



**LIBERALISATION OF AIR TRANSPORT  
AND THE GATS**

**IATA Discussion Paper**

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ATTACHMENT A: Annex on Air Transport Services

# LIBERALISATION OF AIR TRANSPORT AND THE GATS

## An International Air Transport Association Discussion Paper

### I. INTRODUCTION

Towards the end of 1999, a new round of multilateral trade negotiations will be launched in Seattle under the auspices of the World Trade Organisation (WTO). Trade in services will figure prominently and air transport, as a sector only partially covered by the General Agreement on Trade in Services (GATS), will receive particular attention with a view to the possible further application of the Agreement in this sector.<sup>1</sup>

Multilateralism has been at the heart of international air transport since October 1944 when the International Civil Aviation Organization (ICAO) came into being, followed a few months later by its sister organisation, the International Air Transport Association (IATA). Working together, these organisations have a proud history of satisfying the world's consumers and their right to mobility at steadily declining prices and increasing levels of safety and security. This record militates against any change for the sake of change.

This paper brings together the views of IATA's Member airlines on air transport and the GATS and on the relative merits of the different approaches to the ongoing liberalisation process in this sector.

These views are likely to evolve as the Round progresses and in the light of other developments affecting air transport.

### II. GATS AND AIR TRANSPORT

#### A. General remarks

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 since 1947 under the General Agreement on Tariffs and Trade (GATT).

Three features of the GATS are particularly important:

- first, the GATS defines a process aimed at the progressive removal of barriers to trade in service;
- second, the aim is to cover all tradable services in all sectors;
- third, the balance of benefits for a country is measured in relation to trade in all goods and services and not just in any one sector.

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<sup>1</sup> The *Annex on Air Transport Services*, paragraph 5, requires the Council on Trade in Services to "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 to this sector." (The Annex is given in full at Attachment A).

The air transport world is generally unfamiliar with the WTO and the GATS and has, with some exceptions, viewed bringing air transport completely into the GATS with apprehension.

While many aspects of international air transport are dealt with on a multilateral basis, relations between States are still governed by bilateral treaties. But it is recognised that there is pressure to move, over time, from the present system towards a different multilateral or plurilateral framework.

In considering how to expand the coverage of the Annex, there is also growing recognition of the need:

- to better define the industry ‘sub-sectors’ for trade purposes;
- to keep the airline industry ‘on-board’, and
- to generate new thinking, *inter alia* on whether the concept of ‘conditional most-favoured nation’ (MFN) could be applied to air transport in the context of the GATS.

How discussions on air transport will be handled will not be known at least until the Seattle meeting. IATA and its 266 member airlines therefore have a strong interest in staying close to this process to develop a better understanding and to be able to contribute to the discussions.

It is also important for the industry to work closely with governments, particularly where trade officials lack specific knowledge of civil aviation. In this respect, IATA welcomes the more open exchanges that are being fostered by all concerned parties in comparison to the Uruguay Round negotiations, when aviation interests had only limited opportunity to be heard.

The forthcoming Round will underscore the importance that governments and airlines accord to aviation regulatory reform and to the GATS.

## **B. Reasons for limiting GATS coverage of air transport in 1994**

It is useful at the outset to review the reasons why the coverage of air transport services was limited when the GATS was finalised in late 1994.

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, each based on a balanced and reciprocal exchange of rights between states on the basis of *fair and equal opportunity*. In addition, the multilateral framework provided by ICAO and IATA was well understood and comprehensive.

The existing system of economic regulation had proved to be sufficiently flexible to allow for the development of consumer-responsive and increasingly competitive air transport services. At the same time it had proved able to foster the co-operation needed to run a global system covering almost 185 countries (compared to some 135 WTO Member states) and hundreds of airlines, big and small, serving over 1.5 billion passengers a year.

