

UNIVERSITÉ DE GENÈVE

INSTITUT UNIVERSITAIRE DE HAUTES ÉTUDES INTERNATIONALES

THE AIR TRANSPORT REVIEW AT THE WTO:

Bilateralism versus Multilateralism

THÈSE

présentée à l'Université de Genève
pour l'obtention
du grade de Docteur en relations internationales
(science politique internationales)

par

Cecilia Genevieve DECURTINS
(Graubünden, Switzerland – Canada)

Thèse N° 735

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Sur le préavis de M. Urs LUTERBACHER, Professeur à l'Institut, de Mr. Richard BLACKHURST, Adjunct Professor, the Fletcher School of Law and Diplomacy, Tufts University, USA et, de Mr. Martin STANILAND, Professor, Divisional Director, International Affairs and International Development Divisions, Graduate School of Public and International Affairs, University of Pittsburgh, USA, le Directeur de l'Institut universitaire de hautes études internationales, agissant au nom de la Commission mixte de l'Université et de l'Institut, composée des Doyens des Facultés de droit, des lettres, et des sciences économiques et sociales, autorise l'impression de la présente thèse sans entendre par là exprimer d'opinion sur les propositions qui y sont énoncées.

Genève, le 14 juin 2007

pour la Commission mixte:

Professeur Philippe Burrin
Directeur

Thèse N° 735

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Glossary

Air Services Agreements	ASA(s)
Air Transport Annex (the GATS)	the Annex
Air Transport Review	ATR
Asia Pacific Economic Cooperation	APEC
Association of European Airlines	AEA
Bermuda I	BI
Bermuda II	BII
Computer Reservation Systems	CRS(s)
Common Aviation Area	CAA
Council for Trade in Services	CTS
Council for Trade in Services Special Session	CTSS
Best Alternative to a Negotiated Agreement	BATNA
European Communities	EC
European Court of Justice	ECJ
European Economic Area	EEA
European Union	EU
General Agreement on Trade in Services	GATS
General Agreement on Trade and Tariffs	GATT
International Air Transport Association	IATA
International Civil Aviation Organisation	ICAO
International Monetary Fund	IMF
International Organisation	IO
Maintenance Repair and Overhaul	MRO
Multilateral Agreement on the Liberalisation of International Air Transport	MALIAT
Non-governmental Organisations	NGO(s)
Open Skies	OS
United Nations Central Provisional Products	UNCPC or CPC
World Bank	WB
World Trade Organization	WTO
Zone of Agreement	ZOA

Chapter 1

Introduction

Concepts and Terminology

Using general terms such as globalisation, international liberalisation, deregulation or economic interdependence frequently leads to a debate over how one actually defines these concepts. Once defined, they can be used to identify and explain change in the political and economic arenas of industries and contribute to the existing political science lexicon. It is therefore important to address these issues at the outset of this paper and how they will be used, to minimise any ambiguity specific terminology can generate. Liberalisation is frequently used interchangeably with de-regulation and many use the term globalisation to suggest that the independence of sovereign state decision-making ability has been eroded or transferred to some undisclosed power above or beyond the state. For international air transport, this could not be further from the truth, despite suggestions to the contrary.

In the context of this study, de-regulation is not synonymous with liberalisation. The difference between the two, in very simplistic terms, is that the former refers to a domestic arena while the latter denotes an international one. The usage of de-regulation in the air transport sector arose when the US government lifted the very restrictive terms of operations for the cargo sector in 1977 and the dismantling of the Civil Aviation Board (CAB) in 1978.¹ However this only applied to the domestic operators and was intended to allow competitive market forces to determine the shape of the industry and to stimulate a competitive market place.² The traditional market restrictions determining where, when, and how often an airline could fly between city pairs without applying to the government for permission meant the airlines could develop corporate strategies based solely on market criteria for the first time in the history of the industry. Service requirements to specified destinations, usually small or remote communities, were either abandoned or relaxed making it no longer necessary for airlines to cross-subsidise operations due to these regulations.³ Other market restrictions such as self-determination of

¹ Paul Stephen Dempsey and Andrew Goetz, *Airline Deregulation and Laissez-Faire Mythology*, 1992.

² Daniel M. Kasper, *Deregulation and Globalization: Liberalising International Trade in Air Services*, 1998; and George Williams, *The Airline Industry and the Impact of Deregulation*, 1993.

³ While this was the case in the US, in other countries such as Canada, regulations to serve remote regions remained in place.

frequencies between city pairs were also removed. Nevertheless, these changes only applied to the country's airlines and did not affect or change the terms and conditions of international air services agreements (ASAs).

The term liberalisation refers to international trade rules that govern how tariff and non-tariff barriers will be reduced or removed between or among a group of states. International agreements determine *inter alia*, market access, national treatment, and levels of foreign ownership. In short, it is the trade barriers that are affected when liberalisation occurs, not the national regulatory structures that govern the operational aspects of a given industry. This is particularly true in the case of international trade in services, which includes the air transport sector.

This services industry was, is, and will likely remain one of the most highly regulated industries in both domestic and international trade arenas. Regulatory authorities exist at local, regional and national levels of government to ensure safety standards are not compromised. In addition to the national authorities, the International Civil Aviation Organisation (ICAO), a special body of the United Nations, issues recommended practices for technical and safety standards throughout the industry and the decisions are voted on by the Member States. Government regulators usually follow these standards, although unlike the World Trade Organization (WTO) there are no multilateral enforcement mechanisms to ensure standards and procedures are followed. Liberalisation of international air transport in this context has been conducted primarily under traditional state bilateral negotiations and has been expressed through abolishing or relaxing restrictions in tariffs, capacity route allocation, and "doing business" matters.⁴

The industry is global insofar as it exists throughout the world, however it is purely trans-national due to the conditions set out in the bilateral regime of state-to-state negotiations. The strict limitation on foreign ownership and effective control of an airline in most countries prevents these companies from becoming multinational. Although international air transport is a global industry, it remains particularly resistant to liberalisation in both its traditional bilateral framework and in the multilateral system of progressive liberalisation under the WTO. Airlines physically operate out of and back into their home territories although third and fourth country routes are allocated reciprocally under bilaterally negotiated agreements. Code-share⁵ agreements with other flag carriers expand the number of destinations

⁴ "Doing business" matters refer to the sub-sector or infrastructure industries that support airline operations. These will be discussed in greater detail throughout the study.

⁵ Code-sharing is "...the use of the flight designator code of one air carrier on a service performed by a second air carrier, which service is usually also identified (and may be required to be

but do not alter the trans-national nature of an air carrier's route structure and therefore reflect the structural limitations of the bilateral regime.

The Thesis Framework

The thematic framework of this thesis covers the first WTO Air Transport Review (the Review), which began in September 2000 and ended in October 2003. Although the Review ended after three years without any changes to the Air Transport Annex (the Annex⁶) of the General Agreement on Trade in Services (GATS), it is a rich forum for analysing the disparate factors that impact multilateral discussions at the WTO and shows us why any undertaking is a long and drawn out process. Moreover, it provides us with a counterpart perspective to observers who frequently cite any failed talks to be the prelude for the imminent demise of the WTO as an International Organization (IO). This work is intended not only to shed light on the institutional processes, but also to highlight the numerous factors that influence negotiating positions of the WTO Members, thereby furthering our understanding about the role of the WTO *vis-à-vis* national government goals and objectives, and how these are translated into negotiating positions.

Why study the impact of the WTO on air transport when this sector is mostly excluded from the scope of coverage by the GATS and appears to be singularly resistant to multilateral liberalisation? The first reason is to highlight the tensions that continue to exist between the universal belief in territorially defined state sovereignty and the increasing economic interdependence among all states (globalisation). Also it is to put to rest the notion that the WTO pushes its liberalising agenda on nation states by focusing on how negotiators, on behalf of their governments, advocate for or against liberalising a given sector or sub-sector.

Second, international air transport plays a key role in national prosperity by maintaining and/or expanding economic linkages through the lowering of trade barriers. It is of fundamental importance in promoting the economic well-being and growth of local, national, and regional economies in addition to the global economy. Thus, there is a strong link to the debate about the purpose and consequences of having a multilateral trading system.

Third, analysing international air transport liberalisation and the WTO/GATS provides an insight into the economic and political forces that exist in this industry and that have an impact upon international trade negotiations. Without air

identified) as a service of, and being performed by, the second air carrier". *ICAO Manual on the Regulation of International Air Transport*, Doc 9626, 1996, p 4.1.7.

⁶ See Appendix 2 for the full text of the Annex on Air Transport.

transport linkages corporations would have difficulty moving goods domestically or for export and import, particularly corporations using the “just-in-time” method of supply chain management. It would also increase the difficulty of movement for people conducting time sensitive business, tourism, and for some developing countries, acquiring hard currencies.

Fourth, it is precisely because international air transport has been mostly excluded from the GATS coverage that examination of the industry and its infrastructure industries can assist us in attempting to identify where the political agency for change (i.e. catalyst) is located. In other words, analysing the Review negotiations provides a rich forum for understanding why Member States will advocate liberalisation in some sectors and not in others, thus giving us a predictive tool when looking at other services negotiations such as those that began in 2000 under the mandate of Article XIX of the GATS.⁷

Finally, the Review was chosen as the focus of analysis because it remains an anomaly within the GATS through its extensive exclusion of coverage and due to the importance of international air transport throughout the world economy. International air transport was the only specific industry exclusion granted under the GATS during the Uruguay Round (1986 – 1994). Given the Review clause in the Annex, can we say definitively that the exclusion will last in perpetuity or do factors exist that can tell us how the regime might change?

My interest in this research project also stems from the magnitude of the complex co-ordination (both operational and regulatory spheres) required for the air transport industry to function safely and smoothly and how this could evolve under the GATS. Would any shift to the multilateral regime from the bilateral one impact safety or lead to flags of convenience?⁸ To ensure the safe departure and arrival of millions of passengers and tonnes of cargo every year from point of origin to the final destination requires at the outset, high levels of expertise, technology, and capital under a wide range of commercial restrictions. It also requires countless safety regulations, and a highly skilled work force. Although the industry is global in scope, it remains trans-national in structure, and relative to other sectors (e.g. telecommunications or finance) it remains relatively restrictive and hence less

⁷ Article XIX is the first of three articles in Part IV of the GATS entitled “Progressive Liberalization” that mandates “successive rounds of negotiations”, *GATS: The General Agreement on Trade in Services, and Related Instruments*, April 1994.

⁸ Flying a “flag of convenience” originates from the maritime sector whereby a ship owner can register their ship in any country of choice. This has led to concerns primarily over safety standards. Some countries are known to offer ship owners cheap registration fee, low or no taxation and no labour standards. <http://www.globalpolicy.org/nations/flags/guide.htm>.

competitive. Any liberalisation that has occurred continues to be embedded in the bilateral regime that has governed the economic regulation of the industry for over fifty years. Despite calls by some to liberalise this sector on a basis other than bilaterally, it remains singularly resistant to change.

More specifically, this study provides a different perspective for deciding whether the WTO could have a direct impact on liberalising international air transport under a single set of multilateral rules rather than the traditional bilateral framework. The analytical approach that will be undertaken examines the negotiations and negotiators juxtaposed against market forces and other factors that influence Member State positions. This not only deepens our understanding of why Members have taken their respective positions on the topic of the multilateral liberalisation of international air transport but it also helps to expose the underlying factors that cause a state to take one position or another, oftentimes in contrast to opposite positions in other negotiating fora or trade sectors within the WTO. Using such an approach also provides us with greater understanding of how and why regime change (or not) occurs in a global industry.

Ultimately we are looking to see if what we uncover in the Review sessions can be generalised and used as a tool to understand and possibly provide some predictive elements in other industries or international political economy topics. Some academics may query the value of using the Review as a reliable factor in the analysis due to the stalemate that ended the official sessions. However, the analysis is less about whether the first Review can be considered to be successful, but rather about what the negotiating process and positions can tell us about: how different states view the liberalisation process; how they view the different types of negotiations and negotiating fora; and where they stand to gain the most from negotiating partners. Thus, we will look at the market conditions prior to and during the Review to see whether we can expect to see movement from the rigidly bilateral regime to a multilateral one under the WTO in future Air Transport Reviews that are mandated to occur on a regular basis into the future.

Since the conclusion of the Uruguay Round of trade talks in 1994, and the beginning of the WTO as an official IO, there has been heightened attention given to the speed and effects of an increasingly interdependent economic and regulatory world. Non-Governmental Organisations (NGOs), organised labour groups and civil society at large have raising their voices about the growing power of the WTO and the alleged loss of independent national sovereignty. However, what is often overlooked is who or what might be behind these changes. Much of the media coverage about trade issues (further liberalisation or disputes) speaks of the WTO

as if it were based on the same principles as the International Monetary Fund (IMF) or the World Bank (WB), which have power somewhat distinct from the governments that provide operational funding.⁹ However, for the WTO this is not the case. The institutional structure of this International Organisation (IO) is different because it is very much a Member driven organisation and the Members are official delegates of national governments.¹⁰ The Secretariat, while influential, does not direct any policy that is ultimately adopted by the Members. This is certainly the case for the Review and any possible expansion of the GATS over air transport.

International air transport is both a national and a global infrastructure industry that is critical to the economic prosperity of sovereign states and the world economy. In combination with international finance, telecommunications (post and telecoms) and maritime, air transport is a key element of the interdependent world we live in today. It is also one of the most political industries due to its historical links to the state, territorial sovereignty, and thus national security. These linkages are expressed and embedded in a bilateral regime of economic regulations that has not evolved extensively from the original framework.

Although the international economic regulatory regime for this sector remains restrictive, bilateral liberalisation has occurred and it would be remiss to discount or ignore efforts that have already been made by numerous states to push liberalisation forward at the domestic level (deregulation) and the international level (liberalisation). This trend was led by the United States (US) deregulation in 1977 (cargo airlines) and 1978 (passenger airlines), and followed upon by Canada, Australia, New Zealand and others. In the same vein, the European Union (EU)¹¹ and its Member States undertook extensive liberalisation among themselves, effectively shifting away from the traditional bilateral framework.¹² It is therefore

⁹ The World Bank and the International Monetary Fund are Bretton Woods institutions. Although the World Trade Organisation is neither a Bretton Woods institution, nor the United Nations, it does maintain relations with both. Richard Blackhurst, "General Agreement on Tariffs and Trade (GATT): Origins of the GATT", forthcoming in *Princeton Encyclopaedia of the World Economy*, Princeton University Press, 2007.

¹⁰ The definition of a Member of the WTO is: they are States and any separate customs territory free to conduct its own external relations. *Guide to the Uruguay Round Agreements*. p 12.

¹¹ Throughout this paper the name European Union (EU) will be used when referring to the political and economic entity outside of the WTO and European Communities (EC) will be used when speaking about it as a Member of the WTO. This is because the former is the current official name whereas within the WTO the EU is officially called the European Communities (EC).

¹² Presently the economic regulations also include non-EU countries like Switzerland (CH) due to the full ratification of the first EU – CH bilateral (16 October 2000). This Agreement consists of seven economic sectors including civil aviation. For explanatory notes on civil aviation see: <http://www.europa.admin.ch/ba/expl/factsheet/e/luftverkehr.htm>.

valid to say that many developed countries (there are some notable exceptions) have demonstrated a desire and willingness to move definitively away from the extremely restrictive economic regulation of the original bilateral agreements that governed international air transport and all its sub-sector industries throughout the twentieth century. The trend has continued to include developing countries; therefore the issue is not whether liberalisation should occur but how and in which forum.

Given this background one would assume that the Review would have been an opportunity to begin further liberalisation and would see the European Communities (EC) and the US joining together to begin the process of expanding the scope of the Annex. Assuming this to be the case, it is counter-intuitive to expect either of these powerful WTO Members to resist any expansion of GATS coverage. Yet despite the progress made at the bilateral level and the stated desire of the US to drive liberalisation forward, it (and others) blocked all attempts to expand the coverage of the GATS over the air transport sector, including sub-sectors that can operate independently of traffic rights.

The first Air Transport Review, in conformity with the Uruguay Round Mandate began in 2000. The terms, as laid out in paragraph five of the Annex, states that “[t]he 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.” Thus, the objective of the Review was two-fold. One part was to address the economic and regulatory changes throughout the industry, while the other was to examine the operation of the Annex with an eye to expanding coverage of the GATS. How the Review was to proceed would appear to be self-explanatory: examine the economic and regulatory changes throughout the entire industry to identify the sub-sectors that would benefit from a single set of multilateral rules, and expand coverage as appropriate. Through this process, one would have expected to see incremental coverage begin to occur. Given the continued efforts by *inter alia*, the EU and the US to liberalise bilaterally, the Review would be concluded easily and quickly, however, this was not the case.

The Review was not only dragged out over three years, but there were deep divisions among Members regarding expanding coverage of the GATS to this sector, over the definition of “...every five years...”, and over which sub-sectors belonged within the definition of being directly related to traffic rights or so-called hard rights. It was clear that there were two distinct camps; one side argued that the bilateral system had worked well to liberalise the sector, while the other side

believes that liberalisation limits have already been reached and therefore the multilateral system should now be used to advance the process further.

The pro-bilateral group was very clear at the outset of the Review that every effort would be made to retain the economic regulatory status quo. Although at one level this position seems counter-intuitive, it suggests that these Members believe they have more to gain by taking this stand and leads to the question: what types of gains? Do some in this group, by simultaneously pursuing liberalisation bilaterally and opposing it at the multilateral level provide an insight into whether international air transport is going to remain mired in perpetuity within a regulatory framework constructed in 1944, or can we expect to see some type of regime change over time? And, if so, how might it proceed?

