

**WORLDWIDE AIR TRANSPORT CONFERENCE: CHALLENGES AND
OPPORTUNITIES OF LIBERALIZATION**

Montreal, 24 to 29 March 2003

Agenda Item 2: Examination of key regulatory issues in liberalization
2.7: Transparency

**TRANSPARENCY IN INTERNATIONAL CIVIL AVIATION
REGULATION**

(Presented by the United States of America)

SUMMARY

This paper address the issue of transparency in national and regional regulatory procedures dealing with international civil aviation as a means to facilitate liberalization and to promote a fair and equal opportunity to compete. It sets forth recommended standards for transparency for Contracting States.

Action by the Conference is in paragraph 3.1.

1. INTRODUCTION

1.1 Today, more than ever, transparency in the formulation of national and regional laws and regulations affecting international civil aviation is an essential factor in facilitating efficient operations. The *Manual on the Regulation of International Air Transport* (Doc 9626) defines transparency as “the openness of agreements and understandings reached and accessibility by non-party States and individuals with an interest in their contents”.

1.2 In international civil aviation, transparency is an essential element so that all those affected by regulations may have input into their formulation, notice of their adoption and the opportunity for appeal. National regulators should have the benefit of input from all affected parties, both nationals and others. It is in the interest of States as well as the increasing number of parties involved in civil aviation that the process at the national as well as the international level become more open and transparent.

1.3 At the global level, the Annexes to the Convention establish Standards and Recommended Practices (SARPs) to ensure the safety, security and orderly development of international civil aviation, and Contracting States are obligated to file differences between the SARPs and their national regulations and practices with ICAO. In the air transport area, however, only Facilitation (Annex 9) is covered by ICAO SARPs; air transport is regulated almost exclusively by bilateral air services agreements and by regulations at the national and regional levels. Article 83 of the Convention requires Contracting States to register their air services agreements with ICAO, but there is no registration requirement for national or regional regulations. Nevertheless, there are ample reasons to promote transparency at the national and regional level.

1.4 Transparency is an important element in promoting economic growth, competitiveness and financial stability at the domestic and international levels. It is conducive to fairer and more effective governance and improves public confidence in government. It is a fundamental principle under the General Agreement on Trade in Services (GATS) and has been recognized in regional trade fora such as the North American Free Trade Agreement and the Asia Pacific Economic Cooperation (APEC) Leaders' Statement to Implement APEC Transparency Standards, 27 October 2002.

1.5 Transparency is a basic principle that enhances the benefits of liberalization. The removal of barriers to the development of civil aviation is facilitated when members of the public know what laws, regulations, procedures and administrative rulings affect their interests, can participate in their development, can participate in administrative proceedings applying them, and can request review of their application.

1.6 ICAO has already addressed transparency issues in the context of user charges for airport and air navigation services (*ICAO's Policies on Charges for Airports and Air Navigation Services*, Doc 9082/6) and environmental regulation (Resolution A33/7), both of which strongly encourage open and transparent consultations with users.

2. DISCUSSION

2.1 The following recommended principles for transparency in national regulatory action relating to international civil aviation are drawn from the APEC Leaders' Statement:

- a) Each Contracting State should ensure that its laws, regulations, procedures and administrative rulings of general application respecting international civil aviation are promptly published or otherwise made available, for example via the Internet, in such a manner as to enable interested persons and other Contracting States to become acquainted with them.
- b) Each Contracting State should have or designate an official journal or journals and publish any measures referred to in paragraph a) in such journals. Each Contracting State should publish such journals on a regular basis and make copies of them readily available to the public.
- c) When possible, each Contracting State should:
 - i) publish in advance any measures regarding international civil aviation that it proposes to adopt; and

- ii) provide interested persons a reasonable opportunity to comment on such proposed measures.
- d) Upon request from an interested person or another Contracting State, a Contracting State should endeavor to promptly provide information and respond to questions pertaining to any actual or proposed measures regarding international civil aviation.
- e) Each Contracting State should ensure in its administrative proceedings applying any measure affecting international civil aviation that:
 - i) persons of another Contracting State that are directly affected by an international civil aviation proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;
 - ii) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action relating to international civil aviation, when time, the nature of the proceeding and the public interest permit; and
 - iii) its procedures are in accordance with domestic law.
- f) For purposes of these Standards, administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and factual situations that fall generally within its ambit and that establishes a norm of conduct but does not include:
 - i) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of another Contracting State in a specific case; or
 - ii) a ruling that adjudicates with respect to a particular act or practice.
- g) The provisions of these principles will not require any Contracting State to disclose confidential information where such disclosure would impede law enforcement, the enactment of laws, or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular persons or enterprises.

3. ACTION BY THE CONFERENCE

3.1 The Conference is invited to conclude that:

- a) transparency should be regarded as an objective to be pursued within national and regional regulatory frameworks and as an essential element in the liberalization process, and that States and interested parties in the regulatory system benefit from improved transparency;

- b) Contracting States should be invited to adopt and apply transparency principles such as those laid out in paragraph 2.1 for national and regional regulatory actions relating to international civil aviation.

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