

WORLDWIDE AIR TRANSPORT CONFERENCE: CHALLENGES AND OPPORTUNITIES OF LIBERALIZATION

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Agenda Item 2: Examination of key regulatory issues in liberalization 2.2: Market access

LIBERALIZATION OF AIR CARGO TRANSPORT

(Presented by Organisation for Economic Co-operation and Development:
OECD Secretariat)

INFORMATION PAPER

1. INTRODUCTION

1.1 As an international organization dealing with a wide range of economic and social policy issues, the OECD helps governments meet the challenges of a globalized economy.

1.2 In 1997, the OECD published a report on regulatory reform in air transport services (see OECD, *The Future of International Air Transport Policy*, 1997). A general conclusion of the work was that, while considerable progress had been made with liberalization of international aviation in some markets, air transport globally continued to be characterized by a set of regulatory rules and practices far more restrictive than those applying to most other industries operating in international trading environments.

1.3 More recently, in the context of the OECD Programme on Regulatory Reform, the OECD Secretariat has worked co-operatively with aviation officials and industry representatives on possible approaches to liberalizing certain aspects of the regulatory framework for international air transport services.

1.4 The OECD Secretariat decided to pursue the options for liberalization of international air transport by focussing its attention first on the air cargo market. Air cargo transport operates under a regulatory framework that in many cases is less restrictive than that applying to passenger transport - as evidenced by the liberalized air cargo provisions included in a significant number of bilateral agreements. Addressing the issues required for successful reform of air cargo services could be expected to provide the added benefit of facilitating and promoting regulatory reform of international air passenger transport services.

2. AIR CARGO SERVICES

2.1 Air cargo plays a vital role in ensuring the competitiveness and commercial success of a large number of industries across the globe. While in terms of weight, air cargo accounts for only about 2% of all the cargo moved world-wide, it constitutes over one third of the value of the world trade in merchandise. Over a period of many years, international air cargo demand has increased more rapidly than international air passenger demand. It seems likely that the relative growth differentials between passenger and cargo volumes will continue for many years in future. In this case, not only will there be substantially greater volumes of air freight to be carried by combination and air cargo carriers; increasing proportions of air freight will need to be carried on dedicated all-cargo air services. Given the one-way nature of air cargo, and the different economic and operational demands on air cargo services - such as the need for triangulation - the air cargo industry has sought different regulatory arrangements from those applying to international air passenger services.

2.2 The present system of bilateral air services agreements under which air cargo services are generally provided does not comply with two basic principles of the international trade system, namely transparency and non-discrimination. The sets of bilateral aviation agreements are often very restrictive, particularly in terms of their economic regulatory provisions. More broadly, the existing regulatory framework generally limits the ability of air carriers to respond to market developments and their ability to provide - on an efficient and economic basis - the regional and global air cargo services that the market is seeking.

2.3 The air cargo industry has sought cargo-specific regulatory provisions that will provide the extra flexibility the industry needs to ensure air cargo services can respond as efficiently as possible to customer demands.

3. CONSIDERATION OF THE ISSUES

3.1 Work on air cargo within the OECD has included a detailed report on "Regulatory Reform in International Air Cargo Transportation" made available in early 1999, a workshop on the subject held in Paris in July 1999, preparation of a Working Paper entitled "OECD Principles for the Liberalization of Air Cargo" in June 2000 and a further workshop held in Paris on 4-5 October 2000 to identify the issues that would require examination in pursuing regulatory reform and outline possible approaches. These international air cargo workshops, involving participants drawn from international organizations, aviation administrations and the aviation and air cargo industries - and who participated in their personal capacity - confirmed there was a growing concern about the regulatory restrictions on air cargo services. The 2000 workshop identified five key issues:

- a) Leasing of aircraft (especially wet-leases from third countries);
- b) Ownership and control of air carriers;
- c) Liberalised traffic rights for air cargo services;
- d) Safety and security requirements under a liberalized regime; and
- e) Competition safeguards / legislation.

3.2 The Workshop provided support for further work - under the aegis of the OECD - to facilitate air cargo liberalization.