Among the issues that are being examined here is the question of why the two largest and arguably the most powerful Members of the WTO stand in such stark contrast to one another. In turn this leads to a myriad of further questions about the industry and national policies over air transport and about liberalisation of services industries in general. First and foremost, for the purposes of this paper, can we learn anything from the Review that sheds light on the reasons why some Members would choose the multilateral arena to further the already established liberalising trend and others the traditional bilateral negotiating process? Second, can we take the uncovered knowledge and use it to predict whether international air transport will remain essentially a bilaterally regulated sector, or can we identify anything that will suggest a different future, or even argue that eventually the GATS will be expanded to cover many if not all sub-sectors of the industry?

Given the complexity of the industry as a whole, which includes *inter alia*: the uneven liberalisation that has occurred under the bilateral system; the extensive regulatory oversight by ICAO on technical and safety regulations; the International Air Transport Association (IATA), and the number of sub-sector industries that must be taken into account, it has been necessary to work within a theoretical framework that can accommodate all aspects of the industry.

After surveying the mainstream theoretical frameworks that are used in political science, it became apparent that most, if not all, would be unable to accommodate the complexities and the dynamic nature of change within international air transport. Mostly, they do not explain why the two largest aviation markets, both of which have been deregulated internally and liberalised internationally, are so divided on multilateral liberalisation. It became obvious that a middle road theory would be most appropriate for uncovering the fundamental reasons for the radically

different positions taken during the Review and to show how this can be generalised into a broader theoretical framework. Can one truly understand change without accounting for all the infrastructure industries, the core airline sector, and the plethora of regulatory agencies without omitting valuable insights or taking into account the contextual setting of the industry and its component parts? At the same time, do we lose sight of our focus by including so much in the analysis?

The willingness of some to move from a bilateral framework to a multilateral one under the WTO is questionable when analysing the formal sessions of the Review and its results. Although professing a strong desire to liberalise at the international level and openly acknowledging the benefits of further liberalisation, the pro-bilateral group made it clear that multilateral liberalisation was not appropriate for the international air transport industry, raising questions about the reasoning behind this position. In the case of the US, a strong advocate of trade liberalisation in general and this industry in particular, opposition to expanded coverage of the GATS over air transport is indeed puzzling.

In contrast, others worked hard to convince everyone that expanding coverage of the GATS could in fact go a long way in rectifying some of the inherent problems they believe exist within the bilateral system. In doing so, the benefits of multilateral liberalisation would accrue to all participating States — increasing the pie rather than merely redistributing the available pieces.

These differences, the questions they raised, and how to answer them became an intriguing puzzle that is the basis for this study.

Hypothesis

This thesis posits that a gradual and incremental expansion of GATS coverage over air transport sub-sector industries will take place despite the stalemate that occurred in the first Air Transport Review. To support this position it will be argued that Member States are influenced by independent variables that are exogenous to negotiations in the WTO such as the level of existing liberal agreements in the sector, geographic location, economic size and level of development, and the strength of individual corporations in the world economy. Changes in the market arena will eventually impact Members' willingness to begin expanding GATS coverage of Air Transport in future Reviews and thus begin the gradual shift from a strictly bilateral regime to one that accepts multilateral trade rules to operate in tandem with bilateral rules. In particular, it will be argued that the sub-sectors not bound by or subjected to foreign ownership restrictions and do not require traffic rights to operate internationally will be the first to be covered by the GATS.

It is common knowledge that economic nationalism or national market interests drive a State's liberalising agenda. States with industries that are competitive and expanding are likely to support multilateral liberalisation whereas those with industries that are less competitive or struggling financially will be less likely to support this avenue of liberalisation. If the state believes it can gain more through bilateral liberalisation, regardless of the reasons, it will favour this route because economic size and political power can influence the outcome of negotiated agreements. One obvious example is the US. It retains strength in the bilateral arena due to its political and economic power, and the importance of access to its huge domestic market by foreign interests. In the bilateral arena it can ensure liberalisation will occur in the manner and timing of its choosing while protecting the interests of its airlines in the domestic air transport market.

In stark contrast the EC has been a strong proponent of expanding the GATS to cover some of the sub-sectors. Its interests in accomplishing this goal appear two-fold: to push its own agenda for increasing the Commission's authority over this sector, thereby increasing its authority over air transport, and because the sub-sector industries in question are global market leaders. In pursuing this agenda the EC has gone further than the US in liberalising air transport by creating a common aviation area (CAA) among its Member States and other European countries.

In the case of developed but small open economies, one would expect to find support for increased coverage of air transport by the GATS, based on their economically positive experiences with pursuing open market policies. This would be particularly the case for geographically distant countries that lack a geostrategic position and a small domestic market. One would therefore expect Members like Singapore, Hong Kong, New Zealand, Australia, or Chile to prefer moving toward a multilateral regime and not be satisfied with the bilateral status quo.

At the other end of the developed country scale it would be valid to assume nations that are located in geographically strategic positions, or those with a large domestic market and a mature domestic air transport industry, will support the existing bilateral regime. These states know that they are negotiating from a stronger position due to either required over-flight permission, or the importance of market access for the bilateral partner. Thus the assumption is based on the obvious imbalance that exists between negotiating partners.

For the developing world one could expect countries with a large or substantial tourism industry to support a multilateral regime, whereas the least developed countries would prefer the status quo in order to assure the viability of their flag

carriers (an important earning capacity of hard currencies) and would support bilateralism.

The different types of negotiations must also be taken into account and whether they are conducted bilaterally or within a multilateral setting. Depending in which setting the negotiations are conducted, the outcomes can vary substantially due to the ability or lack thereof to use other industrial sectors as bargaining chips. In strictly bilateral settings, such as in air transport negotiations, economic size and political power can influence the outcome. Thus, the processes and outcomes will affect how liberalisation of a given industry will evolve.

The question is not whether the industry should liberalise, but under what economic regulatory jurisdiction. Agreement on the need to liberalise is almost unanimous. This is because it is recognised that further liberalisation in this sector will be beneficial in terms of cost to the travelling public and for the transportation of goods around the world. Moreover, the barriers to foreign investment and ownership have already been breached in some sub-sectors, like ground-handling or airport management services. Resulting from the outsourcing trend of the major airlines in the 1990s, many of the sub-sectors that were traditionally departments within an airline have been sold off to independent companies. Oftentimes these companies are not airlines and once sold to a non-airline corporation, foreign ownership restrictions cease to apply.

Extrapolations from interviews, informal personal discussions, formal Member submissions and interventions during the Review, in combination with empirical evidence (statistical analysis using linear regression) suggest that coverage will begin with the sub-sectors that are the least connected to traffic rights (hard rights) and in sub-sectors where international consolidation has already occurred.¹³ Traffic rights will, in all likelihood, remain in the bilateral sphere far into the future due to the universal perception that they are intrinsically linked to national control over sovereign territory. In short, it will be argued that despite the adamant positions of some WTO Members against expanding GATS coverage of the air transport sector, it is likely that changes exogenous to the WTO will be the catalyst for a slow but

¹³ Although many informal discussions were held during the research phase of the Secretariat background papers and throughout the Review, names will be withheld unless specific permission was granted. Given the sensitive political nature of the Review and that many discussions were off record and therefore not official government positions, it is not possible to cite all the sources for this study. In some instances permission was not requested and therefore not given and in others the request to withhold the name was made. Every attempt has been made to respect confidentiality requests while simultaneously ensuring accuracy of given perspectives and thoughts.

definitive move from a purely bilateral regime to one that includes some sub-sectors being covered by the GATS.

Research Strategy

The primary research strategy that supports my argument is to look at all the relevant component parts of the industry prior to and during the Review period and evaluate the degree of influence they hold over national positions. This will give an indication of the factors that are most influential over national positions within the multilateral Review Sessions. The research is divided into three parts: the first is descriptive, the second economic and regulatory, and the third empirical. The information for the descriptive part of the work is drawn from the written submissions and oral interventions made by the delegates who participated throughout the Review. Included here are discussions with industry experts who work in the policy and operational areas of the industry and some of the participating delegates.

The industry information is based on the research and writing that was done for the secretariat background papers. This included the regulatory and economic changes the industry went through between 1994 and 2000 and was updated to 2004 for this study. The empirical section is based on the data research drawn from the actual market data available and the Review discussions. From this the dependent variable became a Member's position regarding GATS expansion, and the independent variables include the most discussed sub-sector topics and points raised that appeared to have significant value to the different Members arguing their position.

Chapter Overview

The structure of the chapters is set up to address, to the greatest extent possible, a systematic approach that begins with addressing the puzzle of why air transport continues to remain an anomaly within the GATS and to set out my arguments in an attempt to find an answer. Chapter 2 sets the argument within the theoretical framework of economic negotiations, which is based on John Odell's (2000, 2006) work in the area of negotiations theory. Chapter 3 sets the context and history of the international air transport regime in order to clarify the background and liberalisation trends that have occurred within the bilateral economic regulatory framework. Chapter 4 examines the international political economy of the WTO, how it developed from the General Agreement on Trade and Tariffs (GATT) into a Member driven IO with an integral role in making and enforcing world trade rules.

Chapter 5 has two parts. Part I provides an overview of the discussions that took place during the Review and Part II presents the empirical work of the study. Together, the descriptive and empirical work set the context for the two subsequent case study chapters. Chapters 6 and 7 present the cases by describing and analysing individual Members' negotiating positions to demonstrate how various factors influence the stand taken by the national trade representatives. Finally, Chapter 8 draws together all the strands, providing a conclusion to the original puzzle, questions, and argument that have been the foundation of the research.

I have been privileged to have participated in the research and writing of the Secretariat background papers for the Review, which permitted me to attend all the formal Review Sessions, and have extensive access to capital city based experts attending the meetings. The research and interaction with participants provided me with much of the information I used to conduct my research.

Chapter 2

Theoretical Framework

The question of economic regulatory regimes, and where the agency promoting change is located, begins with the assumption that the changing market is a primary factor influencing industry actors regardless of whether they are from the private or public sector. These actors in turn actively try to influence policy makers and ultimately the positions adopted by national representatives in international negotiations irrespective of the type (bilateral or multilateral). However, one could also argue that political factors in the domestic and international sphere that are exogenous to the industry are important when it comes to locating the catalyst for change in a given industry.

Can one truly understand change without taking into account the infrastructure industries, the core airline sector, and the plethora of regulatory agencies without omitting valuable insights or taking into account the contextual setting of the industry and its component parts? At the same time would we lose sight of our focus by including so much in our analysis? Thus, the theoretical framework used for this study must expose the underlying factors that led to the radically different positions taken during the Air Transport Review (the Review) and show how this can be generalised to other fields of political inquiry.

Finding a theoretical framework that is able to encompass the regulatory complexity and political sensitivities surrounding air transport has been a troublesome task due in part to the surprising lack of political analysis about this economically important industry. Political scientists, when analysing air transport, have tended to focus on individual parts of the industry or looked at domestic changes rather than taking a macro approach and examining the global linkages in conjunction with the domestic environment.¹⁴ Most of all there is a paucity of analysis that takes into account how market conditions might impact national policies in this particular industrial sector, or how in some instances political choices are made that appear to contradict existing policy platforms.¹⁵

¹⁴ Helen Milner, "The Interaction of Domestic and International Politics: the Anglo-American Oil Negotiations and the International Civil Aviation Negotiation, 1943-1947 in *Double-Edged Diplomacy: International Bargaining and Domestic Politics*, eds., Peter B Evans, Harold K. Jacobson, and Robert D. Putnam, 1993. pp 207-230. Baldev Raj Nayar, "Regimes, Power, and International Aviation" in *International Organization*, Volume 49, Number 1, Winter 1995, pp 139-170.

¹⁵ This is in direct reference to the UK bilateral position *vis-à-vis* the US. The UK has a fully deregulated domestic market, is a member of the Common EU aviation area and yet has not

After surveying the mainstream theoretical frameworks in political science, it became apparent that most, if not all, would be unable to accommodate the complexities and dynamic nature of change within international air transport. Using these theories it is difficult to explain why the two largest aviation markets, both of which have been deregulated internally and liberalised internationally (to varying degrees), had such opposing views on whether aspects of the industry are suitable for multilateral liberalisation rather than through the existing bilateral regime.

Without going into any depth, it is important to acknowledge briefly the main strand of political theory that has predominated how we perceive inter-state relations in modern times and the tools we use to understand how the international world operates. The starting point would be to acknowledge the realist school of thought since this perspective has dominated the study of international relations for much of the twentieth century. Realists take the position that we are presently living in an anarchic world of sovereign states and thus the level of analysis should be focused at interstate relations to find explanations for how international relations are conducted and where these tend to lead us into the future.

Like any theory realism has numerous strands that have emerged over time, although adherents primarily believe that the state and its actions are at the core of inter-state relations. As noted by Robert Jackson, "[t]he ethics of statecraft is at the heart of realist ethics" (p 211). For our purposes this suggests that the unit of analysis would remain at the state level and therefore does not provide enough theoretical room to account for how policy and decisions are formulated and what input factors are significantly influential. While realist theory can explain the historical construction of the international regime, it does not adequately identify changing relationships between states and what lies beneath the change, particularly when trying to account for the influence of non-state actors, be it directly or indirectly. So long as the air transport industry remained in a pure bilateral framework operating in the closed arena of high level diplomacy, state analysis sufficed. In such a setting it is logical to assume or perceive states as sovereign rational actors, operating on the assumption of power relations (economic and military). However, developing an analytical framework to account for change outside of the state becomes problematic. At the same time, being critical of the relevance of this theory in today's globalisation does not suggest or

moved past its restrictive Bermuda II Agreement with the US. Most observers tend to focus on the latter without setting the context in a broader political framework. In doing this, one misses or omits the important role of the UK in the broader US-EU negotiations that seek to replace all the individual European country bilaterals with a single EU one.

imply that the state is not an important aspect in any study of international relations, it is just not the only one.

Another useful lens to use for analysis relates to the distribution of power (both economic and military) and argues that "... if there is a hegemonic distribution of power there is likely to be an open regime for trade" (Krasner p 117). Within this theory the US, as the post-war hegemon ensured the growth and development of the General Agreement on Tariffs and Trade (GATT) and the Bretton Woods institutions of the World Bank (WB) and the International Monetary Fund (IMF), and the initial attempts to include trade in services within the GATT. Many theorists have convincingly argued that the economic growth throughout the western hemisphere was driven by the US agenda and its hegemonic position (Keohane, 1984). However, since the end of the cold war and the demise of the Soviet Union, the US has lost much of its post-war (WWII) power and according to the theory is therefore less likely to support further economic liberalisation.

The difficulty with these arguments is that they tend to remain at a relatively macro level and therefore have difficulty explaining some of the events that run counter to the theory. For example, from a hegemonic stability theory perspective one would expect to find that the US pursued a liberalising agenda during the period it adhered to the extremely restrictive Bermuda II air services agreements. It wasn't until the 1970s, when its hegemony was already waning that it began actively to pursue liberal policies for this sector. In fact, over time one can also point to a correlation between diminishing US hegemony and its increased efforts to pursue more liberal bilateral agreements and continued pushing to bring trade in services within the GATT framework.

Approaches through the lens of liberalism and its neo-liberal counter-part likewise fall short of being able to fully account for the different aspects and political levels that continually act and interact within a sector over time. The argument about the inevitability of international trade liberalisation is attributed to the enormous power held by transnational corporations is rather singular in its focus. Here the focus is on the corporate institutional power that exists within the state framework. Or, as Susan Strange noted, while US hegemony may have diminished, its structural power has not and that technology is a key factor driving change (Strange 1994). While this might have held true during the 1980s when computer technology started to be used on a wide-spread basis (e.g. computer reservation systems). However, this does not explain how this is related to the push to liberalise bilateral agreements, nor does explain why some sub-sectors could be covered by the GATS and most others not.

It does suggest that the traditional notion of hegemony by individual states can be re-constituted, albeit in a different form within the multilateral negotiating framework. This means that the structurally powerful will remain so, whereas the weak will gain strength through numbers in the institutional setting of consensus based decision-making. Set in the context of the GATS negotiating forum, this would not account for the position of the EC as a single voice, which is arguably as powerful as the US. It certainly does not take into account the different economic and political influences acting upon the negotiator, nor does it expose the underlying reasons for state preferences at both the macro and micro levels of analysis.

Exclusion of this industry from GATS coverage, from a liberal perspective would be difficult to argue, and realists (neo or not) would have difficulty explaining the rationale for inclusion of the one sub-sector, maintenance repair and overhaul (MRO), which is critical to the operation of the airlines and therefore arguably related directly to the exercise of traffic rights. Moreover set in a broader political inquiry, questions need to be raised about state sovereignty and independence, the levels of domestic and transnational interests, and how each impact the other over time. It is therefore imperative to inquire where the linkages are located and seek out the true levels of dependence or interdependence. The fact that the Air Transport Annex in the GATS specifically excludes traffic rights does not, in and of itself, explain the dialectic between the different levels of policy makers. Nor does it explain the national sphere of a political economy or the numerous influential factors that drive international liberalisation under the aegis of a multilateral framework.

Within the mainstream theoretical frameworks it is difficult to take into account the labyrinth of linkages that are the operational basis of both the existing regime (bilateralism) and the norm of reciprocity, and how change to a multilateral system based on Most Favoured Nation (MFN) treatment is achieved. Traditional political analysis has explained the historical growth and the interstate relationships primarily through game theoretic or positivist analysis (Nayal, Zacher, *et al*). Once the regulatory complexity and scope of the industry (i.e. all the air transport sub-sectors) and its bilateral framework set against the multilateral trading arena, the single mainstream theories begin to fall short of encompassing all the relevant factors that drive change or ensure the status quo.

The Theoretical Framework

Negotiation theory has been chosen as the theoretical framework for this dissertation because of the flexibility and scope it offers when trying to include disparate elements or influencing factors that are normally analysed in isolation (Odell, 2000, 2006). These elements range from domestic political influences, economic aspects of the international political economy, existing regulatory structures and policy-makers, industrial lobby groups and labour, to the role and influence of the WTO as a negotiating forum promoting national economic interests. It also provides an avenue to analyse how or if the WTO as a multilateral body has the potential to alter the traditional bilateral negotiations framework in the air transport sector. In short, looking at change in an economic regulatory regime from a negotiating perspective permits us to uncover otherwise overlooked nuances about how and why national agendas are developed. From this vantage point we can examine the input factors of different positions, existing commonalities among Members, elements of disagreement preventing dramatic change within an existing regime structure, and the degree to which changing markets influence national policies.

