

**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
2.2: Market access

LIBERALIZATION OF MARKET ACCESS

(Presented by the United States of America)

SUMMARY

The United States believes that unrestricted access to the international market for air service providers is a key component for allowing the air transport sector to maximize its contribution to the global economy. Since the last Worldwide Air Transport Conference convened by ICAO in 1994, there has been remarkable progress in air transport liberalization. The United States has been and remains a leader in this movement, now partnering with almost 60 states in open-skies agreements, more than 20 of which are with developing countries. We commend the elements of our model open-skies agreement for consideration by ICAO Member States in their own efforts to liberalize.

The United States believes that the considerable progress that it and other States have achieved in liberalization is evidence that the current system has been very effective in increasing liberalization overall. The system is flexible, and under it the United States has used a number of vehicles, including bilateral and multilateral agreements and phased-in implementation, to achieve liberalization.

Airport congestion, while a problem that every Member must address, has not been a significant constraint on States' conclusion of liberalized air services agreements.

There is no evidence to date that progress in liberalization would be enhanced by expansion of the current scope of the Annex on Air Transport Services of the General Agreement on Trade in Services.

Action by the Conference is in paragraph 4.1.

1. INTRODUCTION

1.1 The United States believes that unrestricted access to the international market for air service providers is a key component for allowing the air transport sector to maximize its contribution to the global economy. The number of liberalizing agreements, including open-skies agreements, that ICAO Member States have concluded bilaterally, regionally, and plurilaterally/multilaterally over the past decade demonstrates a clear international consensus on liberalization's benefits. We welcome all efforts by ICAO Member States to achieve liberalization of international air transport services.

1.2 This week's conference has been described as a forum to discuss "how to, not whether to, achieve liberalization." We welcome the spirit of these words and hope that the dialogue among Member States here will advance that end.

2. REVIEW OF PROGRESS IN LIBERALIZATION

2.1 Since the last Worldwide Air Transport Conference convened by ICAO in 1994, there has been remarkable progress in air transport liberalization. As noted in ATConf/5-WP/8, about 70 percent of the 600 agreements and amendments concluded from January 1995 to December 2001 contained some form of liberalized arrangements.

2.2 More importantly, a significant number of these agreements were "open-skies" agreements that removed all restrictions on the essential elements involved in the provision of international air services. By June 2002 some 85 "open-skies" agreements had been concluded involving approximately 70 countries. These agreements involved not only developed countries but also an increasing number of developing countries. The United States is a leader in the movement towards Open Skies. We signed the first such agreement with the Netherlands in 1992 and now partner with almost 60 States in open-skies agreements. More than 20 of these agreements are with developing countries.

2.3 Liberalization, particularly as it is exemplified in open-skies agreements, brings with it the economic benefits generated by a vibrantly competitive market place. We commend the core elements and principles of our open-skies agreements to all ICAO members for consideration in their own liberalization efforts:

- a) Unrestricted route rights (1st through 6th Freedoms), applied to any points in each party's territory.
- b) Unrestricted capacity and frequencies. No restrictions on number of designations. Equivalent access for non-scheduled operations.
- c) Unrestricted operational rights, including change of gauge, type of aircraft used, co-terminalization, and intermodal rights.
- d) Pro-competitive provisions on ground handling, sales operations, and non-discrimination in access to customs services and appropriately developed user fees.
- e) Double disapproval pricing. Under this approach, each carrier sets its prices unless both governments agree that intervention is warranted.

- f) Same-country, bilateral, and third-country carrier code sharing.
- g) Liberal charter arrangements, where the least restrictive charter regulations of the parties apply, regardless of the origin of the flight.
- h) No restriction on conversion and remittance of currency.
- i) Commitment for non-discriminatory operation of and access to computer reservation systems (CRSs).

This range of rights gives flexibility to airlines to pursue the most efficient provision of service, which in turn benefits consumers, airports and communities, and the overall development of the economies that grant the rights.

2.4 The United States notes that alleviation of slot shortages at congested airports is an ongoing concern. ATConf/4 recognized that a shortage of airport slots at congested airports was an important physical constraint on market access, and called for States to expand capacity. We encourage all ICAO Member States to work to insure that infrastructure capacity is sufficient to handle fully liberalized international traffic. However, we agree with the observation in ATConf/5-WP/8 that airport congestion has not been a significant constraint on States' conclusion of liberalized air services agreements.

