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PRELIMINARY THOUGHTS ON THE LIBERALISATION OF AIR TRANSPROT AND THE GATS

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Preliminary Thoughts on the Liberalisation of Air Transport and the GATS

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PRELIMINARY THOUGHTS ON THE LIBERALISATION OF AIR TRANSPORT AND THE GATS

(Presented by Khalid Mahdi, Regional Director – Middle East, IATA)

ESCWA Workshop on GATS and Transport Services
Beirut, 10 June 1999

Introduction

In a few months time, the World Trade Organisation (WTO) will meet in Seattle to launch a new Round of negotiations (known as the Millennium Round) under the General Agreement on Trade in Services and air transport will figure high on the agenda.

I want to share with you today some of the views that are beginning to emerge among IATA's member airlines on air transport and the GATS and more generally about the liberalisation process.

The new GATS Round

As you know, the GATS came into effect in 1995, after more than ten years of preparation and negotiations. It provided, for the first time, a multilateral framework of principles and rules for trade in services similar to that covering trade in goods under the General Agreement on Tariffs and Trade.

Three features of the GATS seem particularly important to me. The first is that GATS defines a progressive process aimed at removing barriers to trade in services. The second is that the aim is to cover all tradable services in all sectors. And the third is that the balance of benefits for a country will be measured in relation to trade in all goods and services and not just in any one sector.

The air transport world is still not familiar with GATS and WTO and has, with some exceptions, tended to view bringing air transport completely into the GATS with apprehension. But we must accept that pressure exists to move, over time, from the present bilateral system to a multilateral framework.

Another possibility, that some European airlines are examining, is to establish whether the GATS could be used to remove specific trade obstacles not directly covered by bilateral agreement, such as airport services, ground handling restrictions or discrimination in the field of ATC and airport charges. Other issues include ownership and control, transit rights, wet-leasing, cargo and facilitation.

A key question that needs more study is how conditional MFN could be developed to apply specifically to air transport and so overcome the practical objections to full MFN being applied in this sector. Conditional MFN can also be described as *mirror reciprocity*, or opening only to other countries that have taken similar measures and has been used for the first time in the Agreement on Government Procurement.

Accepting that there is widespread agreement on the need to liberalise aviation markets, the question that must be answered is what is the best way for us to move forward, with adequate safeguards and relying on the progressive element, so as to avoid radical change.

Where do developing countries stand?

What can one say about GATS and air transport from the standpoint of developing countries? It is difficult to generalise as they represent a wide range of situations and interests and they have had the least input into assessing GATS developments.

Let me start by making two general observations. The first is that developing and transition countries represent 80 per cent of the total membership of WTO. The second is that foreign trade accounts on average for 38 per cent of gross national product, against 15 percent for the EU.

In principle therefore, developing countries have an interest from a trade standpoint in seeing air transport fully in the Agreement so that they can take maximum advantage to using air transport services for bargaining purposes in other sectors. In other words, carriers might not benefit but countries would. I would add that there is a strong feeling in the industry that aviation should not be used as a hostage in tradeoffs or in connection with trade disputes.

Two major developments that may influence the way in which developing states and their airlines consider the liberalisation process are the gradual consolidation of the four major airline alliances involving partners in different regions and the serious economic difficulties encountered by many long-established airlines for a variety of reasons.

The GATS does recognise that the special situation of some developing countries may dictate the extent and pace of liberalisation. Furthermore, any state can craft its commitments in such a way as to privilege its nationals, providing a certain safeguard. Negotiations on safeguards as such have not progressed.

If the notion of safeguards is developed, they should be used to give airlines and their states confidence in the liberalisation process rather than as protection measures. More work must be done to clarify how the interests of airlines in difficulties can be considered bearing in mind that air transport is a part of a nation's essential infrastructure.

Conclusion

The first conclusion to be drawn is that a lot of work remains to be done to educate the aviation community about the GATS and trade negotiators about air transport. We also

need to have a better understanding about what is already included in the Agreement and a clearer classification of services.

The Annex must also take account of other emerging obstacles to trade in air transport such as airport and airspace congestion, safety oversight, environmental measures, taxation, competition law and consumer protection requirements.

Secondly, there is a strong preference in the industry for air transport services to continue to be dealt with on a sectoral basis, as opposed to inclusion with other services on a comprehensive basis.

Thirdly, the position that is beginning to emerge from among our members is that the GATS is not the vehicle at present for overall liberalisation, but the Millennium Round does offer the opportunity to examine what obstacles exist and to see if GATS can help. Nevertheless, it would be extremely difficult to manage the dual regime that would emerge if aviation hard rights were brought into the GATS.