It is a theory based on bounded rationality, meaning that actors (negotiators) operate with less than full information and are individually affected by constraints placed upon them by national governments and changes in the domestic and/or international political arena. Moreover, the continually changing markets make it difficult or impossible for negotiators to possess full information at any given time. Information is provided by the Secretariat or Members that have teams of specialists dedicated to the sector under negotiation, however the latter source would necessarily be biased and reflect specific national concerns and perspectives. Additionally, negotiators must remain cognisant of linkages and overlaps in the different negotiating *fora* such as the services negotiations that began in 2000.¹⁶ In this case there are sub-sectors that arguably could be considered to be within the domain of the GATS already (e.g. express couriers, or freight forwarding).

At this point it is important to note how 'negotiations' are defined and used throughout this paper. We begin with Odell's definition that, "negotiation and bargaining refer to a sequence of actions in which two or more parties address

¹⁶ Art. XIX paragraph 3 of the GATS states that "...negotiating guidelines and procedures shall be established." Guided by this article the Members created what is referred to as the Services 2000 roadmap, which laid out the essentially bilateral 'request-offer' negotiating guidelines. See, "Guidelines and Procedures for the negotiations on Trade in Services" S/L/93, 29 March 2001. See also "Technical Aspects of Requests and Offers: Summary of presentation by the Secretariat". WTO Seminar on the GATS, 20 February, 2002.

demands and proposals to each other for the ostensible purposes of reaching an agreement and changing the behaviour of at least one actor" (Odell, 2000, p 4). For our purposes the definition has been expanded to include formal and informal negotiations and the differences between them. For example, the Review meetings were formal sessions in the General Council and Council for Trade in Services (CTS) but were not considered to be 'formal negotiations' in the sense of requests and offers. This is noted because a number of delegates went on record to state that they and their governments did not consider the Review to be a formal negotiation.¹⁷

Nevertheless, this paper considers the Review to be a 'negotiation' in the sense that the full membership met seven times (four dedicated sessions) over a period of four years to evaluate the economic and regulatory changes in the global industry and to determine whether coverage of the sector should be expanded, and if so, which sub-sectors? It is also a negotiation from the perspective that there was potential to make changes to the GATS within the Annex. Expansion of coverage of air transport would then allow the designated sub-sectors to be part of the larger Services Negotiations.¹⁸ Given that some delegates wanted to expand the coverage of the GATS in this sector, and others did not, the discussions to achieve each side's objectives are considered, for our purposes, to be a negotiation.

Including the input values or factors from the marketplace in the negotiating arena we begin to understand that, as entrenched as the bilateral regime in air transport appears to be on the surface, change is in fact occurring at various levels throughout the industry. The question to be answered from a theoretical perspective, however, is whether the emergence of the GATS as a legal framework Agreement, the Review, or the services negotiations 2000, are a direct catalyst to change or just a reflection of the international political economy or something more random. Ultimately, we are seeking the catalyst for change and how this affects national positions. We are also asking if the WTO has a direct influence and impact on a regime change in the international air transport sector and why the US, EU and others stand so far apart in their positions despite the fact that each side of the debate supports further liberalisation of the industry as a whole. In essence the debate is not about whether aspects of the industry should be liberalised, but in what framework (bilateral or multilateral).

¹⁷ Egypt, Japan, Senegal, Brazil, Korea, and Uruguay stated the Review was not a negotiation. The EC went on record to state that it believed the Review was a negotiation. See Appendix 4.

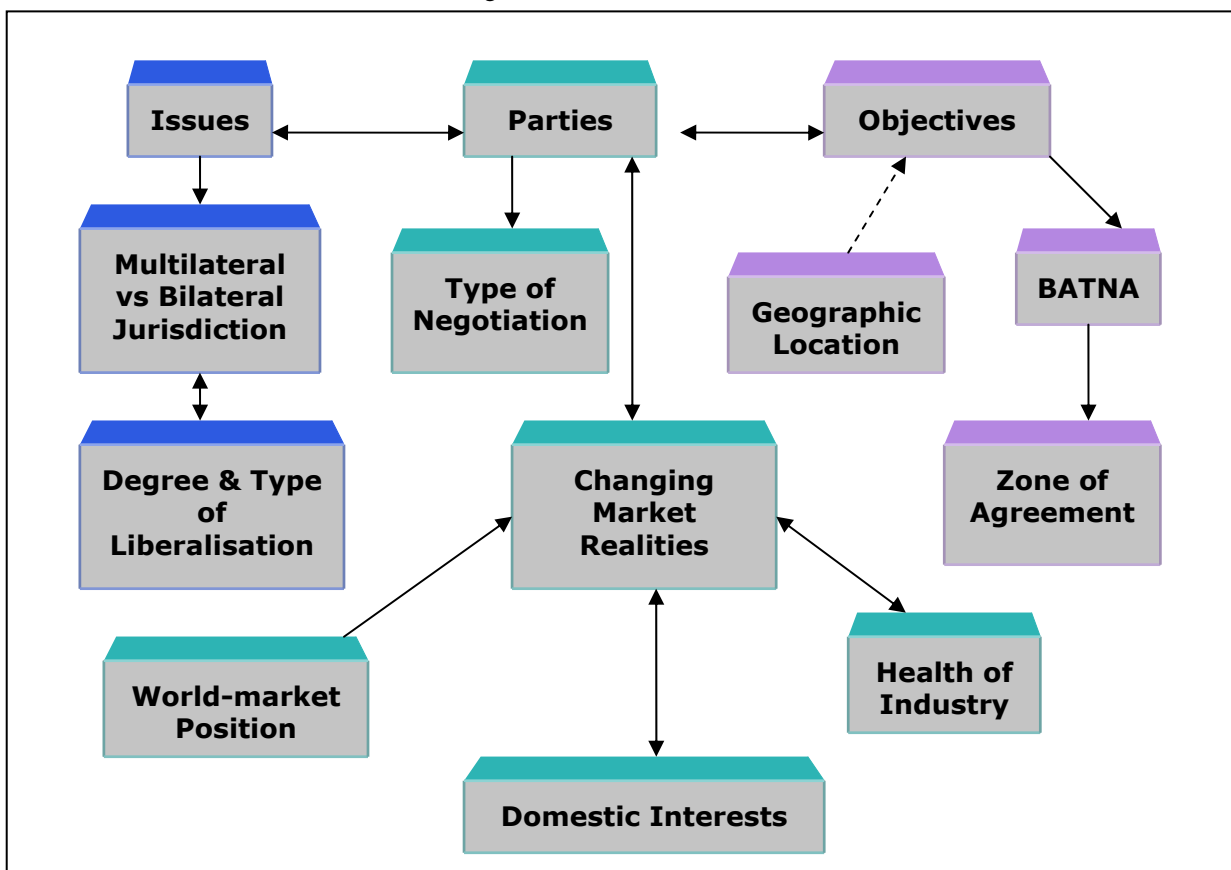
¹⁸ The Services negotiations also began in 2000, becoming part of the Doha Round when it was launched November 2001. "Ministerial Declaration", WTO, WT/MIN(01)/Dec/1.

The Framework Elements

The theoretical framework is designed to capture input values that feed into the negotiating positions of national trade representatives within the WTO using one of the most politically sensitive global infrastructure industries. Due to the complexity of the industry it was necessary to reduce the absolute number of actors and sub-sectors while keeping the overall industry linkages intact. The choice of industry sub-sectors also reflects the oral and written submissions by the Member States in the Review. These must then be situated within the theoretical framework to show the inputs that affect the national trade representatives' negotiating position.

The starting point of the analysis is to identify the issues, the parties, and the objectives. Emanating from these factors are at least five key elements. These are contributing factors toward any given negotiating position and include: changing markets, domestic political constraints or support (domestic interests), the type of negotiations, the zone of agreement (ZOA), and the best alternative to a negotiated agreement (BATNA). This list is not finite, although for the purposes of this paper they will be used to show why Members have taken opposing positions despite their unanimity to liberalise the entire sector. In general terms the above factors are roughly grouped according to the three initial factors of analysis (issues, parties, and objectives). Chart 1 is intended to show the directional flow of elements that influence how each Member might perceive and prepare their national position.

Chart 1: Issues, Parties, and Objectives



To augment these general aspects of the theory, statistical analysis using linear regression will be used to discover whether geographic location (distance from major markets), market position (of sub-sectors), the economic health of the flag carriers (industry sector) and the degree of liberalisation that has already occurred under the bilateral regime have any statistical significance and thereby influenced the negotiating positions during the Review. They also provide an empirical base from which comparisons can be drawn with the written and oral submissions of the Members. Outlining each element briefly lays the foundation for the structure of the analysis in the cases studies that will be used.

The Issue(s)

Multilateral versus Bilateral Jurisdiction

The Review is the only forum within the WTO where a shift from the bilateral structure could begin to occur as it is not permitted to make commitments in the Member's schedules of specific commitments unless the sub-sector is acknowledged to be covered by the GATS.¹⁹ Thus, the issue of how these two fundamentally

¹⁹ This refers to air transport since it is the only sector explicitly carved out of the GATS.

different environments could impact on each other is one of the key issues facing negotiators. It is important to note that in contrast to other economic or regulatory negotiations, the Review and all that will follow are mandated by the Annex. Normally a negotiation is initiated by one State in response to domestic requests or a changing international political economy. For the Review, the issues under examination relate directly to the mandate written into the Annex, which states in paragraph five, "[t]he 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." In short, the issue pertains to which, if any, sub-sectors could or should be covered by the GATS and sets the dependent variable that is used for the statistical analysis in the empirical section of the study (chapter 5): does a Member support expansion of the GATS coverage over sub-sectors of air transport or not? The independent variables that are used to try to explain the positions are drawn from the oral and written submissions of the Member States and were chosen on the basis of the importance the delegates attached to these variables in their presentations and interventions.

Degree and Type of Liberalisation

With one major exception (the EU Common aviation area) international air transport remains governed primarily by bilateral agreements. The differences exist within the agreements and range from being very restrictive to quite liberal (Open Skies type). Coding the degree of liberalisation based on the degree of liberalisation of ASAs that are signed by the Members is considered to be an important independent variable for evaluating whether a Member would be more likely to support the bilateral or further multilateral expansion over the sector.

The Parties

The parties in any interstate negotiation will normally be government representatives: either government employees or contracted experts in the sector. At the WTO the parties are the official trade representatives and industry experts in the employment of their Government. Only State representatives are permitted to attend meetings and not independent interested parties. Nevertheless, trade representatives or their sector experts may choose to keep interested domestic

parties informed at all stages of a negotiation and thus also draw upon their counsel.²⁰

Types of Negotiations

For simplification purposes we identify four types of negotiations that take place within the WTO. These reflect the different aspects of how the WTO functions as an institution and the types of agreements that have been reached through the different negotiating fora. First there are the high level negotiations called Ministerials that are institutionally mandated to occur every two years, whereby the participants are government Ministers and other high level officials from the Member States. These meetings formalise the launching of new general trade Rounds (e.g. the Uruguay Round and Doha Round), review interim results and progress, and formally conclude the Rounds. These types of meetings can be classified as conceptual negotiations to oversee or direct the other more specific negotiations that are taking place. For the purposes of this study, only the relevant bodies within the WTO will be mentioned, therefore this level of negotiations will not be examined further.

The second level or type of negotiation is found in the General Council meetings. This Council oversees the institutional functioning of the WTO including dispute settlement. Discussions in this forum are always multilateral and decisions are normally made by consensus.²¹ The only exception to this practice is when the dispute settlement body uses reverse consensus to reach a decision.²²

The third type takes place in the Council for Trade in Services (CTS). In this forum, framework negotiations related to the services sectors are conducted multilaterally. A secondary forum occurs in the Special Session (CTSS), which is made up of all

²⁰ This was the case for the US during the Uruguay Round of negotiations on air transport. A lawyer from the national pilots union was on an open line with the capital based expert attending the meetings in Geneva. It is likely that other negotiators were in constant contact with people in their home territory. This was taken from discussions about the Uruguay Round negotiations with the US air transport expert who attended the Review.

²¹ Decision-making within the WTO and its predecessor the GATT have traditionally been made by consensus and the trade delegates and Ambassadors make every effort to maintain this tradition. The possibility of voting does exist however it is normally avoided. "Marrakesh Agreement Establishing the World Trade Organization", Art. IX, p. 11, *The Results of the Uruguay Round of Multilateral Trade Negotiations: the Legal Texts*, 1995; and *Guide to GATT Law and Practice: Analytical Index*. Volumes 1 and 2, 1995.

²² A dispute settlement panel report is adopted unless there is a consensus not to adopt it. The Dispute Settlement Body of the WTO is an example of a formalised legal framework that also encompasses the non-legal preliminary steps of negotiation. Negotiation over international disputes (most frequently bilateral ones) is one of the primary tools used between States. Within the 'negotiation' framework, the interested Parties to a dispute can choose from a range of methods (depending on the terms of the agreement) from an exchange of diplomatic notes, to a more formalised procedure utilising competent authorities or experts. From an interview with WTO Legal Division Counsellor.

the same Members as the CTS. Normally meetings are conducted in “formal sessions” with comments and submissions being “on the record”. Nevertheless, during these meetings a delegate can request to go into “informal” discussions. A discussion following this interim change of status allows delegates to pursue politically sensitive questions and answers without fear that any comments would be recorded as a national position. Although such a request was made a number of times during the Review it was reversed each time at the request and agreement of other Members.

Despite the multilateral structure of the WTO, an important aspect of negotiations is in fact bilateral (the fourth type). Beginning in 2000, the current Services negotiations are primarily bilateral and operate in the form of requests and offers.²³ Although Members can and do join together in their requests to one or more states the actual negotiating process takes place between Members.

Changing Market Realities

Examining the changing market realities is an input factor considered to be one of the determining elements influencing negotiators. Both domestic and international markets change constantly, including ownership of corporations, growth or reduction of different sectors, international expansion, and profitability. Constant change in these elements highlights the lack of complete information held by negotiators. In particular, air transport and its numerous sub-sector industries²⁴ are subject to continual and often rapid shifts due to the cyclical nature of the industry and exogenous factors such as terrorism (11 September 2001), pandemic diseases (SARS) and political instability in different countries and regions of the world.

Despite the constant change, it is possible to identify trends or patterns in the marketplace that give us indications about what kind of position negotiators will adopt within the multilateral negotiating arena and the incentives that underpin Members’ positions. Looking at empirical evidence over a period of time (nine years for this study) one can discern industrial sectors that will likely be advocated by the Member States to be covered by the GATS. Through actual market data we can discern whether a sector is economically robust, competitive and expanding outside national borders, or if it is in decline. It is also possible to see which

²³ For an understanding of the procedures see: “Guidelines and Procedures for the Negotiations on Trade in Services” in S/C/W/93, 29 March 2001.

²⁴ A complete listing of the sub-sectors as agreed to by the Member States is found in Job No. 2451. See Appendix 1 for the complete text.

countries' corporations are gaining global market-share and which are losing out. Where the sector represents the former it is likely that the government will advocate multilateral liberalisation. Where it is found that domestic industries are in decline and are losing a formerly held competitive position in the world marketplace, governments will tend to avoid or delay liberalisation. Of course within the multilateral trade arena of the WTO, consideration will be given to other more competitive sectors and it is likely that trade-offs will occur in the negotiating process.

Over the years one notices this pattern when looking at how the US initiated the inclusion of services into the GATT (Kennedy Round and beyond). During this era the US was a market leader in the world of finance and telecommunications and its industries were demanding greater and easier access to the international marketplace.²⁵ Set in this context, it is not surprising to find that it was the US promoting inclusion of trade in services within the GATT framework (Crystal, 2003 *et al*).

World Market Position

This refers to whether the Member has corporations that are multinational or trans-national and how much of the world market they control. It can also include emerging international corporations that are seeking to expand operations across borders. For corporations operating in numerous countries or those seeking to gain international market share, we tend to see the representative of the Member State advocating greater liberalisation for the sector. It is recognised that a single set of transparent and multilaterally negotiated rules simplifies access to trade laws in the Member States. Moreover, once a Member makes a services sector liberalisation commitment, it will not become more restrictive in the future.²⁶

Health of the Industry

Referring to the 'health of the industry' relates primarily to corporations as national entities regardless of whether they operate internationally. Is the industry (sector and sub-sectors) economically dynamic or in financial distress? In the former, there is likely to be less labour strife due to an expanding and/or stable labour market while in the latter it is probable that the opposite is occurring. Given that Member States are always looking to maximise economic growth in their homeland,

²⁵ *Reshaping the World Trading System: A History of the Uruguay Round*, John Croome, 1999.

²⁶ Once a Member makes a liberalisation commitment in its schedule to a sector, it is not easy to retract that liberalisation. Nevertheless, Article XXI allows a Member to retract a commitment under certain specified conditions and/or if the Member were to end its membership in the WTO. To date no Member has quit the WTO.

it is understandable that some degree of protectionism will be exhibited when other countries are becoming more competitive and gaining market share in the national and world economies.

Domestic Political Interests

Similar to the comments above regarding international competitiveness and global market-share, domestic support for liberalisation will be greater or lesser depending upon the perceived threat from foreign interests. This support links directly to the perceived health of corporations in the sector. Where the industry (sector) is growing and the workforce is expanding or at least stable, it is more likely that corporations will have greater political support than if the industry is perceived to be vulnerable to foreign competitive forces.