2.5 The liberalization that the U.S. has been able to achieve has been accomplished primarily through bilateral agreements. Regional and plurilateral agreements, however, are also effective tools, and the U.S. was pleased to enter into the Multilateral Agreement on Liberalization of International Air Transportation (the MALIAT, or "Kona" Agreement) with Brunei, Chile, New Zealand and Singapore in 2001. This agreement provides a straightforward framework that allows all parties to enjoy full open-skies treatment from all other parties, as well as enhanced access to capital investment, and for the accession of new parties without the need for a series of time-consuming bilateral negotiations. Since its establishment, the MALIAT has been joined by Peru and Samoa, for a total of seven members.

2.6 The United States also recognizes the utility of phased-in or transitional open-skies agreements. In some cases, our negotiating partners were not prepared for immediate implementation of all elements of our standard open-skies agreement, so we agreed on phased implementation. Transitional provisions are an effective way to encourage States that might otherwise hesitate to accept liberalization, and gives those partners an early opportunity to reap the economic benefits of access to the U.S. and global marketplace.

2.7 Liberalization provides broad and deep economic benefits for States' consumers, airlines, airports, communities and economies. The United States believes that the considerable progress that it and other States have achieved in liberalization is evidence that the current system has been very effective in increasing liberalization overall, and that the momentum should be maintained. To this end, we believe that the elements we have included in our open-skies agreements should be the minimum objective of every air services agreement.

3. GLOBAL APPROACHES TO LIBERALIZATION

3.1 In light of the significant liberalization that has been achieved under the current system, we agree with the strong majority view that most States do not appear ready to enter into a global multilateral agreement encompassing air transport, and we concur with the conclusion in ATConf/WP-8 that States should continue to pursue liberalization at their own pace using bilateral, regional, plurilateral and multilateral avenues of their own choice.

3.2 The primary vehicle promoted by the minority advocating a global approach to liberalization is the World Trade Organization's General Agreement on Trade in Services (GATS), through the Annex on Air Transport Services. Currently, the Annex applies to only three specifically named services: aircraft repair and maintenance, selling and marketing of air transport services, and computer reservation system (CRS) services. The Annex excludes from the application of the GATS traffic rights and all other "services directly related to the exercise of traffic rights." Proponents of a global trade approach for air transport services have in recent years proposed expanding the scope of the Annex to include some traffic rights or related services such as ground handling.

3.3 The United States believes that the broad exclusion of most air transport services from the GATS was appropriate and farsighted, and the industry-specific approach has continued to produce significant liberalization to the benefit of consumers and suppliers of these services. The United States sees no evidence that this progress would be assisted by any expansion of the current scope of the Annex; to the contrary, the United States expects that liberalization would be slowed by changes to the current scope.

3.4 In contrast to the significant liberalization that has occurred in the exchange of air service rights outside of the GATS, a review of the three services currently covered by the GATS Annex reveals that liberalization in those services through application of the GATS has been limited. In the case of aircraft repair and maintenance, all WTO commitments scheduled when the GATS was concluded offered only previously-established open access and did not represent new liberalization. In the case of both CRS and selling and marketing, which continue to be inextricably linked, several States have registered MFN exemptions for the applicability of the Annex to those services, and the GATS was not an impetus for liberalization for these States. By contrast, dozens of States have concluded open-skies agreements with strong liberalizing commitments on CRS and marketing and selling.

3.5 At this time, the United States believes that the problems mentioned above attend not only to the GATS, but to any global coverage of air services in a general trade agreement. In the view of the United States, no changes should be made to the status quo solely to create an impression of progress. Nor should any change be undertaken that would do more harm than any clearly achievable good. The goal for ICAO Members should be the further liberalization of the air transport sector, and at this time it is clear that this goal is best achieved under the current system of air services agreements that allows States to pursue liberalization at a pace and method that meets the needs of each specific State.

4. ACTION BY THE CONFERENCE

4.1 The Conference is invited to consider the views expressed above, and to conclude that:

- a) the considerable progress that Member States have achieved in liberalization is evidence that the current system has been very effective in increasing liberalization overall, and

that the momentum should be maintained through the use of open-skies agreements at the bilateral, regional, plurilateral and multilateral levels;

- b) airport congestion, while a problem that every Member must address, has not been a significant constraint on States' conclusion of liberalized air services agreements; and
- c) there is no evidence to date that progress in liberalization would be enhanced by expansion of the current scope of the Annex on Air Transport Services of the General Agreement on Trade in Services.

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