However, the debate is just beginning. IATA, along with other players, is still evaluating the various views and proposals, and looking for the best way to further the liberalisation of air transport. We plan to have a formal policy in place in time for the start of the Millennium Round in December.

Two other services, aircraft leasing and airline catering, were also covered elsewhere in the Agreement itself but have received little attention because the terminology was not aviation specific.

To date, the GATS has had little effect on trading the services I have mentioned. This can be put down to a lack of clarity, a lack of understanding and the fact that *most-favoured nation* (MFN) exemptions were registered by key signatories, notably in regard to CRS.

Efforts are already in hand, especially in the European Union, to educate stakeholders, to clarify what the existing GATS does and does not cover and to evaluate the GATS as a major instrument of liberalisation and to compare it to other approaches. MFN exemptions will also come under close scrutiny during the coming Round.

Different ways to liberalise

Of course the multilateral approach of the GATS is not the only way to liberalise air transport.

The United States set the example in 1978 when it deregulated its domestic market. Since then considerable progress has been made in liberalising international air transport through bilateral means and through plurilateral and regional arrangements.

The United States has been particularly successful in opening foreign markets through *open skies* bilateral agreements with 35 countries, commencing in 1992 with the Netherlands, and most recently with Bahrain. From a practical standpoint this approach has produced undeniable results.

The European Union on the other hand seeks to build on the successful plurilateral system put in place by the Third Liberalisation Package of 1993. These arrangements have been extended to the European Economic Area and will soon cover an additional ten states in central and Eastern Europe. Another step forward could be a plurilateral agreement between *like-minded* states, beginning with the EU and the United States.

The Andean Pact or the Mercosur Agreement in South America are other examples of emerging plurilateral systems.

On a more limited basis, the Organization for Economic Cooperation and Development (OECD) is exploring the scope for moving all-cargo services under a multilateral or plurilateral regime as a way of accelerating the adoption of multilateral rules, notably through the use of MFN.

The common denominator in these arrangements is the reliance on a pragmatic and aviation specific approach to achieve concrete results.

The importance of pragmatism

For the present, the IATA GATS task force still holds to the IATA policy agreed in 1994 that it is premature to view the GATS as a vehicle to liberalise hard rights.

But the Millennium Round reopens the debate on the liberalisation process and challenges the industry to think constructively as to how a multilateral or a combination of regimes, can be used to pursue liberalisation under a predictable set of rules.

A first conclusion is that it is necessary to clarify exactly what is covered by the GATS, especially under marketing and selling and leasing.

We will have to wait until the Seattle meeting to learn how discussions in this area will be handled. IATA and its 263 member airlines, together with the regional airline associations therefore have a strong interest in staying close to this process to develop a better understanding.

It is important for the industry to work closely with governments, particularly with trade officials who lack specific knowledge of civil aviation. So we welcome the much more open communications that are being fostered by all concerned parties compared to the Uruguay Round when aviation interests had only limited opportunity to be heard.

This Conference, and others which have and will take place, are a measure of the importance accorded to regulatory reform in general and to the GATS in particular.

Why was the coverage of air transport in the GATS limited in 1995?

The first question I want to address is why the coverage of air transport services was limited in the GATS in 1995.

The Uruguay Round negotiators recognised at an early stage that international air transport was governed by an intricate system of over 3,500 bilateral agreements. These accords were based on a balanced and reciprocal exchange of rights between states on the basis of *fair and equal opportunity*. In addition, the International Civil Aviation Organisation (ICAO) and IATA provided a well-understood and comprehensive multilateral environment. This framework was sufficiently flexible to allow for increasing competition and at the same time for the co-operation needed to run a universal system covering almost 190 countries and hundreds of airlines, big and small.

The airline industry sent a strong message that it did not wish to see a dual regulatory regime created with some states applying GATS obligations and others holding to existing arrangements. If new trade concepts were to be applied to air transport, it was the general view that ICAO, as the competent UN agency involved, was best qualified to take into consideration the industry's particular characteristics and regulatory arrangements and structures.

Existing coverage of the GATS

It became clear during the negotiations, that it was premature to include air transport in the General Agreement. So a compromise solution was sought that would leave the door open to widen the scope of the coverage at a later date.

This took the form of a separate Annex on Air Transport Services that included only three ancillary services: aircraft repair and maintenance, selling and marketing of air transport services, and computer reservation system services.

The Annex specifically stated that anything to do with traffic rights and any directly related services was excluded. These are defined in the widest sense to include routes, traffic rights, capacity, pricing and the criteria for the designation of airlines, that is ownership and control requirements. They are sometimes referred to as *hard rights*, or the basic authorisation needed to operate services to and from another country as distinct from *soft rights*. The notion of *soft rights* emerged during the negotiations in an effort to categorise *doing-business* activities.