The degree to which domestic interests can influence policy makers and national negotiating positions will depend on the level of interaction and political power held, or perceived to be held, by these groups. The notion of perception is added because of the different structures and roles played by labour in each national territory and how they are interlinked with the state in addition to the degree of organisation. It is not necessarily the case that inflexible labour standards (ability to hire and fire employees) within a given country translate into absolute rigidity or power. In this instance reference is being made to the strength and amount of organised labour. In fact one can identify countries with flexible labour standards that view organised labour as a political force and hence are cautious about advocating liberalisation in politically sensitive industries such as air transport.²⁷ National trade associations and the major labour groups are an integral part of the policy choices being made at the national level. The trade associations will reflect their membership's interests and thereby give us an understanding about the state of the industry.

Given that international air transport has historically been linked directly or indirectly to territorial sovereignty and national security issues, it is not surprising that in some countries liberalisation is perceived as a potential threat to the security of the State. In the EU this issue has largely been resolved through the liberalisation that occurred in order to bring all the Member States within one air transport jurisdiction (common aviation area). Also, national security and air transport have largely been separated. Although an internal EU aviation market has been created, a common foreign policy and defence arrangement remains close

²⁷ "The Economic Impact of an EU-US Open Aviation Area", the Brattle Group, December 2002, pp 8-1 – 8-18.

to non-existent. In contrast, there are voices in the US Department of Defence that view any liberalisation outside the traditional bilateral framework as a potential security issue (Brattle Report, p 7-1). Beginning with the terrorist attacks in the US on 11 September 2001 and the subsequent military actions in Afghanistan and Iraq, the issue of national security and aviation remains an important issue for many US domestic interests.

The Objectives

The objectives of a trade negotiator can range from very specific national goals (e.g. specific export reductions) to goals situated in a larger bargaining context such as the Services or Agriculture Negotiations within the Doha Round. The former is likely to be initiated by one country bilaterally in response to a perceived need or a national policy objective whereas the latter is set within an agenda that has a mandate to reduce trade barriers on an ongoing basis.

In multilateral negotiations WTO Members are committed to reducing trade barriers, both tariff and non-tariff, through a consensus based decision-making process.²⁸ Since there is virtually no area of international trade that is not covered by the WTO and Members seek to maximise their national objectives, all understand that trade-offs are part of the negotiation process. In such a context it is difficult to generalise specific objectives. This is particularly the case for trade in services under the GATS since *a priori* no sector is excluded from coverage and a mandate exists for ongoing negotiations to liberalise the service sectors.

Best Alternative to a Negotiated Agreement (BATNA)

One of the features of this theory is the central role and importance of the best alternative to a negotiated agreement (BATNA). The theory holds that negotiators will make demands or pursue specific negotiating objectives depending on how alternatives to an agreement are perceived by each side, or all participants in the case of multilateral negotiations. Each perspective or side will be driven by input factors originating from domestic sources or domestic interests that are participants in the international marketplace. This can be applied to any type of negotiation, including bilateral, plurilateral or multilateral. In some instances this would also include what might be termed as competitive negotiations, whereby neighbouring countries have concluded trade agreements with a specific state. The countries

²⁸ Consensus decision-making is based on the historical tradition established during the GATT years and continues in the WTO. Although the legal right to use majority voting exists, delegates make every effort not to use this tool. Instead *ad referendum* will be used at times in order to move forward on a stalled negotiation.

that have not done so would feel that to regain potentially lost opportunities they must also negotiate a favourable agreement with that same country.²⁹

One sees this effect in some developing countries *vis-à-vis* the US and the EU in terms of preferential bilateral trade agreements. The World Bank, in its 2005 *Global World Prospects* has pointed to what it calls the spaghetti bowl effect of economic trade liberalisation agreements and notes that there is a first move advantage (pp 27-56). However, once all the neighbouring countries have signed similar agreements, the positive effects could be minimised. This is particularly so because in the rush to sign liberalisation agreements, developing countries believe that such agreements with large economic powers will be preferable to no agreement and therefore will be likely to accept terms that might not be to their best advantage. Many of the developing countries may lack the resources necessary to ensure agreements truly benefit their economic growth and/or sign agreements that could cause trade diversion, which could have negative consequences on their economies. While most of the research has been directed toward trade in goods, the same cautionary notes can also be applied to trade in services and are therefore relevant to this study.

Trade in Services is a particularly sensitive area of negotiations since historically many services were supplied by governments and even those in the private sector were not thought of as part of international trade. Unlike goods, services cannot be measured at the point where they cross a border and they require both the producer and the consumer to complete the transaction. In many instances (not all) the service provider and the consumer are in the same location, which makes exports difficult to measure.³⁰ Indeed, trade in services has become an important factor of international trade as oftentimes it underlies the ability to trade efficiently in goods. Moreover it has enormous potential for promoting growth throughout the world economy. This is particularly the case for developing nations (e.g. tourism and travel services).

When considering BATNA, oftentimes it is presumed that all negotiations are finalised with an agreement, whereas it could also refer to a stalemate or a delaying tactic in negotiations. The Review could be categorised as the latter

²⁹ "Regional Trade and Preferential Trading Agreements: A Global Perspective" in *Global Economic Prospects: Trade, Regionalism, and Development 2005*, The World Bank, pp 27-56.

³⁰ Measuring trade in services remains elusive because there is no agreed standard for accurate measurement. The only internationally recognised services statistics are limited to Tourism trade by the Satellite accounts at the World Tourism Organisation (WTO/OMT). IOs such as the World Bank are in the process of developing a broad services template, however it remains in the design stage of development. <http://www.world-tourism.org>.

condition since the only agreement that was made (and with difficulty) was to finalise the process and set up a tentative start date for the next Review.³¹ Moreover, all the Member States know that under the terms of the Annex on air transport, future reviews will occur.

For our purposes however, BATNA is viewed in terms of incentives. Here we ask why some states prefer liberalisation through the bilateral regime and others in a multilateral forum and what goes into the formulation of these perspectives. The question or dependent variable is why some Members supported expansion of the GATS and other vehemently supported the bilateral status quo. By doing this we broaden the scope of analysis to include the interested parties (state and non-state actors) that feed into the final negotiating positions of the members. Although it is alluring to look only at the specific proposals (written and oral) within the Review, this would not give us sufficient information about the background players that contribute either implicitly or explicitly to the final outcome or position. Adding empirical data broadens our knowledge base and by grouping the interested parties schematically (Chart 2 below) we can see the different interest groups and thereby identify where their incentives are located, giving us an understanding about the collective input of information that leads to a negotiating position.

Zone of Agreement (ZOA)

The zone of agreement (ZOA) is roughly “the value of the worst deal a party or parties will accept” (Odell, 2000, p 26). In this study the ZOA is inextricably linked to BATNA. Where a country perceives its BATNA to be greater outside the multilateral forum, the incentive to achieve further liberalisation is reduced. Although applicable to any type of negotiation, the principles underlying the ZOA between or among parties may be somewhat misleading when it is applied to the Review. The Review, as a negotiation, occurred due to the mandate given to Members in the Air Transport Annex. This mandate ensures the first Review as the beginning of an ongoing evaluation of the sector by Members. The mandate does not provide explicit instructions to Members on what must be reviewed or whether expansion of coverage must be reached at any specific point in time, but does allow for the status quo to be maintained. Thus, in the context of Odell’s treatment of reaching a ZOA, the Review process differs slightly.

³¹ Although the formal start date of the next Review was not agreed upon, preliminary meetings to set a date should take place late 2005. The start date of the 2nd Review was finally scheduled to begin 13 December 2006.

The Members (parties to the negotiations), were/are required to discuss the economic and regulatory changes in the air transport sector and sub-sectors (the issues). The objective of some Members was to decide whether any of the sub-sectors could be covered by the Annex; for others it was to ensure this did not occur. At the outset of the Review it was clear that the objective was the real issue under negotiation to the point where three years later, a stalemate was the final outcome. Nevertheless, it would be difficult to claim that the process was a complete failure due to the requirement to repeat the process into the future. Instead it should be viewed as the first round of a number of negotiations. Members that pushed hard to expand the GATS coverage might claim the Review to be a failure, however they will have the opportunity to come back to the topic on a regular basis in the future. In the meantime, they retain the power to pursue a liberal agenda unilaterally or negotiate commitments on some of the ancillary sub-sectors in the Services negotiations (e.g. warehousing and storage or fuelling).

It is difficult to attribute the classic ZOA analysis to the first Review because it is difficult to identify a single resistance point.³² Although Odell uses the conceptual notion of negotiators reaching a ZOA between two or more sides, this does not further our understanding to any significant level about the Review due to the structure of the negotiation and the lack of experience in working with this particular industry. Nevertheless, within the broader institutional framework of the WTO it is relevant to note that reaching a ZOA between Members or states wishing to accede is an important factor and due to the degree of existing differences, agreement can take years to accomplish (e.g. China or Russia).

Geography

It is not only the economic principles and policies of a trading nation that are important, but also the distances. Regardless of cost, transporting goods and people long distances impacts on the competitive position of transportation companies around the globe. Knowing that regulatory barriers increase the cost of doing business, it is not surprising to find that countries that are geographically distant from major markets tend to advocate liberalisation. This is even more pronounced when the countries are not major markets and rely on international trade for economic growth and stability. Thus, the geostrategic location (distance from major markets), particularly in the air transport sector, will likely be a factor that helps to determine a member's position.

³² The resistance point (or reservation value) is the value of the worst deal the party will accept. John S. Odell, *Negotiating the World Economy*, 2000, pp 24-26.

In this study it is assumed for the purpose of simplification that there are two major markets: the EU and the US. This choice was based on the size of the general markets (both import and export), the comparable level of development, and the history of liberalisation that both have undertaken. Notably, India and China, two of the fastest growing markets, are excluded from this study. India did not actively participate until the discussion turned to ending the Review and China had not yet acceded to the WTO. It will be interesting to analyse their positions and level of participation after the second Review, which is to commence late 2006.

Linkages Between and Among Interested Parties

Due to the complexity of the industry and the corresponding economic regulatory and safety structures it is useful to describe the linkages visually: below are a set of charts (2-7) designed to depict the major aspects of the entire industry, highlighting the non-linear flow of factors that feed into a national policy position for international air transport. Rather than identifying each of the infrastructure industries specifically, the charts are intended to be applicable to the component parts required for the operational side of the whole industry. The charts depict the linkages between the interested groups that are of importance for our analysis, showing the directional lines of communication and potential influences that combine to impact upon the formal positions taken by members in a negotiation.

Chart 2 on the following page is designed as a general outline of the numerous interested parties that have specific incentives to influence the outcome of the multilateral negotiations. It is intended to show, in a non-hierarchical manner, that different groups will represent the interests of their larger constituents. The only grouping or institution that would be considered as industry specific to this chart is ICAO. However, this same chart would be appropriate to use for other industries whereby the ICAO box would be replaced by the appropriate technical body representing the industry being examined (e.g. the International Telecommunication Union, ITU).

Although the natural tendency would be to assume that a specific hierarchy exists, the representation is to highlight the types of interested groups and provide a general indication as to whether or not they represent domestic or international interests. There are no values given to any particular box since we are depicting the variety of interests and their linkages to others rather than the value or specific incentives for each group. The different areas are presented separately below to show in greater detail how the information and influence tends to flow into the final negotiation outcome. In all cases the boxes are intended to show linkages for the

sector of air transport in addition to any other sector. The representation of the charts should be understood as a general outline of potential interactions between interested parties that can be used in a broader context, or for an industry specific analysis.

Other Negotiating Fora within the WTO

This box is included to indicate the larger institutional structure of the WTO. Although the various WTO bodies are legally separate entities and conduct their business independently from each other, all fall within the same institutional framework. Depending on the Member, national government or territorial representatives will either have specialists for the different areas or a small number of generalists, all under the direction of one Ambassador.³³

Multilateral Negotiations

This box includes all the negotiating fora that exist in the WTO regardless of whether all Members participate, in order to include the plurilateral bodies (e.g. aircraft manufacturing) and any bilateral negotiations that might take place (e.g. the request/offer negotiations in Services). At the Ministerial level this box would represent the multilateral agenda-setting process that is operationalised in the General Council or the individual Divisions. All decision-making is normally finalised by consensus rather than majority voting.

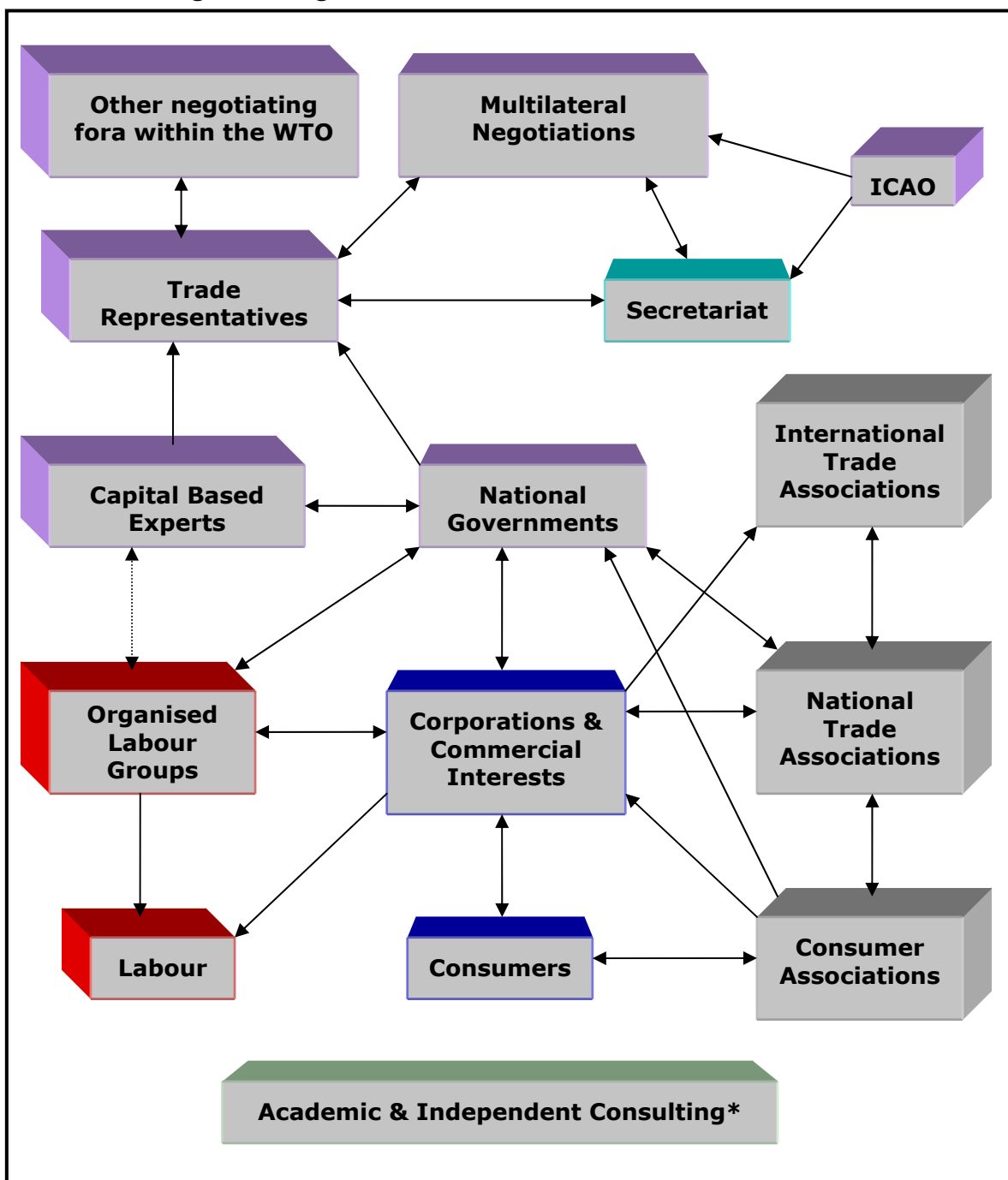
The WTO Secretariat

The WTO Secretariat is relatively small in comparison to other IOs and is located only in Geneva, Switzerland.³⁴ Unlike other IOs, which have different institutional mandates and structures, the WTO is truly a Member driven institution and as such the professionals who work for the secretariat do not have any decision-making powers. The secretariat professionals provide technical and expert support for the different bodies in the form of research, background papers, and provide advice to delegates upon request. For example, it is the professionals who write the minutes

³³ When referring to Members in the WTO it is important to note that not all Members are nation states. One example would be the EC, which represents all the EU Member States (countries).

³⁴ The total number of people employed at the WTO is approximately 630, which includes administrative staff, and translation services. http://www.wto.org/english/thewto_e/intro_e.htm.

Chart 2: Linkages among Interested Parties



Note*: Since academic and independent consulting is widely used by all other groups, their participation is assumed to be linked to each of the other boxes in the schematic. Adding directional arrows to this group would unnecessarily complicate the chart.

for meetings and must be available to answer any technical or sector specific questions on topics under discussion. Other functions are to research and write up the annual Trade Policy Reviews or give legal assistance in dispute settlement cases. People who work for the WTO secretariat are drawn from almost seventy different Member States and are expected to remain neutral in any political issues that involve national interests. The two-way directional arrows running between

the Secretariat to the multilateral negotiations and trade representatives reflect the support given in both of these areas and the instructions to be implemented at the request of the Members. However, despite the frequent communication between the Secretariat and the delegates, in many instances the Secretariat does not initiate contact due to the need for impartiality in their work.

Trade Representatives

Trade Representatives or delegates work directly for their governments under the Geneva Mission Ambassador. Depending on the country, trade representatives negotiate in numerous areas as generalists (usually these are from developing countries) or they are specialists in one sector only. The make-up and structure for the Member's missions are determined in the home state.

Capital Based Experts

These are sector specialists who live and work in the capital cities who provide background information, policy papers or statements for the trade representatives. They attend sectoral meetings in a support capacity and/or provide oral presentations and answer sector specific questions from other delegates. When in Geneva they work directly with the Mission staff (trade representatives and Ambassadors).