A further consideration was that, in contrast to the bilateral reciprocity reflected in the traditional system, *most-favoured nation* (MFN) treatment was to be a fundamental principle in the new GATS framework. Under the latter, a GATS Member

would be required, immediately and unconditionally, to accord to the services and service suppliers of any other Member, treatment no less favourable than that it accords to like services and service suppliers of any other country. This obligation would apply across the board – that is, it would not be confined to those sectors in which Members would elect to make specific commitments on market access and national treatment. Measures inconsistent with the MFN principle could only be maintained if covered in the lists of exemptions filed by each state at the conclusion of the Uruguay Round.

It was widely held then, as it still is, that the application of the MFN principle to international air transport could hold back the on-going process of liberalisation between like-minded states. Given the history of bilateral dealing in this sector, there was a reluctance to see states that are unwilling to take similar market-opening measures enjoy the benefits of liberalisation.

At that time, neither states nor airlines wished to see a dual regulatory regime emerge, particularly in respect of traffic rights, in which some states applied GATS obligations while others held 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. In other words, that aviation rather than trade interests should continue to play the predominant role at the state level.

### C. Present coverage of the GATS

Taking these views into account, a compromise was developed that would leave the door open to expanding coverage of the sector at a later date. This took the form of a separate Annex on Air Transport Services that covered only three ancillary services<sup>2</sup>:

- aircraft repair and maintenance;
- selling and marketing of air transport services, and
- computer reservation system services.

The Annex specifically excluded anything affecting traffic rights and services directly related to their exercise. *Traffic rights* were defined<sup>3</sup> in the widest sense to include routes, capacity, pricing and the criteria for the designation of airlines, that is ownership and control requirements. They are sometimes referred to as *hard rights*, meaning 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 as distinct from the authority to perform flights, and therefore to expand the Annex by limiting the exclusions set down in the Annex only to hard rights. No agreement was reached on severing the two categories as some states

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<sup>2</sup> A fourth, Ground Handling Services, was considered until late in the Uruguay Round but eventually discarded.

<sup>3</sup> Paragraph 6(d) of the Annex states “*traffic rights* mean the right for scheduled and non-scheduled services to operate and/or carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a member, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership and control”.

viewed soft rights as being essential to the exercise of hard rights and as providing leverage to advance liberalisation.

The Annex offered a particularity in that it provided a *positive*<sup>4</sup> list of the services covered by the Agreement (in paragraph 3). But the wording also left a certain ambiguity regarding the exclusion of “services directly related to the exercise of traffic rights”<sup>5</sup>.

An important feature of the Annex is the requirement (under paragraph 5) that the Council for Trade in Services (CTS) review, at least every five years, developments in the sector and the operation of the Annex. The CTS was therefore mandated to conduct regular reviews of air transport independently of future WTO trade negotiations of a general nature.

With the approach of the new Round, different bodies, including IATA, have begun to:

- educate stakeholders, to clarify what the existing GATS does and does not cover,
- evaluate the GATS as a major instrument of liberalisation, and
- compare it to other approaches to liberalisation.

Recognising the widespread interest in regulatory reform and in furthering the process of liberalisation, this paper sets forth the various options for change that may be considered within the framework of the GATS as well as outside, but parallel, to this framework.

### **III. LIBERALISATION WITHIN THE GATS FRAMEWORK**

#### **A. Options for change**

In reviewing the operation of the Annex over the past five years, one must conclude that the GATS has had little impact on the conditions under which the three services referred to above are traded. The reasons for this can be put down to a lack of clarity and understanding and to the fact that the initial commitments<sup>6</sup> made by states were modest in both scale and scope and often did no more than reflect the status quo. This assessment of the results to date should be taken into account in examining the options for change.

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<sup>4</sup> Under the GATS, states make commitments on market access and national treatment for all services listed in their schedules of commitment unless a specific exclusion is made.

<sup>5</sup> The WTO background paper on *Air Transport Services* (S/C/W/59) states (paragraph 4) that “The expression ‘services directly related to the exercise of traffic rights’ is not defined, but the fact that paragraph 3 [of the Annex] is presented as an exception to the exclusion in paragraph 2 implies that the three covered services are regarded as directly related”.

