4 ICAO has also enjoyed a co-operative relationship with the OECD. Since the last Session of the Assembly, information and views have been provided as input to the OECD's study on the future of international air transport policy and information on the status of the OECD Multilateral Agreement on Investment was obtained for the Air Transport Regulation Panel's consideration of broadening the traditional ownership and control criteria for the use of market access in international air transport.

5. ACTION BY THE ASSEMBLY

5.1 The Council has included the text of Resolution A31-12 on trade in services, in the form appearing in the Appendix to this working paper, in a new draft Resolution on a Consolidated Statement of Continuing ICAO Policies in the Air Transport Field to be adopted under Agenda Item 33 (Assembly Resolutions to be consolidated or to be declared no longer in force).

5.2 The Assembly is accordingly invited:

- a) to note this report; and
 - b) to review the text in the Appendix to this working paper with a view to its adoption under Agenda Item 33.
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APPENDIX

EXTRACT FROM DRAFT ASSEMBLY RESOLUTION ON A CONSOLIDATED STATEMENT OF CONTINUING ICAO POLICIES IN THE AIR TRANSPORT FIELD

Appendix A - Economic Regulation Section IV. Trade in services

Whereas on the issue of including aspects of international air transport under the General Agreement on Trade in Services, ICAO has actively promoted an understanding by all parties concerned of the provisions of the Convention on International Civil Aviation and of the particular mandate and role of ICAO in international air transport;

The Assembly:

1. *Reaffirms* the need for ICAO to explore future regulatory arrangements and develop recommendations and proposals to meet the challenges facing international air transport, responding to the internal and external changes affecting it;

2. *Recognizes* that such arrangements should be based on the general goal of gradual, progressive, orderly and safeguarded change towards market access, and the interests of all Contracting States in ensuring their effective and sustained participation in international air transport;

3. *Urges* Contracting States which participate in trade negotiations, agreements and arrangements relating to international air transport to:

- a) promote a full understanding of the role of ICAO in developing policy guidance on the regulation of international air transport;
- b) ensure that their representatives are fully aware of the provisions of the Chicago Convention, the particular characteristics of international air transport and its regulatory structures, agreements and arrangements; and
- c) file with ICAO under Article 83 of the Convention copies of any exemptions and specific commitments pertaining to international air transport made under the General Agreement on Trade in Services;

4. *Requests* the World Trade Organization and its Member States to accord due consideration to:

- a) ICAO's constitutional responsibility for international air transport; and
- b) the results of ICAO's World-wide Air Transport Conference (1994) and ICAO's continuing work on the economic regulation of international air transport;

5. *Requests* the Council to:

- a) continue to monitor developments in trade in services which might impinge on international air transport and inform Contracting States accordingly; and
- b) promote continued effective co-operation and co-ordination among ICAO, the World Trade Organization, and other intergovernmental and non-governmental organizations dealing with trade in services.

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