ICAO (and other International Organisations)

Although the United Nations ICAO is represented in the Chart, it is specified because of the topic. ICAO does not have official observer status and therefore must be specifically invited to attend meetings, however it actively cooperates with the Secretariat by providing research for background papers. ICAO was invited and attended all the Review sessions and gave presentations in all four of the dedicated Review meetings.

Corporations and Associations (International, National, Consumer and Labour)

Commercial interests are the natural counterpart to the policy maker groups discussed above and represent the end user of policy decisions, liberalisation and regime changes that occur. They can be roughly divided into three interest groups: corporate, labour and consumer. All three require each other to exist and survive. In principle, the entire regulatory framework serves to ensure these three groups operate within a regulatory structure.

Trade associations represent corporations at the national and international levels and exist for the purpose of defending their membership's interests. However, there can be a dichotomy between the national and international levels during

times of changing regulatory structures. Both levels act as organised lobby groups to defend and promote the interests of their members. A lot of time and effort is spent monitoring policy change and informing their members. They act as an information clearing house whereby they ensure that the association speaks with one voice even if a consensus is lacking within the membership.

Roughly speaking organised labour acts in a similar capacity as the trade associations. They monitor policy change at the national and international levels and depending on the country, have a great deal of influence on national policy positions.³⁵ Although this assessment of organised labour would hold for most sectors, it is particularly strong throughout air transport as most employees in this industry are members of organised labour unions.

To a lesser degree, consumer associations and consumers also participate in lobbying policy makers. A good example is the efforts made by consumer groups to have regulations for passenger rights enacted in the US and the EU. Although the former did not formally enact legislation, the government made it clear that this would happen if the corporations did not adhere to good practices. In the EU legislation was enacted. Throughout the entire process IATA, in conjunction with national airline associations, lobbied governments relentlessly to prevent such legislation from becoming law.³⁶

Academic and Independent Consultants

This group has been added separately and without arrows depicting linkages due to the plethora of people hired or consulted in this capacity in all areas of the chart. Using this form of expertise has become commonplace throughout all levels of a political economy regardless of the level one is examining. However, they are not normally included in any of the negotiations directly but are consulted in advance of any type of negotiation or discussion for background analysis or opinions. It would be beyond the scope of this research to do more than acknowledge their existence.

Chart 3 is designed to show the reader the flow of input on technical and safety issues. It should be noted that while the actors for the most part remain the same

³⁵ The US stands out as a good example. Not only is labour cited as a reason for pursuing bilateral liberalisation rather than multilateral, but labour was consulted directly during the Uruguay Round when the Air Transport Annex was being finalised. "The Economic Impact of an EU-US Open Aviation Area", 2002 and personal interviews that were conducted.

³⁶ I participated in the research and development of a reference manual for IATA in 2001 on passenger rights that was used by member airlines as an aid to their lobbying efforts. "Comparison of Relevant Rules and Recommended Practices and Airline Service Commitments", IATA, May 2001.

as in Chart 2, the trade experts and negotiators are not included. In this depiction of linkages ICAO is the ultimate location for international policy decisions.

ICAO is one of the oldest UN special agencies and has always been the international body that coordinated the safety and technical standards and it is through this organisation that the Chicago Convention provides the framework for the bilateral system between states. Although it is often implied that ICAO, through the Convention, actively oversees the economic regulatory structures of air transport the Convention is “silent on progressive liberalization as an objective” (MTN.GNS/W/36, p 9). Changes to the bilateral system would nevertheless involve ICAO and so it has a vested interest in being actively involved in any transition of the economic regulatory regime.

Chart 3: Safety Technical and Economic Regulatory Linkages

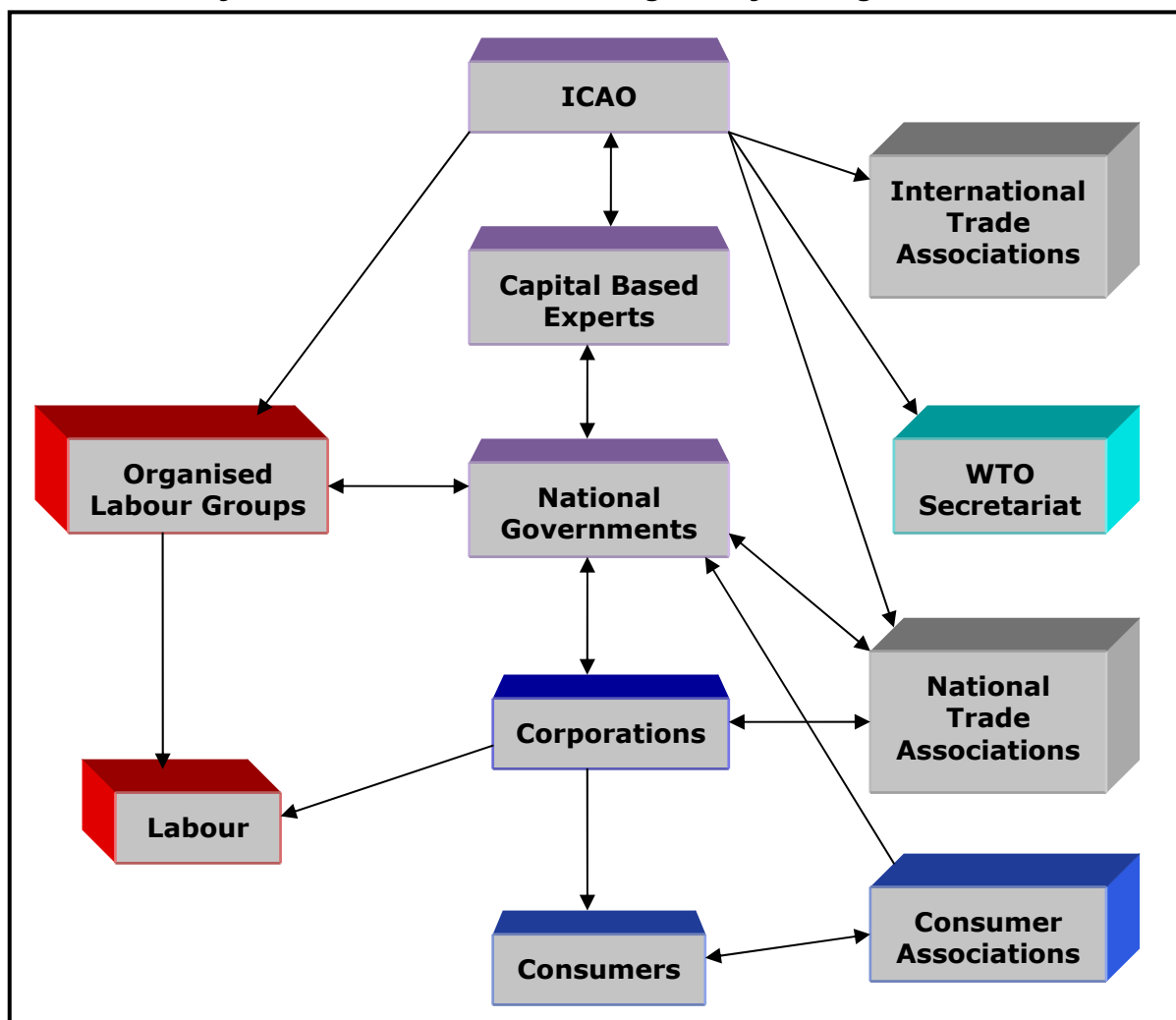


Chart 4 shows the linkages between the different actors that are directly involved in much of the preparatory work that must be undertaken to prepare for negotiations in the multilateral forum. It is noteworthy to mention that ICAO is not included due

to its observer status. Whether this status will change in the future is likely linked directly to the amount of coverage the GATS will have in the sector in the future. Since the sector is mostly excluded from GATS coverage the linkages that are relevant to our study are between the groups that are directly involved in the advance preparations for and actual discussions that take place in the WTO.

Chart 4: WTO Secretariat Linkages

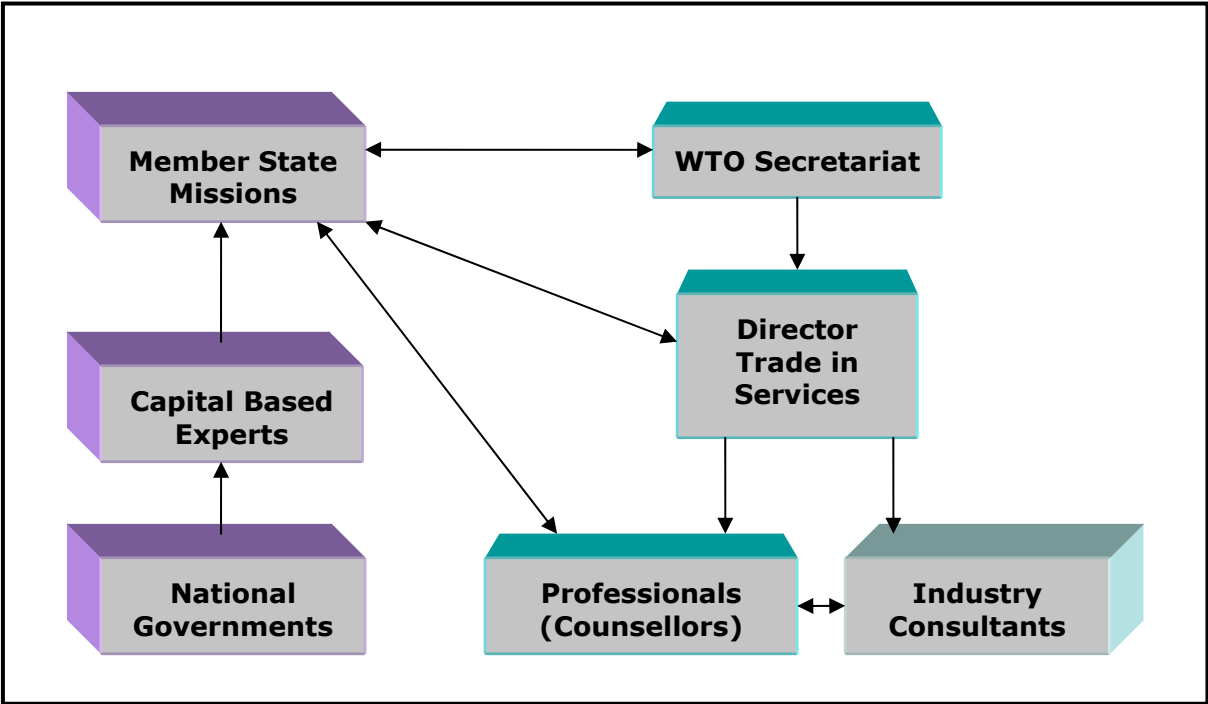


Chart 5 is designed to depict the major actors in what is generally referred to as the 'market'. Here one can see the linkages between the actors that operate under the regulatory policies that come from governments be it via State legislation or WTO rules. Although this group must respond and operate within legislative and regulatory boundaries, these are some of the important actors that policy makers look at when formulating positions at the national or international regulatory environment.

Chart 5: Linkages between Trade Associations and Corporations

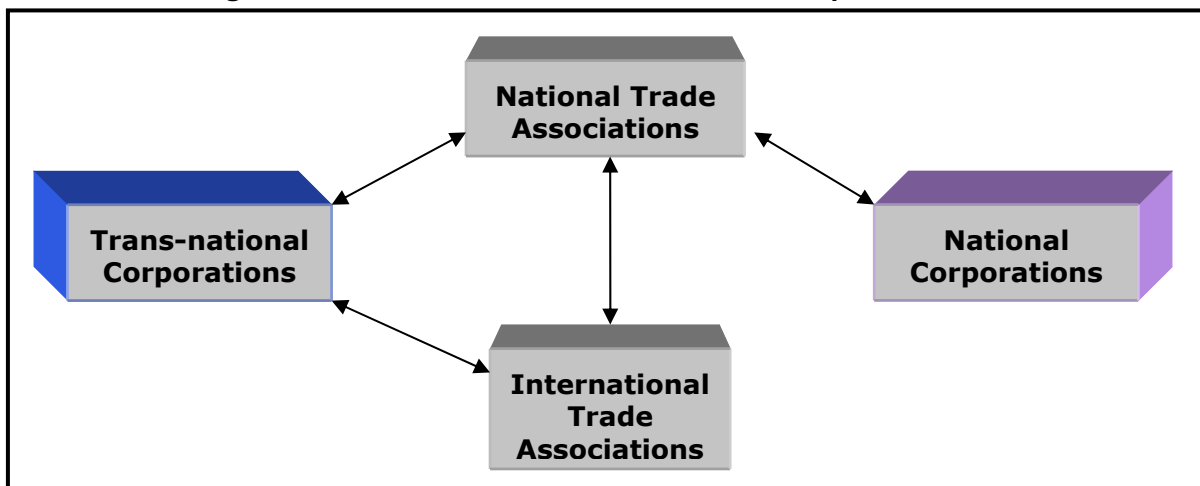
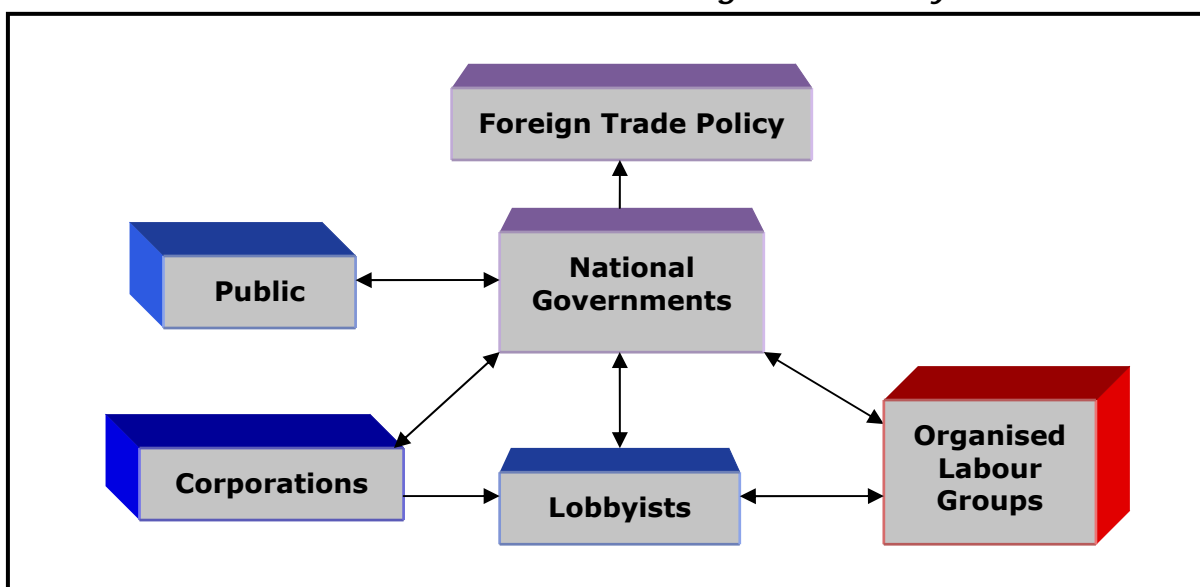


Chart 6 depicts the general linkages between a national government and domestic interests and is intended to show that there are numerous domestic factors that have some level of influence into the policy making process that ultimately creates foreign trade policy. The depiction is intended to be general and not specific, because differences would likely appear, depending on the political structure of a state.

Chart 6: Domestic Influences on National Foreign Trade Policy



Generalising the Predictive Elements

As with other theories, analysing regime change through a negotiator's perspective is an approach that can be generalised and possesses predictive elements. Regardless of the topic or industry, negotiations do not occur in a political or economic vacuum of time or space. Ultimately they are reflections of the past and contemporary world surrounding such negotiations and negotiators bring personal

perspectives and approaches to the table. Having the opportunity to analyse a multilateral negotiation in its entirety is unusual due to the normal diplomatic veil that enshrouds the process and therefore provides us with a unique perspective. For example, it allows us to set the talks in a much broader context than is normally available to political scientists, while at the same time allowing us to look at the minutiae of the different positions taken by Members throughout the Review.

Moreover, it informs us as to whether regime change will likely occur by taking into account important factors that are exogenous and endogenous to a national industry when put in the context of national policy objectives expressed in the multilateral forum. Domestic policy platforms, existing regulatory structures and institutions (national and international), the geostrategic position of a country (distance from major markets), and the share of the world market an industry possesses all influence negotiating positions in a multilateral forum in different ways from a single industry bilateral setting. Additionally, spill-over or linkages to other sectoral goals affect multilateral negotiations in ways that do not exist in a single sector bilateral forum.

It is also possible and useful to use these same analytical inputs in other political studies. The important contribution that negotiations theory makes to political science is its scope, adaptability and real world relevance. One is not limited to restrictive assumptions throughout the analysis, while at the same time data can be drawn from existing market conditions, thereby informing the overall process. It is also important to note that outcomes are not defined in terms of winning or losing. Rather it is important for gaining a deeper understanding of what each of the parties has achieved relative to their original stated objectives and provides suggestions for the next steps that will likely be taken in the future. Compiling the information in descriptive and empirical form gives us the opportunity to suggest that market forces play a larger role in the formation of a negotiating position for some while domestic objectives outside the actual sector are important for others.

Summary: Analysing Economic Negotiations

John S. Odell, in *Negotiating the World Economy*, has proposed analysing change through a theoretical framework that takes into account the market and political influences affecting international economic negotiations and negotiators. The influential factors are found at the local, national and international levels, and include numerous types of interests ranging from corporations to labour groups and their representative lobby groups, plus in some instances military and national security interests.