<sup>6</sup> For example, MFN exemptions were registered by about half of the states that made commitments on CRS and marketing and selling.

Two feasible options to liberalise air transport within the GATS framework can be considered at the present time:

- Option 1 – Leave the Annex basically unchanged, but clarify certain terms and improve the commitments made in terms of quality and number of states;
- Option 2 – Build on Option 1 and seek to expand the services covered by the Annex subject to certain conditions so as to remove specific obstacles to trade in air transport.

With few exceptions, IATA's member airlines continue to hold to the policy agreed in 1994 that it is premature to view the GATS as a vehicle to liberalise traffic rights<sup>7</sup>. Matters that remain to be addressed in this connection are:

- most states wish to be able to participate in air transport and hence, with few exceptions, wish to maintain a degree of control in this field by keeping arrangements on a sector-specific basis rather than making them tradable against other national trade interests;
- the lack of predictability, from an aviation standpoint, of outcomes under the GATS framework;
- the concern that unconditional MFN under the GATS would hold back liberalisation; and
- the growing belief that a hybrid system based on multilateral or plurilateral arrangements and possibly incorporating certain GATS concepts could offer a more solid basis for continued liberalisation under a predictable set of rules.

IATA offers the following comments on Options 1 and 2 that will be the main focus of discussions regarding air transport during the new Round. These comments put in perspective the views developed by other airline bodies to date.

## **B. Clarifying and strengthening the current Annex (Option 1)**

A minimalist approach would consist in clarifying and strengthening the Annex as it stands at present and in re-evaluating the commitments made to date. At the same time, consideration should be given to improving the trade descriptions concerning air transport services as they figure in the United Nations Central Products Classification (CPC) and as these are cross-referenced in the WTO Tabulation (WP/120).

There remains much scope to improve the number and quality of the commitments made by states on the three services in the Annex. The commitments and MFN exemptions filed have been considered in detail in the WTO Note<sup>8</sup>, which shows that out of 135 WTO Member states, 46 states made commitments on aircraft repair and maintenance, 36 on CRS and 34 on marketing and selling.

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<sup>7</sup> This could be envisaged by either crafting a special agreement with a detailed set of provisions to address fundamental concerns of the industry, or by abolishing the Annex and including air transport services in the Agreement, thereby treating aviation no differently than other services

<sup>8</sup> WTO, S/C/W/59, paragraphs 46-59 and related tables.

For various reasons, including the wish to obtain equivalent treatment on the basis of reciprocity, almost half of the states took MFN exemptions in respect of marketing and selling and CRS. It should be noted that the Agreement requires the Council on Trade in Services to review all MFN exemptions granted for more than five years and that, in principle, the termination dates of exemptions granted in the Uruguay Round should not exceed a period of ten years. Furthermore, the GATS Annex on Article II (dealing with MFN) makes clear that existing exemptions will be the subject of negotiations during the new Round.

As discussed above, the WTO Background Note has pointed to the need to clarify the scope of the Annex with respect to “services directly related to the exercise of traffic rights” to which the GATS does not apply. Services that are not directly related to traffic rights are covered by the Agreement. This should be clarified to establish the coverage of the Agreement and the scope of the Annex. Preferably, the Annex should continue to *positively* list the air transport elements covered by the GATS as now set down in paragraph 3 of the Annex.

Clarification is also needed of the definition given in the Annex of selling and marketing of air transport services<sup>9</sup>. The WTO interprets the definition to mean that the opportunities “to sell and market freely” are available only to the air carrier concerned. Given the important role played by intermediaries on behalf of airlines and of the impracticability of distinguishing between direct and indirect marketing and selling activities, it has been proposed that the definition should be changed to cover all the marketing and selling activities of an airline or, on its behalf, by its authorised intermediaries. Use of the term “freely” should also be clarified to establish whether this extends to the prohibition of certain restrictions currently encountered in some countries.