3.3 A final OECD Workshop was held on 21-22 January 2002. The key Workshop outcomes - reflecting the views of the participants - included:

- a) relaxation of existing restrictions on international traffic rights would allow better market access and improve the air cargo industry's ability to meet user requirements;
- b) relaxation of government controls over "ownership and control" of air carriers would allow the development of industry structures and services better suited to global and regional air cargo tasks;
- c) more consistent approaches were required to leasing of aircraft, particularly wet-leasing;
- d) liberalization measures should only be undertaken if essential public interest regulatory controls over aviation safety and aviation security could be assured; and
- e) environmental aspects and infrastructure constraints need consideration in conjunction with liberalization initiatives.

4. PROPOSED LIBERALIZATION APPROACHES

4.1 In May 2002, the OECD Secretariat made available on its website a comprehensive package titled: "[Liberalisation of Air Cargo Transport](#)". [A copy can be downloaded from the OECD Transport Division's home page by clicking this link].

4.2 This package was designed to assist Member countries, the aviation industry and other interested parties with the liberalization of air cargo services. It identifies the conceptual issues to be addressed and principles that should guide liberalization initiatives. The Air Cargo Liberalization package outlines opportunities and options for reform and identifies practical ways and means to undertake regulatory reform in the air cargo transport sector. It addresses the range of air cargo liberalization issues - including market access, ownership and control and aircraft leasing - and other issues that were identified by aviation officials and industry participants through the course of the work as presenting unnecessary barriers to the delivery of efficient air cargo services to users.

4.3 The Liberalization package considers two broad approaches - bilateral and multilateral - and for each approach provides suggested draft text for dealing with the key issues in the form of:

- a) A Bilateral Protocol - which focuses on the liberalization of traffic rights for air cargo services, ancillary services and other specific air cargo transportation issues that can be dealt with separately under existing bilateral air service agreements.
- b) A draft Multilateral Agreement - which could provide a means for liberalization of existing market restrictions and restrictions on commercial flexibility and "doing business" matters, on a multilateral basis. The draft Multilateral Agreement approach could facilitate early action to liberalize international air cargo services without compromising essential safety and security aspects of civil aviation.

4.4 The approaches to the issues take into account the views expressed by participants at the 2002 Workshop, with additional clarification where required. In the case of the draft Multilateral Agreement, the proposed treatment of the three key issues is as follows:

- a) **Traffic Rights:** The formulation of market access which is included would deliver full international traffic rights liberalization for air cargo services, providing access to air cargo markets between the territories of the Contracting Parties and to/from any points in other States.
- b) **Ownership and Control:** The proposed Articles on Authorization and Revocation would allow Contracting Parties to dispense with the requirement that the air carrier be 'substantially owned' and, in the Authorization provision, also allow Contracting Parties to dispense with the requirement that the air carrier be 'effectively controlled' by the Contracting Party designating the air carrier, its nationals or both. [However, reflecting the diversity of views on this important issue, the Articles include optional provisions retaining a requirement for designated air carriers to be effectively controlled by the designating Party, its nationals or both (or alternatively by Contracting Parties, their nationals or both)].
- c) **Aircraft Leasing.** The formulation on aircraft leasing would allow each designated air carrier to have the right to hold out and operate air services for the conduct of international air transportation in accordance with the Agreement by the use of owned, dry leased, or wet leased aircraft provided that :
 - C in the case of leased aircraft, the functions and duties with respect to such leased aircraft under Articles 12, 30, 31 and 32a of the Chicago Convention:
 - i) are accepted and performed by the aeronautical authorities of the State of the lessee / operator; or
 - ii) continue to be performed by the aeronautical authorities of the State of Registry; or
 - iii) are, by agreement between the aeronautical authorities, otherwise allocated between the authorities of the State of Registry and the authorities of State of the lessee / operator so as to ensure full compliance with the forementioned Convention Articles.

4.5 This approach is aimed at meeting the needs of the industry to use leased aircraft and the needs of Contracting States to be assured of the operational integrity of both dry leased and wet leased aircraft registered in other countries. Interested air cargo industry parties have raised with some key aeronautical authorities the possible use of these provisions in relation to 'wet'-leasing as well as 'dry'-leasing.

5. CONCLUSIONS

5.1 The OECD Secretariat's package on "Liberalization of Air Cargo Services" highlights the need to remove outdated regulatory restrictions that are impeding air cargo operators in their efforts to provide improved air cargo services to users.

5.2 The Liberalization package outlines the key issues and suggests possible approaches for their resolution - under either bilateral or multilateral approaches - to facilitate air cargo liberalization.

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