Using such an approach gives the analyst a flexible set of input factors, permitting inclusion of data that otherwise might have little or no analytical value. Analysing the air transport sector and its component parts using this approach permits us to systematically address, unravel and examine the complexity of a global industry. This is particularly valuable for answering our primary question about the incentives, or BATNA, each Member State has for expanding coverage of the GATS over the air transport sector and the degree of influence the Review has in promoting a regime shift from the traditional bilateral framework toward a multilateral one under the WTO and the GATS. It also allows us to understand why some states prefer to liberalise parts of the industry multilaterally and others bilaterally. Through this lens we can better understand the reasons for negotiated agreements if we take into account international political power (in the realist sense of the term), market forces that impact domestic policy makers and known alternatives to the terms of an agreement.

The starting point emanates from the notion of bounded rationality and incomplete information rather than the realist perspective that assumes choices are based on full or complete information. The theory itself is partially subjective, which has raised debate in the rational choice camp of theorists. Nevertheless, it is a theoretical framework that is grounded in empirical reality. Can a theory that attempts to assess influences and interactions among people have any degree of credibility in the arena of international relations or international political economy? I believe that an unequivocal yes can be delivered.

It is, however, important to draw from knowledge of domestic political systems and the ever-changing environment of the marketplace in the field of inquiry. Taking elements from these academic arenas and using them in the real world enriches the theoretical possibilities of increasing our understanding of the rarefied world of international economic negotiations. Critics are likely to say that it is not possible to create a new paradigm or political theory by simply drawing aspects from accepted frameworks. However, in a rapidly changing world the mainstream theories have, in many instances, become outdated and therefore have been under increasing challenge by academics in sister fields. In our case we utilise aspects or elements of the different theories, such as the importance of using contemporary empirical data, domestic political aspects to show how they impact national policy makers and regulators. It is also important to utilise economic trade theory to lay an analytical foundation, thereby ensuring that a solid link with the political theory is maintained.

The combination of these factors, as highlighted by Odell, gives us tools of analysis that take into account the likelihood that negotiators from Member States at the WTO do not have full information and some have more information than others yet still must negotiate the best possible deal for their national governments. In actuality, not only do many national delegates (representatives) have less than complete information, many of the developing world representatives lack in depth knowledge of many sectors. Air transport in particular is a complex services sector that includes sixteen economically important sub-sectors. It would be difficult for an aviation expert to stay abreast of all the sub-sectors of this industry, and virtually impossible for an economic trade negotiator who is not an expert. Based on this information, it would be incorrect to assume that all trade negotiators enter multilateral discussions with the same amount of information, or in specific sectors, expert knowledge of the industry in question. They are therefore dependant on the input from multiple domestic and market factors that exist throughout the expert air transport community (e.g. ICAO, IATA, and domestic corporations).³⁷

Augmenting negotiating theory we have drawn from different theoretical perspectives permitting the analysis to be generalised thereby encompassing historical, contemporary, and future directions of the international political economy. This also provides insights into the formulation of state policies in the different negotiating arenas and how the state acts as a filtering process for domestic interests, both industry specific and in general.

In short, different perspectives can improve the understanding of what is occurring throughout the global political economy. Drawing the different theoretical strands together actually allows us to pull together the relevant factors of international air transport to show how national positions will coalesce at some point in the future and be expressed through compromises given to reach a consensus within the multilateral framework. The process will then become embedded within the international legal framework and ultimately reflected in the specific commitments made by individual states. This is because the state represents a much larger set of actors working to advance specific objectives rather than only one industry.

³⁷ Although there appears to be an industry-wide consensus that international air transport should be liberalised, there is no consensus about whether this is best achieved through the bilateral process or a multilateral one. Therefore the experts throughout this industry are not considered to be an epistemic community. "Introduction: Epistemic Communities and International Policy Coordination". Peter M. Haas, *International Organization*, Volume 46, Issue 1, Winter, 1992, 1-35; "Courts and (Epistemic) Communities in the convergence of Competition Policies", Frans Van Waarden and Micheala Drahos in *Journal of European Public Policy*, 9:6 December 2002: 913-934.

Since numerous groups within civil society have raised concern over the broadening and deepening scope of the WTO throughout the international political economy, it is relevant to question whether the structural power (economic and political) of particular states is being transferred into the multilateral setting. Just raising the question will inevitably spark debates over loss of state sovereignty and whether increased multilateral authority automatically corresponds to this perceived loss. This suggests that international trade liberalisation and globalisation of political and corporate power is working in concert to undermine forty plus years of Keynesian Welfare ideology.

Analysing the changing international political economy through the lens of international air transport, an industry that is critical to the smooth functioning of the world economy and an important national symbol, we can identify how state sovereignty remains a foundation from which international relations emanate. Moreover, this complex and highly regulated industry is a useful sector for highlighting important linkages between and among state and non-state actors alike. This thesis suggests that despite the growing power and authority of the WTO as a multilateral institution, state sovereignty remains both important and a driving force behind decision-making within the WTO and how market forces play a strong role in the negotiating positions of different Member States.

Chapter 3

The Evolution of Bilateral Air Services Agreements in International Air Transport³⁸

International air transport is governed by a bilateral regime based on reciprocity that determines the economic regulatory framework for airline operations internationally. Each 'bilateral', or air services agreement (ASA) determines the terms and conditions of market access that include *inter alia*: the number of airlines permitted to operate, the frequency of operations, the tariff structure, the level of foreign ownership permitted, and city pairs available to the operating airlines. Despite recent liberalisation trends that have begun to establish in different parts of the world, this global industry remains mired in an historical framework that was created toward the end of the Second World War. Reflecting the events at the time it was constructed and designed on the basis of territorial sovereignty and the independence of the nation-state.

"In 1944 the United States hosted an international civil aviation conference in Chicago attended by delegates from fifty-two countries and lasted five weeks".³⁹ While still concerned about national security, delegates were now aware of the economic consequences of aviation development and included in their deliberations the question of who owns the right to exploit international air transportation commercially and on what basis?⁴⁰ The meetings at the convention are significant because the same debate ensued during these meetings that are currently being discussed: should the industry be governed solely by bilateral agreements or should it have a more multilateral foundation? Unlike today, the US advocated the more liberal multilateral route and the Europeans, particularly the British, demanded the more restrictive bilateral structure.

Americans sought a regime in which government participation was limited to "ensuring that private airlines [were] able to operate and compete freely with each other without disturbing the market function"; the British preferred a regime that allowed for greater levels of government intervention (Golich, p 160).

³⁸ The information in this chapter is based on standard or model agreements used by the US and not on actual bilaterals unless otherwise specified. "Air Service Rights in U.S. International Air Transport Agreements: A Compilation of Scheduled and Charter Service Rights" contained in U.S. Bilateral Aviation Agreements", International Affairs Department, The Air Transport Association of America, 15 June 2000.

³⁹ *Memorandum on ICAO: The Story of the International Civil Aviation Organization*. 15th ed., ICAO, Montreal, 1994.

⁴⁰ Vicki Golich, "Liberalizing International Air Transport Services", in Dennis J. Gayle and Johnathon N. Goodrich eds., *Privatization and Deregulation in global Perspective*, 1990, p. 160.

The outcome of the Chicago Convention was the creation of a system of economic regulations that are bilaterally negotiated between states, and where the technical and safety issues are coordinated multilaterally through the issuing of recommended practices by the International Civil Aviation Organisation (ICAO). Below is a very simple depiction of the roles between ICAO and the national regulatory bodies. Notable is that while ICAO establishes guidelines and makes recommendations, it does not have a rule making role or sanctioning authority. It is a body that provides technical advice and provides important research and data analysis for its members.

Chart 1: Hierarchy of Technical, Safety, and Economic Regulations



States, through their national regulatory authorities formulate and implement the final policies and standards. The territorial division of air space was established and state control ensured.⁴¹ International airlines were identified by their flag and there was an "...indomitable desire to maintain a "prestige" airline as a positive and legitimate expression of their nationhood – to make others cognizant of their independent existence".⁴² Even privately owned international airlines were obligated to work with their governments to acquire landing rights into and beyond desired destinations. "The international legal structure of air transport has made it anything but 'free as the open sky', and instead has hemmed it with the constraints of competing national sovereignties".⁴³

⁴¹ Stephen Wheatcroft, *Aviation and Tourism Policies: A World Tourism Organization Publication*, 1994, p 17.

⁴² K.G.J. Pillai, *The Air Net: The Case Against the World Aviation Cartel*, 1969, p 16.

⁴³ Yvan Du Johchay, *The Handbook of World Transport*, 1978, p 68.

Although ICAO does not directly influence or participate in bilateral negotiations, it is the repository for the ASAs that are concluded between states. Currently there are some 3,000 bilateral agreements worldwide, however only about 1,500 are officially registered since there are no legal requirements, nor any enforcement abilities held by ICAO.⁴⁴ Most bilaterals fall into roughly three types of agreements that can be demarcated in time.

The first is commonly referred to as Bermuda I signed in Bermuda, 11 February 1946 that laid the foundation for the economic regulations of the global industry; it is the most restrictive type of bilateral.⁴⁵ The second is called Bermuda II and by today's standards is very restrictive, however it marks the first step toward liberalisation.⁴⁶ Like Bermuda I, Bermuda II was signed by the US and the UK in Bermuda in 1977. The third is referred to as an Open Skies type agreement and was a bilateral signed between the US and the Netherlands in 1992. The only significant variation that appeared since the onset of Open Skies type agreements is the first plurilateral agreement named "Multilateral Agreement on the Liberalisation of International Air Transportation" signed on 1 May 2001.⁴⁷ Despite the name and that there were only five signatory States, the agreement does not substantially deviate from the bilateral framework.⁴⁸

The only type of agreement beyond the bilateral framework is classified as a common aviation area (CAA). This is considered to be the most liberal type of economic regulation because all the key elements of the bilaterals, such as foreign ownership restrictions, designation, and cabotage⁴⁹ have been removed. In short, a

⁴⁴ The number of signed bilaterals people mention range from 3,000 to 3,500. Since many are never registered with ICAO the precise figure is unknown. From discussions with the ICAO staff member while conducting research for the WTO Secretariat Background Papers in 2000. For registered Agreements see: "Agreements registered with ICAO including ground-handling provisions" as of 31 December 1999. ICAO database.

⁴⁵ "Bermuda I Air Transport Agreement of February 11, 1946". <http://www.state.gov/e/eb/rls/othr/64765.htm>.

⁴⁶ Bermuda II actually occurred because the UK denounced Bermuda I in 1976, so a new agreement was required. This agreement was amended in April 1978, December 1980, and November 1982. "Air Service Rights in U.S. International Air Transport Agreements: A Compilation of Scheduled and Charter Service Rights Contained in U.S. Bilateral Aviation Agreements", the Air Transport Association of America, 15 June 2000.

⁴⁷ The full text can be accessed at: <http://www.state.gov/e/rls/othr/2573pf.htm>.

⁴⁸ Christopher Findlay, "Plurilateral Agreements on Trade in Air Transport Services: the US Model". Asia Pacific School of Economics and Management: The Australian National University. November 2002.

⁴⁹ "The terms cabotage and cabotage traffic in air transport usage: are derived, respectively, from maritime terms for the prohibition of coast wise carriage of traffic by foreign carriers and from the traffic thus prohibited which could be equated with domestic traffic, i.e. traffic moving on a single transportation document (ticket or waybill) involving no origination, stopover or termination outside the territory or State", *ICAO Manual on the Regulation of International Air Transport*, Doc 9626, 1996, p 4.1-9.

common aviation area is an internal market where the 'Freedoms of the Air' are no longer determining factors that are negotiated and prescribed by two states.

Freedoms of the Air

Chart 2 (next page) depicts how traffic rights operate and what is meant when using the term 'Freedom' in the context of economic regulatory rights in the industry. The first category includes the First and Second Freedoms. The First Freedom is defined as "the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to fly across its territory without landing".⁵⁰ The Second Freedom is defined as "the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to land in its territory for non-traffic purposes".⁵¹ Both are considered to be 'operational' freedoms rather than traffic rights since no commercial traffic is involved and are normally not specified as 'rights' in bilateral agreements. These rights are included in the International Air Services Transit Agreement (IASTA), which has been ratified by one hundred and twenty-three States.⁵²

The second category of Freedoms defined by ICAO is the 'so-called Freedoms'. They are considered to be traffic rights and the key to market access between two states. Bilaterals will normally specify the types of traffic rights permitted in any agreement. The most common that are found are the Third to Fifth Freedoms and whilst there may be Sixth Freedoms in some bilaterals, ICAO does not collect data for this type of Freedom.⁵³ The granting of Seventh and Eighth Freedoms is a recent occurrence for all-cargo operations and according to sources at ICAO, rare.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² IASTA was one of the Agreements that came into existence during the Chicago Convention in 1944. The text of the Agreement with signatories is located at: <http://www.mcgill.ca/files/iasl/chicago1944b.pdf>.

⁵³ It is known that some countries such as Germany, the US, the UK and Japan collect this type of information, however it is kept confidential and sold only on request.

Chart 2: Freedom Rights in International Air Transport

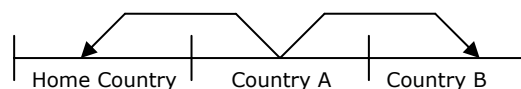
FIRST FREEDOM

To over-fly one country to another



SECOND FREEDOM

To make a technical stop in another country



THIRD FREEDOM

To carry freight and passengers from the home country to another country



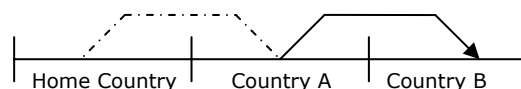
FOURTH FREEDOM

To carry freight and passengers to the home country from another country



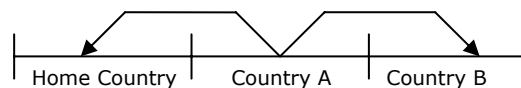
FIFTH FREEDOM

To carry freight and passengers between two countries by an airline of a third country on route with origin/destination in its home country



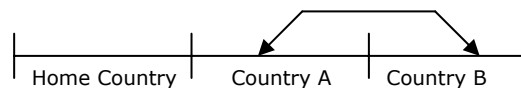
SIXTH FREEDOM

To carry freight and passengers between two countries by an airline of a third country on two routes connecting in its home country



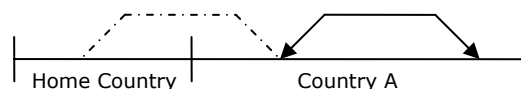
SEVENTH FREEDOM

To carry freight and passengers between two countries by an airline of a third country on a route with no connection with its home country



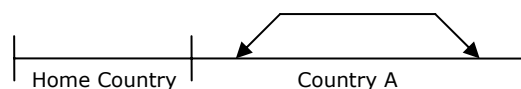
EIGHTH FREEDOM OR CABOTAGE

To carry freight and passengers within a country by an airline of another country on a route with origin/destination in its home country



TRUE DOMESTIC

To carry freight and passengers within a foreign country with no connection with the home country



Source: Association of European Airlines/European Commission/OECD.

Typology of Air Services Agreements

Bermuda I Type

The Bermuda I type of bilateral agreement is the most restrictive and although it dates back to 1946, many states still have existing agreements of this type. Instead of negotiating a new agreement, which takes time, diplomatic notes are normally exchanged to modify articles or increase the number of designated carriers. The traditional structure normally allowed for the designation of one airline from each state, specified capacity through frequency and type of aircraft permitted, the city pairs served by the carriers, the frequency of the operations, and a double approval of fares and tariffs that could be charged. Any derogation from these limitations could trigger the rights to be withdrawn by the receiving state.

Although all of the above mentioned points make these agreements restrictive, it is the foreign ownership and designation articles that set the baseline for the current market access limitations. This is also a defining factor that differentiates bilateral type agreements from the common aviation area. These restrictions are found in the criteria set out stating "substantial ownership and effective control" must be held by 'nationals' of the country designating the airline. This works in two ways. The designating country can be sure that foreign control of a carrier is limited and it also prevents or restricts the bilateral partner from lifting its own agreed upon limits.⁵⁴ Although each bilateral would be unique they follow standard patterns and contain similar content. The following are examples of foreign ownership and control provisions found in the bilateral agreements.

1. Each contracting party shall have the right to designate in writing to the other contracting party one or more airlines for the purpose of operating the agreed services on the specified routes and to withdraw or alter such designation;
2. on receipt of such a designation the other contracting party shall without delay grant to the airline or airlines designated the appropriate operating permission;
3. however, each contracting party reserves the right to withhold, revoke or suspend, or impose such conditions as it may deem necessary with respect to the operating permission of the designating airline, in any case where it is not satisfied that

⁵⁴ When a merger was proposed between KLM and BA it was reported the US warned that if "...BA takes over KLM, it will strip the Dutch airline of its unrestricted traffic rights to the US, and of its anti-trust immunity for an alliance with US carrier Northwest Airlines, unless London signs up to an 'open skies' accord by year's end." *My Business*, "Access to US Air Cargo Market Hangs on BA/KLM Merger", <http://www.mybusiness.co.uk>.

substantial ownership and effective control of that airline are vested in nationals of the other contracting party.⁵⁵

It is generally accepted that these criteria stem from the post-war era and the perceived need by governments to ensure the integrity of their territorial air space and because of national security concerns. Although these limitations, with few exceptions,⁵⁶ continue to exist, they are being questioned by many.

Bermuda II Type

Beyond modifications to Bermuda I type agreements there was no substantially new bilateral until Bermuda II was signed between the governments of the US and the UK in 1977.⁵⁷ The primary difference between this and the previous type rest on capacity limitations and combinations of routes over the North Atlantic. An Annex pertaining to cargo would be phased out by 1983. For others negotiating new bilaterals in the post 1977 period the basic criteria of Bermuda II was adopted. The new type of bilaterals also reflected the technology change and the common usage of jet aircraft that flew longer distances.

The standard elements of this type of agreement often still contained double tariff approval (this has mostly changed to double disapproval) and country of origin, specified city pairs, limited designation of carriers, and the standard foreign ownership criteria. In short, Bermuda II type agreements remain very restrictive. They are also the most common type of bilateral that continues to govern market access throughout the global industry.