As far as the air transport sector is concerned, these considerations underscore some important shortcomings in the CPC – the international trade classification system favoured by states to make commitments and list exemptions<sup>10</sup>. This issue has been addressed in some detail in the WTO Note<sup>11</sup> as well as by the US Department of Transportation<sup>12</sup>.

As the WTO points out, with the exception of repair and maintenance, there is no direct equivalence between the CPC and the services listed in the Annex (paragraph 3). The implication is that the use of CPC numbers may imply commitments on services not covered by the Annex. This was the case for several states that made commitments on additional services.

Over the years, the air transport industry has developed a precise and commonly accepted language for negotiating purposes, as well as classifications for reporting

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<sup>9</sup> Paragraph 6(b) of the Annex defines selling and marketing as “opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as research, advertising and distribution”, with the exception of pricing and the applicable conditions.

<sup>10</sup> WTO members are free to use the CPC or *sui generis* definitions or a combination of the two. Most use the CPC.

<sup>11</sup> WTO, S/C/W/59, paragraphs 37-40 and 60-66.

<sup>12</sup> Office of International Aviation, US Department of Transportation, *Aviation Issues in GATS 2000 and Other Fora*, July 1999 (see pages 12-13).

purposes and for common industry standards and services by ICAO and IATA. Discussions within the industry regarding the GATS and regulatory reform make use of this common vocabulary which does not readily match that used by trade negotiators.

At present, the CPC is insufficiently detailed for scheduling commitments in the air transport sector. As the US DOT points out, this “can produce ambiguous and arbitrary sectoral assignments of activities that have several possible classifications”. The classification of air transport and ancillary services in the CPC must be carefully reviewed to arrive at common sectoral definitions.

This is particularly important in the light of proposals to expand the coverage of the GATS to additional services.

### **C. Expanding the Annex (Option 2)**

Various possibilities to expand the scope of the services in the Annex have been advanced by governments, international organisations and by various trade associations in recent months. These proposals will receive close attention during the coming year and must be studied carefully to assess their inter-relationship and probable impact on the liberalisation process as a whole, rather than in part. These proposals fall into two categories:

- to expand the coverage of ancillary services;
- to include some services involving hard rights, specifically all-cargo services, express delivery services and charter services.

Two important questions arise in this connection. The first is which trade descriptions are to be used, the CPC or terminology and classifications commonly used in air transport. As noted above, the WTO paper considers this issue in some detail (paragraphs 61-68), with special reference to *services auxiliary to all forms of transport* and *supporting services for air transport*.

The second question is whether means of applying conditional MFN can be agreed. Proposals made by the Association of European Airlines (AEA)<sup>13</sup> and suggestions<sup>14</sup> regarding the inclusion of cargo services hinge on the acceptance of conditional MFN<sup>15</sup>. In the view of some experts, conditional MFN, if accepted in a revised Annex or related agreement, would apply only to services related to traffic rights. Hence the importance of defining which services are related to traffic rights, as noted earlier in this paper.

On the issue of ancillary services, the AEA considers that the negotiations offer an opportunity to remove certain obstacles to trade in air transport that exist under the existing regulatory system on the condition that arrangements are found to apply conditional MFN under the GATS. The AEA qualifies conditional MFN as “arrangements restricted to like-minded countries, concerning measures in respect of which reciprocity is an essential precondition for the removal of regulatory barriers”.

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<sup>13</sup> See the proposals made by the Association of European Airlines (September 1999).

<sup>14</sup> For example, the International Chamber of Commerce Policy Statement on *Air Cargo and the WTO*, September 1998.

<sup>15</sup> The WTO Agreement on Government Procurement has such a provision.

With this as a precondition, the AEA paper sets forth concrete proposals regarding first and second freedoms<sup>16</sup>, wet-leasing of aircraft<sup>17</sup>, ground handling, airport and air navigation charges and some air cargo matters, including customs procedures, intermodal transport and harmonised interpretation of common rules.

The liberalisation of air cargo services has been the subject of numerous papers and a detailed study by the Organisation for Economic Co-operation and Development (OECD)<sup>18</sup> which was examined at a workshop in July 1999. The subject is complex because air cargo services are provided under different circumstances by combination carriers, all-cargo carriers and integrated carriers (including express delivery operators). For this reason, IATA has still to develop an industry view on the issue.

The OECD meeting concluded that any regulatory process would have to be beneficial to all participants in the logistical chain. In addition, the OECD's involvement in air cargo could set the stage for like-minded countries to proceed with reform of the air cargo regime to prepare the groundwork for an eventual initiative in the WTO framework.

The notion that fundamental regulatory reform, affecting hard rights in particular, should be pursued initially by "like-minded" countries is echoed by the AEA, which believes that moving towards a new regulatory framework "requires a comprehensive understanding between the (European) Community and the United States of a sector-specific nature (i.e. the establishment of a Transatlantic Common Aviation Area), which is not a matter suitable for initial action within the multi-sectoral GATS 2000 negotiations".

Such an approach would enable those parties who are ready to move towards a multilateral regime to do so on a sector-specific basis and to evolve arrangements based on GATS principles and open to accession by other like-minded states. It would also enable developing and transition countries to progressively move in the same direction at their own pace.

#### **D. Position of developing countries**

In assessing the scope for any expansion of the GATS, due consideration should be given to the interests of developing and transition countries<sup>19</sup>. But it is difficult to generalise as they represent a wide range of situations and have had the least input into assessing GATS developments.

For many states, including developing island and land-locked countries, maintaining essential air services is a vital national necessity that cannot be put at risk.

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<sup>16</sup> The first two freedoms are considered as "Transit" rights as opposed to the remaining freedoms, which are counted as "Traffic" rights. The first freedom is the right to fly and carry traffic, non-stop over the territory of another State. The second freedom is the right to fly and carry traffic over the territory of another State and to make one or more stops there for non-traffic purposes.

<sup>17</sup> A wet-lease involves the hire of an aircraft with crew from another carrier with a valid aircraft operating certificate.

<sup>18</sup> OECD, *Regulatory Reform in International Air Cargo Transportation*, [DSTI/DOT(99)1], April 1999.

<sup>19</sup> The United Nations Conference on Trade and Development (UNCTAD) considered this aspect at an Expert Meeting in Geneva (21-23 June 1999) on *Air Transport Services: the Positive Agenda for Developing Countries*.

Two general observations should be borne in mind. 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 their gross national product against 15 percent for the EU and even less for the United States.

In principle therefore, some developing countries may 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. Offsetting this, there is a strong feeling in the industry that air transport should not be used as a pawn in tradeoffs with other sectors or in connection with trade disputes.

Two important developments may influence the way in which developing states and their airlines consider the liberalisation process. The first is the gradual consolidation of the major airline alliances involving partners in different regions. The second is the serious economic difficulties currently experienced by many long-established airlines in Africa, Asia and the Pacific and South America and the Caribbean for a variety of reasons.

As will be discussed in the following section, many developing countries in Africa and South America have shown a strong preference to liberalise within regional trade groups in order to manage the process better.

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, thus providing a certain safeguard.

However, multilateral negotiations in the WTO envisaged by GATS Article X dealing with *Emergency Safeguard Measures* have not progressed. In 1998, ICAO released a study on *Preferential Measures for Developing Countries in the Economic Regulation of International Air Transport* that could be considered in this connection.

If the notion of safeguards is developed, it might be argued that they should be used to give airlines and their states greater confidence in the liberalisation process rather than as protection measures. Transitional mechanisms could also be given further study.

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.

#### **IV. LIBERALISATION OUTSIDE THE GATS FRAMEWORK**

##### **A. Different ways to liberalise**

When the United States deregulated its domestic aviation market in 1977-78, it set in motion a process that could not be turned back. Since then, the ever-widening reach of liberalisation, through bilateral means as well as through plurilateral and regional arrangements, has become the dominant feature of the international regulatory environment.