Open Skies

Arguably, signing the first Open Skies agreement in 1992 between the US and the Netherlands marks the first significant step toward liberalising the bilaterals since 1944. Open Skies agreements, while strictly bilateral, have done away with any capacity controls or limitations on frequencies, freedom and flexibility on fares and tariffs, and the freedom to choose gateway cities. The charter and all-cargo arrangements have also been liberalised. Included in this type of agreement is the commitment to permit airlines to conduct their own ground-handling operations (self-handling) and the guarantee that airlines have no restrictions on currency exchange and remittance to the home country. There are also terms governing

⁵⁵ Peter van Fenema, "Ownership and Control", Report of the Ownership and Control Think Tank World Aviation Regulatory Monitor, held at Geneva, 7 September 2000, p. 11.

⁵⁶ "Agreements registered with ICAO including ground-handling provisions" (as of 31 December 1999), ICAO database.

⁵⁷ Bermuda II was signed, 23 July 1977, U.S. Department of State, 28 UST 5367; TIAS 861, Amendments: 25 April 1978; TIAS 8641.

access to computer reservation systems (CRSs), and the non-discrimination of treatment within a system. This type of agreement also permits what the US call "open code-sharing opportunities". Here airlines are expressly allowed to pursue code-sharing opportunities with other carriers whereby the ticket is issued by one carrier but the flight is operated by another, or others.⁵⁸

What have not changed from the Bermuda type agreement are the strict foreign ownership conditions, designation of carriers, and cabotage rights. Normally there are no restrictions on the number of carriers that can be designated but the conditions behind the designation remain restrictive. This is because the clause "substantial ownership and effective control" remain intact in the same form as in the Bermuda type agreement.

The final element that changed the substance of this type of agreement, at least as it relates to the US, was the removal of the article on multilateral agreements. In the Bermuda II Article 16 stated: "If a multilateral agreement, accepted by both Parties, concerning any matter covered by this Agreement enters into force, this Agreement shall be amended so as to conform with the provisions of the multilateral agreement" (US Standard "Post 1977" Agreement). Notably this article was removed at a time that the Uruguay Round was being negotiated and it was clear that *a priori* no services sector would be excluded.

After the first agreement was signed, the US actively pursued negotiating further agreements of this type and by the time of the first Air Transport Review (the Review) over 70 new agreements had been concluded. It noted during the Review that judging by the number of Open Skies agreements that had been signed, it was clear Members considered this to be the most appropriate avenue to pursue liberalisation of the sector (see Chapters 6 and 7 for further discussions). It also noted that other states have begun to negotiate Open Skies type agreements.

Multilateral Agreement on the Liberalisation of International Air Transportation (MALIAT)⁵⁹

Despite being heralded as a breakthrough in liberalising international air transport, and given the optimistic name "Multilateral", the agreement does not depart substantially from a traditional bilateral other than it has more than two signatories. Moreover, it is difficult to accept the name since only there were only

⁵⁸ "Fact Sheet on Open Skies", 8 May 1997. <http://www.usembassy.or.cr/openskye.html>.

⁵⁹ The full text of the agreement, conditions and legal information can be found at: <http://www.maliat.govt.nz/agreement/index.html>. Throughout the paper the MALIAT is also referred to as a five state plurilateral.

five states that signed the agreement. While the agreement is unlike standard bilaterals, as it allows for accession members, it does not seem to provide any key elements that are attractive enough to make joining the agreement a priority for other states (Findlay, 2002, p 18). In fact, only three small countries have joined (Cook Islands, Samoa, and Tonga) and one of the original signatories has already withdrawn (Peru).⁶⁰ In an analysis of the agreement (signed in May 2001), and its potential to break the restrictive bilateral framework, it was found that the agreement while more liberal in some aspects, falls short of creating anything that is substantially new.⁶¹

All of the same standard bilateral clauses that exist in the Open Skies agreements are included, although the granting of traffic rights is more extensive and pricing does not require even double disapproval. The 'rights' are a key liberal element that includes the ability to pick-up and drop-off passengers and cargo in territories "behind", intermediate, and "beyond" a signatory's territory or that of the other Parties to the agreement. Capacity limitations and type of aircraft are no longer specified, nor are the frequencies. Designated carriers can operate city pairs of their choosing.

Another key liberalising element found in this agreement is the article on ownership and control, and designation of carriers. The traditional 'substantial ownership and effective control' has been changed. Article 3(a) requires that "effective control for that airline is vested in the designating Party, its nationals, or both"; and in 3(b) "the airline is incorporated in and has its principal place of business in the territory of the Party designating the airline" (MALIAT, p 4). This means that among the Parties to the agreement, the nationals of one Party can take a larger share of an airline where the principal place of business is located in the territory of another Member. This expands the access to larger capital markets, which for smaller states has always been difficult due to the strict limitations on foreign capital investment.

The only exception to this rests with the US as it was uncomfortable with the new clause and issued in November of the same year an Order to Show Cause pertaining to the ownership of carriers by US nationals.

⁶⁰ Samoa acceded on 4 July 2002, Tonga on 19 September 2003 and the Cook Islands on 8 March 2006 New Zealand Ministry of Transport and New Zealand Ministry of Foreign Affairs and Trade. <http://www.maliat.govt.nz/country/index.shtml>.

⁶¹ Christopher Findlay, "Plurilateral Agreements on Trade in Air Transport Services: the US Model", Asia Pacific School of Economics and Management, the Australian National University, 2002, p 19.

Maintaining that the Department of Transport has no means in place to ascertain changes in control or degree of US ownership of any of the airlines designated by the four countries concerned, it concludes that the public interest requires that these airlines submit that information to the Department. Specifically, we propose that these carriers file a report with the Director, Office of International Aviation, at least 30 days prior to any proposed change of ownership in excess of five percent of their voting stock (van Fenema, p 22).

Although this reporting clause was challenged by the airlines, it remains in effect and part of the agreement. Other liberalising features are the possibility of accession by other states and the subsequent amendment to permit accession on a cargo-only basis (Article 15bis).

Common Aviation Areas (CAA)

There are two agreements that qualify as common aviation areas. The first initially included all the EU Member States plus Norway, Iceland and eventually Switzerland, and the second is between Australia and New Zealand. The European Common Aviation Area (CAA) is a direct result of the political and economic integration process of the EU and has effectively created a single aviation market that continues to expand its membership.⁶² The Single Aviation Market (SAM) between Australia and New Zealand is also an agreement that effectively drops the traditional bilateral restrictions. Although it is currently only the two States that are signatories, it is not considered a bilateral since it creates a common market area. Both will be discussed below.

The EU Liberalisation Packages

The First Package is comprised of four elements: 1) it links the applicability of Articles 85 and 86 in the Single European Act (SEA) to civil aviation in general; 2) it gives block exemptions to airline cooperation agreements, CRSs, and ground-handling; 3) it addresses fare regulation; and 4) it sets out capacity and market access rules.⁶³ These incremental changes reflect both the compromises and trade-offs that were made between the Member States and the Commission. "Rather than introducing sweeping changes in terms of deregulation, it changes and legalises the framework in which the same activities are carried out".⁶⁴

⁶² The EU has signed agreements in June 2006 with the South-Eastern European countries. Once implemented, the CAA will include thirty-five countries, www.ec.europa.eu/transport/air_portal/international/pillars/common_aviation_area/ecaa_en.htm.

⁶³ *Official Journal of the European Communities* (L364) 1-25, 1987.

⁶⁴ Benoit M.J. Swinnen, "An Opportunity for Trans-Atlantic Civil Aviation: From Open Skies to Open Markets?" *Journal of Air Law and Commerce*, Vol. 63. August-September 1997, p 260.

The Second Package came into force on 1 November 1990, although most of the terms related to minor amendments of the First Package. The most significant changes that were introduced related to the freedoms of flight, route access, entry and exit within the European marketplace. Third and Fourth Freedoms were granted between all airports in Europe. This meant that a carrier from State A no longer required landing rights enshrined in a bilateral agreement in advance of starting operations into State B. The carrier from State A was also able to pick up passengers and cargo originating in State B and carry them to State A. Fifth Freedom rights (e.g. State A - to State B - to State C and back) were limited to fifty per cent capacity (up from thirty in the First Package). In other words, a carrier could exercise these rights without prior authority as long as their operation did not exceed fifty per cent of the other Member States' airlines' capacity. Recognition was also given to peripheral regions and smaller communities. Airlines were not permitted to discontinue service for the sole reason that it was not economically viable. Included in this package were public service obligations and certain protections for new regional routes.⁶⁵

The Third Package addresses the final steps for undertaking the complete liberalisation of internal European air transport market. It came into force on 1 January 1993 and effectively completed the creation of a single common European air transport industry over four years. Compliance with the Third Package had to be completed by 1 April 1997. The introduction and enactment of the provisions underpins the political will of the Commission to assume authority over all aspects of air transport.

⁶⁵ Kenneth Button, Kingsley Haynes, and Roger Stough, *Flying into the Future: Air Transport Policy in the European Union*, 1998, p 43.

Chart 3: The Three Liberalisation Packages

Date from:	01.01.1988	01.11.1990	01.01.1993
Fare approval	Automatic approval of discount fares		Free pricing on all fares
	Double approval of full fares	Double disapproval applied to full fares	Member States and/or EC can intervene against excessive economy fares and fare dumping
Market access	Multiple designation on country to country routes		Full access to all routes between all EU countries. Cabotage (operation of domestic route in another country) completely free from April 1997. Up to 50% capacity allowed if domestic sector is combined with route to home country, 1993-7.
	Multiple designation permitted on higher volume city-city routes		More developed public service obligations and some protection for new regional routes
	5th freedom	5th freedom	
		Protection for routes designated as public service obligations and certain new routes	
Licensing of Carriers	Not provided for		Full freedom to start an airline: 1. if EU ownership; 2. if financially sound and; 3. if safety requirements are met.

Sources: Graham, 1995; AEA (1993)

Provisions were also made regarding radical fare reductions that might lead to price wars and destructive competition. Individual states or the Commission could intervene if airlines began reducing ticket prices excessively. However, the airlines

would be encouraged to begin a "sustained downward development of fares" (Button, p 43). Designation by state authorities over traffic rights between all Member States was also abolished. The incremental and restricted re-regulation was intended to prevent destructive competition between the European carriers.

The implementation of the Third Package substantially altered the structural framework of the European air transport for four reasons: 1) cabotage rights create a single domestic marketplace with no restrictions on routes, capacity, or fares; 2) licensing of air carriers is no longer under state control; 3) ownership of airlines is no longer restricted, or forbidden between or among Member States; and 4) membership is open to like-minded states.

The liberalisation in its entirety has created a common aviation area; an unprecedented break from the notion of territorial sovereignty over air space and the bilateral framework of economic regulation. All countries acceding to the EU will become part of this single market. In short the EC has created the largest single aviation market in the world. Externally, the EU explored the concept and proposed a similar common transatlantic aviation area with the US, however there was little support for discussions on the American side.⁶⁶

European Court of Justice (ECJ) Rulings

On 5 November 2002 the European Court of Justice (ECJ) handed down landmark decisions⁶⁷ pertaining to the legality of eight "Open Skies" agreements signed between the US and the Member States of the European Union (EU).⁶⁸ The decisions are significant because they draw into question not only the integrity of existing agreements, but also how future air services agreements will be negotiated between EU Member States and third countries due to the ruling that certain aspects (articles) in the Open Skies agreements do not conform to Community law. Moreover, depending on how the Commission and the Member States agree to proceed and the position adopted by the US negotiators, these decisions have the potential to alter substantively the existing bilateral regime of air services agreements.

⁶⁶ "Towards a Transatlantic Common Aviation Area: AEA Policy Statement", September 1999.

⁶⁷ Although totalling eight in number, the essence and substance and decisions for each are substantively similar and will therefore be treated throughout as a single decision except when specific decisions are being noted. For the text of all the Court decisions see: "Judgement of the Court (5 November 2002), C-466/98, C-467/98, C-468/98, C-469/98, C-471/98, C-472/98, C-475/98, and C-476/98. <http://www.curia.eu.int/jurisp/cgi-bin/gettext.pl>. See also "Open sky agreements: Commission welcomes European Court of justice ruling" (5 November 2002) Brussels, IP/02/1609, and "Press Release No 89/02, Press and Information Division.

⁶⁸ The eight Member States include: the Netherlands, Austria, Germany, Luxembourg, the UK and Northern Ireland, Denmark, Sweden, and Finland.

Although the decisions in these cases have not given the Commission exclusive authority to negotiate air services agreements with third countries, the rulings have ensured that Member States must bring all their bilaterals into conformity with the ECJ rulings. Henceforth all the bilaterals must recognise European airlines as 'Community' carriers. This is an important aspect to consider due to the relatively standardised nature of the traditional air transport bilateral agreements regardless of whether they are liberalised Open Skies agreements or the more restrictive Bermuda II agreements. In short, the court rulings have created an environment whereby the Member States and the Commission must work with each other for the first time when negotiating the final terms of any international air services agreement.

The Court ruled in favour of the Commission on four distinct areas of air transport. It is arguably the decision over ownership and control of an EU airline that could affect the internal and external dynamics of the whole industry. This is because every bilateral agreement whether it is a liberal Open Skies, or a restrictive Bermuda I or II, contains articles specifying that ownership and effective control must be held by the designated airlines of each signatory. The implications of changing every bilateral agreement signed between the EU Member States and third countries are therefore far reaching. In particular, the relationship between the EU and the US must be carefully assessed before any action is undertaken.

Ultimately the ECJ rulings set the stage for changes in the traditional bilateral regime governing regulations in international air transport and could have significant ramifications reaching far beyond the EU. Traditionally bilateral agreements throughout the world were negotiated by individual sovereign states based on the norm of reciprocity. However, the continuing political and economic integration of the EU has altered the air transport market within the EU through the three 'Liberalisation Packages' that created a common aviation area.

The Single Aviation Market (SAM): Australia – New Zealand

The SAM Agreement signed in September 1996 is significant, even though it is only between two states, because of the terms that remove many of the traditional market access barriers in the Bermuda or Open Skies types of agreements.⁶⁹ These barriers, such as capacity, frequency, tariffs and cabotage, have been removed completely and articles on competition policy and mutual recognition of aviation related certification inserted. Carriers are able to determine where, when, how

⁶⁹ The full text can be found at http://www.dfat.gov.au/geo/new_zealand/sam.pdf.

often, and what they will charge. Additionally, carriers from each of the states are permitted to operate on a cabotage basis and are allowed to set up domestic carriers in the other state.

The provisions on foreign ownership do not go as far as the European single market, but do raise the limitations to fifty per cent for non-Australian and New Zealand capital investment. The agreement specifies that at least two-thirds of the Chairperson and Members of the Board are nationals of one or both states. It also uses principal place of business as one of the ownership criteria. Articles ensuring the protection of national interest are included and in combination with the foreign ownership restrictions ensure effective control. Nevertheless, due to the openness created between the two states, SAM is categorised for the purposes of this study as a common aviation area.

The Role of ICAO

The ICAO, a special organisation of the United Nations has been empowered to oversee the technical and safety standards of air transport and air navigation. It has the largest number of member states (183) and is therefore truly a multilateral body. Until the GATS came into existence, ICAO was the only Intergovernmental Organisation (IO) with any degree of influence over the industry. It is therefore considered by many of the WTO members to be the only IO that should have any jurisdiction over air transport. This comes primarily from developing states, but the jurisdiction issue has also been brought forth by some developed states (i.e. the US and Japan) wishing to limit the GATS coverage at its current level.

The economic regulations determining how and where airlines can conduct their business internationally are prescribed, as discussed above, in the ASAs, not through predetermined rules laid out by ICAO.

In summary, the rôle of international air transport in the overall development strategy of States and the extent to which this can be achieved through a liberal or a protective approach is a matter for States individually under the Chicago Convention. It is the framework which is established by the Convention rather than the Convention itself which provides the means for the progressive liberalization of international air-transport services and, in recent years, a marked degree of liberalization has taken place within this framework (MTN.GNS/W/36, 16 May 1988, p 10).

Historically, ICAO has not had a significant amount of influence over the commercial aspects of the industry beyond recently suggesting that technical and safety standards cannot be separated from economic issues. ICAO did not begin to actively develop a predominant economic regulatory role until the Uruguay Round

was underway in the mid-1980s. It normally provided research and analysis for regulatory standards that are directly related to safety issues. There is no embedded history of recommended commercial practices. It is nevertheless possible to find "recommended practices" based on ICAO research that are adopted and adhered to by its Member States. That some industry participants and national policy makers view the WTO as a threat to ICAO is really overstating the role of the GATS *vis-à-vis* its Member States. ICAO has a critical role to maintain in the safety aspects and this role should never be diminished in any manner. Given that the same states belong to both IOs the likelihood of ICAO's role being diminished because the GATS is expanded to cover some sub-sectors is extremely remote.

The movement from an economic regulatory system that is based on bilateral air services agreements, to a multilateral framework in air transport remains in a conceptual stage of development and is not supported by all industry participants, including ICAO. The majority of states throughout the world remain committed to the operational framework developed over the past fifty years that is primarily bilateral, but there is a growing number that would like to move away from the restrictiveness of these agreements without losing control over territorial sovereignty or reducing technical and safety standards. The liberalisation of international air transport industry that has occurred was conducted within this framework. However, the development of multilateral trade liberalisation through the creation of the WTO and the GATS suggests that there is a tension developing between the traditional bilateral framework and the multilateral forum of the WTO/GATS.

Chapter 4

The GATT, the WTO, and the GATS

In order to set the context for the scope of the World Trade Organization (WTO) Agreements, the 2000 services negotiations and the Air Transport Review (the Review), it is relevant to cast back to the informal negotiations prior to the launch of the Uruguay Round to see how the present institutional framework developed, when new proposals were submitted, and whether they gained immediate support by other Members. In short, history helps us identify a number of relevant factors for understanding institutional change at the multilateral level. Moreover, this exercise provides a deeper understanding of the commitment by sovereign states to participate and achieve national economic gains from the increasing interdependence of the global economy and any corresponding sovereignty based trade-offs. This pertains equally to all Member States.⁷⁰ It also highlights the importance of the value placed upon compromise and consensus decision-making in order to achieve sovereign economic and political goals.