The resulting market changes have led airlines to restructure (e.g. privatisation and alliances) and to develop new commercial practices (e.g. in pricing and distribution) in turn creating a new liberalising dynamic.

Furthermore, the experience of different countries and regions with the liberalisation process has shaped their views as to which method or combination of methods offers the greatest scope for widening liberalisation in the future.

The United States has been particularly successful in opening foreign markets through bilateral *open skies* agreements with 36 countries, commencing in 1992 with the Netherlands, and most recently with Argentina. From a practical standpoint, the US reliance on the bilateral approach has produced undeniable results.

Other countries<sup>20</sup> have also concluded over 30 *open skies* agreements with partners other than the United States or between Member States of the European Union.

The experience of the European Union has been different and its outlook has been conditioned by 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, in the eyes of the European Commission, could be a plurilateral agreement between *like-minded* states, beginning with the EU and the United States.

Other regions have also turned to regional agreements as the way to promote liberalisation between “like-minded states”. Examples of emerging plurilateral systems are the Andean Pact, the Mercosur Agreement, the Asia-Pacific Economic Co-operation Group (APEC), the Southern African Development Community (SADC) and the Community for East and Southern Africa (COMESA).

The common denominator in these arrangements has been a reliance on a pragmatic and aviation-specific approach to achieve concrete results. They have also incorporated a transitional mechanism, involving safeguards and phased liberalisation over time. Ironically, the more liberal the agreement the greater the detail as to what is agreed, quite the opposite of what one might expect.

In this pragmatic perspective, consideration could be given to assessing how the experience gained since 1995 can be used to advance the process of progressive liberalisation by various means and more generally, to convince the industry that the GATS can “add value”.

## **B. Exploring New Approaches**

The logic of the European and the American experience points towards liberalised aviation markets being negotiated on a regional basis or a global basis. For some time, the question has been how and when such arrangements might be linked up in such a way as to create a new regulatory framework that would be plurilateral or potentially multilateral in scope.

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<sup>20</sup> These countries are Argentina, Australia, Brazil, Brunei Darussalam, Chile, Denmark, Ethiopia, Guatemala, Kenya, Netherlands, Macao, Malaysia, Nepal, New Zealand, Norway, Sweden, Singapore, Panama, Peru, Samoa, Taiwan, Turkmenistan, United Arab Emirates, Uganda, United Kingdom and Venezuela (Communication from ICAO).

The AEA considers that moving towards a new regulatory framework “requires a comprehensive understanding between the (European) Community and the United States of a sector-specific nature (i.e. the establishment of a Transatlantic Common Aviation Area), which is not a matter suitable for initial action within the multi-sectoral GATS 2000 negotiations”.

Other proposals have been advanced by the OECD to explore 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, and by the ICC for cargo services involving “mirror reciprocity”. Both have been referred to above.

These proposals share three common features. First, they are outside the GATS framework, at least initially. Second, they are aviation-specific. Third, they focus on some form of *conditional MFN* or *mirror reciprocity*.

A key question that needs more study is whether 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 was incorporated for the first time in the Agreement on Government Procurement.

Conditional MFN can also be described as *mirror reciprocity*, or opening only to other countries that have taken similar measures. Such an arrangement might involve a number of like-minded states that accord to each other treatment set down in a transparent “model agreement” based on GATS principles. Other states could join such a “plurilateral club” if they accepted *mirror reciprocity*. A state that chose not to adhere would be bound by its existing bilateral arrangements with individual members of the club.

Once a “critical mass” in membership has been achieved, the model agreement could be subsumed into the General Agreement. Such an approach would have the merit of allowing trade negotiators to formulate certain provisions (e.g. conditional MFN) to address issues of concern specific to air transport.

If the “Club” approach is to be pursued within the framework of the GATS, it would have to receive the approval of all Members of the WTO and be approved by the Ministerial Conference<sup>21</sup>. How this could be achieved would need to be considered.

Accepting that there is widespread agreement on the need to liberalise aviation markets, the fundamental question is what is the best way for the industry to move forward, with adequate safeguards and relying on transitional mechanisms making it possible to manage change.

It is now up to the aviation community and trade negotiators to determine to what extent the WTO/GATS approach offers the best means of meeting the needs of airline consumers, both passengers and shippers, while taking account of the economic and social impact of civil aviation.

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<sup>21</sup> See Article X (9) of the *Agreement Establishing the Multilateral Trade Organization*.

## V. CONCLUSION

Several conclusions emerge from this assessment:

1. Much work remains to be done to educate the aviation community about the GATS. At the same time there is a need to ensure that trade negotiators have a better understanding of the needs and concerns of the air transport sector.
2. The industry continues to see ICAO as the inter-governmental agency best qualified to take account of the particular characteristics, regulatory arrangements and structures of the air transport sector.
3. However, the review of the Annex on Air Transport Services presents an opportunity to clarify the scope and nature of the activities and measures currently covered by the GATS as well as to develop better definitions for use in negotiations and in scheduling commitments.
4. Any expansion of the Annex must also take account of other potential obstacles to trade in air transport such as airport and airspace congestion, safety oversight, security considerations, environmental measures, facilitation, taxation, competition law and consumer protection requirements. ICAO remains the multilateral institution best suited to deal with many of these issues.
5. There is a strong preference in the industry for air transport services to continue to be dealt with on a sectoral basis, and not to be negotiated together with other services on a comprehensive basis. The great majority of states wish to participate in air transport and hence, with few exceptions, wish to maintain a degree of control in this field by keeping arrangements on a sector-specific basis rather than being traded off against other national interests.
6. IATA Members remain to be convinced that the GATS can add value to the existing liberalisation process. Indeed, with few exceptions, they hold to the view that the GATS is not the vehicle for fundamental reform of the air transport sector at this time. They are also concerned that the unconditional application of the MFN principle would hold back liberalisation. Furthermore, bilateral air service agreements continue to offer a practical means of ensuring sector-specific reciprocity.
7. Nonetheless, there is a growing belief that a hybrid system could be developed that would enable multilateral and bilateral arrangements to co-exist depending upon national and regional preferences and needs. Such an approach might explore the application of certain GATS concepts and lay the groundwork for continued liberalisation under a predictable set of rules. At present, it remains unclear how a dual regime might work in practice.

The challenge for IATA in the coming months will be to evaluate the broader interests of the world-wide industry while building on and respecting the views of national, regional and sub-sectoral bodies and individual airlines. As these views develop and their implications are assessed, they can be expected to contribute to an evolving IATA position.

**ANNEX ON AIR TRANSPORT SERVICES**

1. This annex applies to measures affecting trade in air transport services, whether scheduled or non-scheduled, and ancillary services. It is confirmed that any specific commitment made or obligation assumed under this Agreement shall not reduce or affect a Member's obligations under bilateral or multilateral agreements that are in effect at the entry into force of the Agreement Establishing the WTO.
2. The Agreement, including its dispute settlement procedures, shall not apply to measures affecting:
  - (a) traffic rights, however granted; or
  - (b) services directly related to the exercise of traffic rights, except as provided in paragraph 3 of this Annex.
3. The Agreement shall apply to measures affecting:
  - (a) aircraft repair and maintenance services;
  - (b) the selling and marketing of air transport services;
  - (c) computer reservation system (CRS) services.
4. The dispute settlement procedures of the Agreement may be invoked only where obligations or commitments have been assumed by the concerned Members and where dispute settlement procedures in bilateral and other multilateral arrangements have been exhausted.
5. 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.
6. Definitions:
  - (a) "*aircraft repair and maintenance services*" mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn for services and do not include so-called line maintenance.
  - (b) "*selling and marketing of air transport services*" mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions.
  - (c) "*computer reservation system (CRS) services*" mean services provided by computerized systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued.
  - (d) "*traffic rights*" mean the right for scheduled and non-scheduled services to operate and/or carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Member, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number ownership, and control.