Examining the informal discussions and negotiations that eventually led to the official launching of the Uruguay Round deepens our knowledge and understanding of the mechanisms and procedures of consensus decision-making. Understanding the informal setting lends support to the argument that while the process may be time intensive and cumbersome, it remains the most appropriate and democratic method for multilateral trade agreements. The process is likely to be slower than majority voting, however, despite the time and effort necessary to reach a consensus on contentious issues, the outcome tends to produce rules and documents that represent broader interests, whereby all participants achieve at least some of their original objectives.

The General Agreement on Tariffs and Trade (GATT) has been evolving and expanding in both membership and scope since its inception in 1947⁷¹, however the

⁷⁰ As noted previously, the Members of the WTO are not always sovereign states, with the EC being the most obvious example. However, throughout this chapter reference will be made to the state or states in addition to Members and Member States. This is being done for ease of usage and is not intended to suggest all Members are in fact sovereign states.

⁷¹ The GATT negotiations first began in 1947 as an *ad hoc* institution after the failure of establishing the International Trade Organization (ITO) in 1944, and it was not recognized under international law. It included only 23 states. GATT Agreements and membership grew until 1995 when the WTO became the official international organization. The GATT Secretariat was likewise an informal institution until the WTO was created. Richard Blackhurst, "General Agreement on Tariffs and Trade (GATT): Origins of the GATT", forthcoming in *Princeton Encyclopedia of the World Economy*.

terms of accession were different prior to the formation of the WTO. During the early years a country, specifically former colonies, only had to apply for membership to be accepted; there were no accession negotiations and thus no requirement to change domestic regulations prior to joining. Nevertheless, every time a country joined the GATT, trade barriers were reduced and there was a corresponding and positive economic impact experienced by those states, which in turn affected the growth of the world economy. Today, countries wishing to accede must go through lengthy (years) bilateral negotiations (accession talks) with other Members prior to being accepted into the Organisation. These institutional changes occurred over the years gradually without much public attention or scrutiny. That is until the Uruguay Round (1986-1994) of negotiations and the inclusion for the first time of trade in services.

Prior to the creation of the GATS it was widely believed that provision of many services could not be traded across borders and that in many instances it was a governmental responsibility to provide services to the people. It was the perceived encroachment on the latter that drew wide-spread and negative attention to the WTO and in particular the General Agreement on Trade in Services (GATS). Large and increasingly violent anti-globalisation demonstrations began to occur and culminated with globally broadcast riots in Seattle (1999) and Genoa (2001). While much of the media attention was garnered on the basis of protests against economic globalisation, history provides concrete evidence that national economic gains have been made through the lowering of tariffs or quota restrictions and increasing interdependence between states.

The growth and expansion of this multilateral institution is the antithesis of international air transport. During roughly the same time period that the GATT expanded on the basis of Most Favoured Nation (MFN) treatment, air transport developed on the basis of bilateral agreements and reciprocity. While the GATT principles were based on transparency and consensus, bilateral reciprocity through historically non-transparent negotiations between unequal partners defined the market access rules of international air transport.

The end of the Uruguay Round established the WTO as an Intergovernmental (International) Organisation (IO) and produced *inter alia* the GATS. The original intent of the Punta del Este Ministerial Declaration and the launch of the Uruguay Round negotiations in 1986, was to include *a priori* all forms of services without exclusion. However, as the negotiating groups were established, certain service

sectors that were considered to need 'special treatment' were treated individually in sector specific working groups. These sectors⁷², which included air transport, were negotiated individually and resulted in the creation of six sectoral Annexes⁷³ attached to the main text of the GATS. Only the Air Transport Annex contained provisions that specifically exclude parts of the sector from the GATS, while the others were mandated for further negotiations (i.e. telecoms maritime and financial services). The immediate exclusion of the air transport sub-sectors was not unequivocal since aircraft repair and maintenance services (MRO), selling and marketing of air transport services, and computer reservation system (CRS) services were specifically identified for coverage by the GATS. Moreover, the text of the Air transport Annex was framed ambiguously. While clearly defining the exclusion of traffic rights, it is less clear about the meaning of the 'services directly related to the exercise of traffic rights' (GATS, 1994). Considering that air transport is oftentimes the transportation medium connecting trading partners, any exclusion is striking. The effect is that market access barriers in air transportation services contribute toward higher than necessary consumer costs in the supply chain.

Pre-Uruguay Round Negotiations

In an excellent analysis by John B. Richardson⁷⁴ about the discussions leading up to the launching of the Uruguay Round we are given insights into the institutional structure and decision-making processes within the WTO. As a participant prior to and during the Uruguay Round, Richardson's observations and analysis highlight work that is required by delegates and is not usually available to academic researchers. From this perspective he analyses the informal negotiations that took place prior to the Punta del Este Ministerial Declaration and the launching of the Uruguay Round. These discussions are considered to be critical in the sense that without compromises reached during this phase of negotiations, it is likely that the Uruguay Round would not have been launched. Analysing the outcome of these discussions raises two important factors in multilateral negotiations: the importance of informal meetings and discussions that occur among the Members,

⁷² The other sectors that can be found in the Annexes of the GATS include: telecommunications, maritime, and financial services. *GATS: The General Agreement on Trade in Services and Related Instruments*, 1994.

⁷³ The Annexes cover: Article II Exemptions, Movement of natural Persons Supplying Services under the Agreement, Air Transport, Financial Services, a second Annex on Financial Services, Telecommunications, and Basic Telecommunications. *Ibid.*, pp 25-48.

⁷⁴ See "What Really Happened at Punta del Este: Understanding the Framework of the Uruguay Round" in *International Economics and Development*. Rittle, 1988. John Richardson was a participant during the period under discussion as a delegate with the European Communities.

and the influence of economically powerful states when major controversies arise in the multilateral setting.

First, it is important to note that the US and the EC played pivotal roles in the GATT, particularly when contentious issues were involved. When either or both of these two powers choose to oppose an issue unequivocally, it is unlikely that any further progress will be made in that issue area in the short-term. Nevertheless, both of these influential Members are cognizant of their economic power within the world economy and are therefore less likely to overtly oppose discussions or negotiations that would lead to a convergence of ideas.⁷⁵ Unlike developing countries, the largest two economic powers will continue participation despite opposition to a particular topic or issue under discussion. This in turn enhances the possibility of reaching compromises and can facilitate the convergence of negotiating positions and/or consensus. To achieve the desired outcome of the powerful states, rewording the text under discussion will accommodate, to some extent, that state's demands in the event that others challenge it.

The inclusion of services in the Uruguay Round provides a good example of the willingness of states to participate in a multilateral forum and suggests that despite the varying speeds of trade liberalisation, the trend is well established. The US was the initiator of including services into the GATT, although was later supported by the EC.⁷⁶ In the initial stages prior to the Round a number of countries (primarily developing countries) strongly objected to the proposal. However, rather than abandoning the concept, both the EC and the US worked to ensure informal discussions were initiated, bringing 'on board' the reluctant Members. Thus, initiatives emanating from either of these two Members have, in most cases, the ability to push an agenda forward despite opposition from smaller states, particularly if those states do not form into groups that promote their interests. Following from this, it is unlikely that unless an issue is supported (actively or tacitly) or at least not opposed by one or both of these two Members it will probably remain under discussion and can lead eventually to a consensus.

The second point is about how consensus can be reached through compromise without actually conceding a state's primary objectives, and therefore can be

⁷⁵ See Croome, page 6 regarding his observation that despite their reluctance to initiate further negotiations "the Community took seriously its responsibilities as a leading power and pillar of GATT, and was prepared to join fully in discussions and decisions on GATT's future." John Croome, "Reshaping the World Trade System: A History of the Uruguay Round", 1999.

⁷⁶ More accurately "American financial services providers were perhaps the prime movers for putting services on the agenda of the round." Bernard Hoekman, "Market Access: through Multilateral Agreement", in *The World Economy*, Vol. 15 No., 6, pp 707-727, 1992.

differentiated from a majority voting system. In this instance achieving an optimal outcome remains an important negotiator objective. When striving for an agreement there cannot be one or two who adamantly oppose an outcome, regardless of economic or political strength, unlike in the case of majority voting. At the same time, the absolute numbers of states participating in the multilateral negotiations environment make it impossible for every individual state to articulate specific positions. Thus, states tend to form interest or tactical alliances in order to move the negotiations forward (Richardson, p 205) or at a minimum to keep the item under active discussion.

Examples of this type of co-operation today are the alliance between the US and Japan over wanting to keep air transport excluded from GATS coverage, or the Dominican Republic in concert with other developing Members⁷⁷ to ensure their proposed Tourism Annex is not swept aside in its entirety. Another example is the creation of the Cairns Group⁷⁸ during the Uruguay Round to ensure agricultural issues and concerns remained under discussion. In the case of air transport there were no definitive groups and the US and the EC remained at odds over what sub-sectors might be covered. The US agreed to the creation of an Annex and consented to accept coverage in three of the sub-sectors; of the three, they took an MFN exemption on two (marketing and sales, and CRS). Looking closer at why only one of these sub-sectors (MRO) was accepted by the US can be found in their domestic legislation. The MRO industry had already successfully lobbied the government to make legislative changes so that maintenance bases could be located outside the country and airlines could take advantage of the more competitive international market in aircraft repair.⁷⁹ This allowed the US to agree to a compromise in order to achieve the needed consensus to the overall Round. Noting this is significant due to the negotiations over the ground-handling sector that the EC *et al* wanted included in the exceptions and the US did not. Conceding MRO was an important negotiating point. Had there been a majority vote on these negotiations, the outcome might have been substantially different.

Although the potential for developing a majority voting system existed and has been used prior to the Uruguay Round (1986), the trade delegates remain strongly committed to the consensus process. This adherence to the notion of deciding by

⁷⁷ The supporting Members were: Bolivia, Ecuador, El Salvador, Honduras, Nicaragua, Panama, Peru, and Venezuela.

⁷⁸ Bernard Hoekman and Michel Kostecki, *The Political Economy of the World Trading System: From GATT to WTO*, 1995.

⁷⁹ Interview with US based government representative that participated in negotiations of air transport during the Uruguay Round.

consensus exists despite the built in provisions of the "Marrakech Agreement Establishing the World Trade Organization", Article IX, that allows for majority voting.⁸⁰ "The GATT contracting parties could, by simple majority "decide to conduct, sponsor or support multilateral negotiations", although they could not oblige individual countries to accept new substantive obligations as a result of such negotiations" (Croome, 1999). This would likely have the effect of injecting structural weakness into the system whereby it could create disadvantaged splinter groups that might decide to ignore final decisions. A slow system would then also become fractured. A precedent would be set for decision-making that could have the potential to entrench the North-South division and existing tensions even further. Indeed, while some states remained opposed to beginning the Uruguay Round, they did not demand the use of majority voting, and remained within the consensus based protocol (Croome, 1999).

For advocates of majority voting rights, the adherence to consensus can be rather perplexing since most democratic states operate on the basis of the former rather than the latter. Consensus is often criticised for being inefficient (too much time) and producing agreements that may appear at the surface to be ambiguous and too broad. Moreover, the initial proposals and objectives may be set in general terms whereby differing perspectives or proposals may have areas in common with others despite appearing, in the first instance, to be vastly different. In this sense (as was the case for including services in the Uruguay Round) general proposals are broad enough to permit compromises through negotiations without losing the core intent of the original proposal. This is because there can be issues where states may be unclear of their specific objectives and is reflected in the wording of a proposal or submission. The negotiations leading up to the launching of the Uruguay Round exemplify this type of negotiating proposal and the results reflect the flexibility of the negotiating and decision-making process. In fact, it could be argued that despite the apparent inefficiencies that are built into consensus decision-making the process provides for a greater likelihood of reaching some level of agreement for Members regardless of economic and political power. Nevertheless, there is also potential for a stalemate or talks collapsing altogether.

The strongest opponents of the proposal to include services in the GATT were the G10⁸¹ developing countries led by India and Brazil. In between were the EC leading

⁸⁰ *The Results of the Uruguay Round of the Multilateral Trade Negotiations: the Legal Texts.* Geneva: World Trade Organization, 1994, p 11.

⁸¹ The Group of ten includes: Argentina, Brazil, Cuba, Egypt, India, Nigeria, Peru, Tanzania, Vietnam and Yugoslavia.

a mix of OECD (Organisation for Economic Co-operation and Development) and developing countries and a group of developing countries referred to as the G20 group.⁸² While each state could be said to hold particular objectives, the positions were broadly categorised into four groups (US, EU, G10, G20). At one end of the spectrum stood the US and at the other end were those who were adamant that any services negotiations had to be completely separate from negotiations over goods (G10). Noteworthy for the G10 position is that the concern was primarily a structural issue rather than a complete refusal to consider services at all.

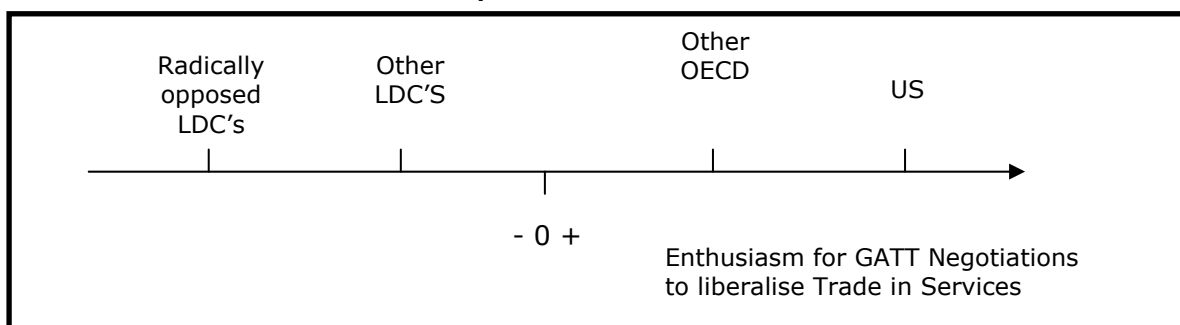
Structural issues tend to relate to how new areas of interest such as how inclusion of services will be incorporated operationally and whether operational divisions will be separated. In this instance, it was important for some states to ensure that the new area of services would be kept distinct from the framework (structure) of the GATT, whereas others were content to merely incorporate services directly into the GATT rules. The general divisions and groups of states that formed in response to the US proposal to include services into the GATT represented core differences among the contracting states (Croome, Richardson, *et al*).

At one end of the spectrum stood those who did not want services negotiations included in the GATT and were represented mostly by the developing states (all levels). Others wanted special recognition for difficulties facing the developing states. This was based on the institutional framework whereby a distinct North-South divide already existed. The US, supported by some OECD countries wanted to adhere to its original proposal submitted in 1982, whereby services would be liberalised through GATT negotiations (Richardson, Croome, Nayal). Using Richardson's graphic depiction (Charts 1-4) it can be seen how the informal negotiations permitted compromise among the four groups, allowing for incremental movement away from the initial positions and toward a consensus.

Chart 1 below represents the initial perception of negotiating positions and appears to suggest that it would be difficult to find compromises to bridge the gap in perspectives. In a majority vote it is likely that the developing countries would have carried the vote to oppose the US proposal.

⁸² The list of Members that are included in this group were not identified other than to note that they were "developing countries". John B. Richardson, "What Really Happened at Punta del Este: Understanding the Framework of the Uruguay Round" in *International Economy and Development*, 1998, p 206.

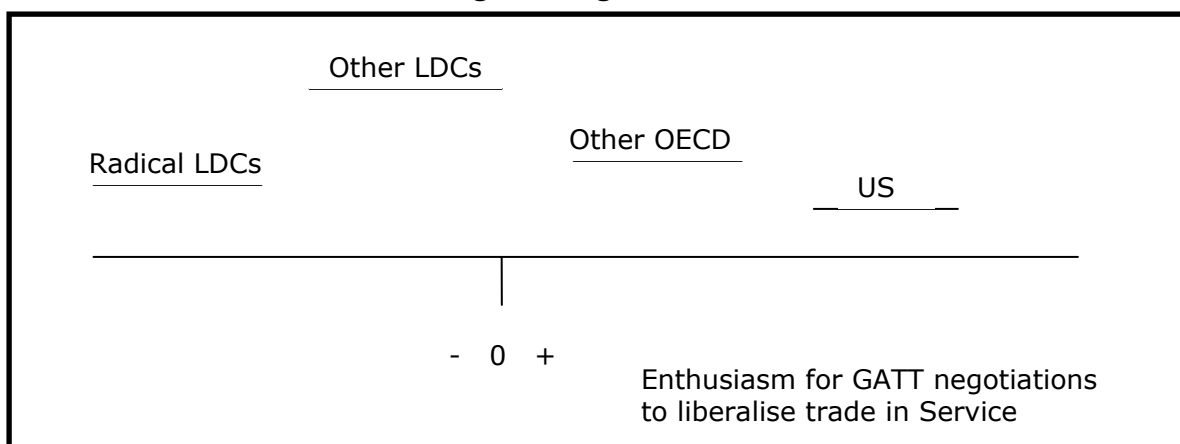
Chart 1: Enthusiasm for US Proposal to Liberalise Trade in Services⁸³



Source: John B. Richardson "What Really Happened at Punta del Este".

At this stage it is still individual Members that are grouped according to declared opinions regarding the US proposal, although they can be viewed as distinct clusters. Through the informal discussions it became clear that the groups took general positions in order to support others in the same group despite some differences in objectives and political positions. In this manner, negotiators were able to establish a basis for continuing the talks. The table below indicates that while the groups are shifting their overall positions, they remain distinct in their differences, and the same perspectives no longer appear to be completely immutable.

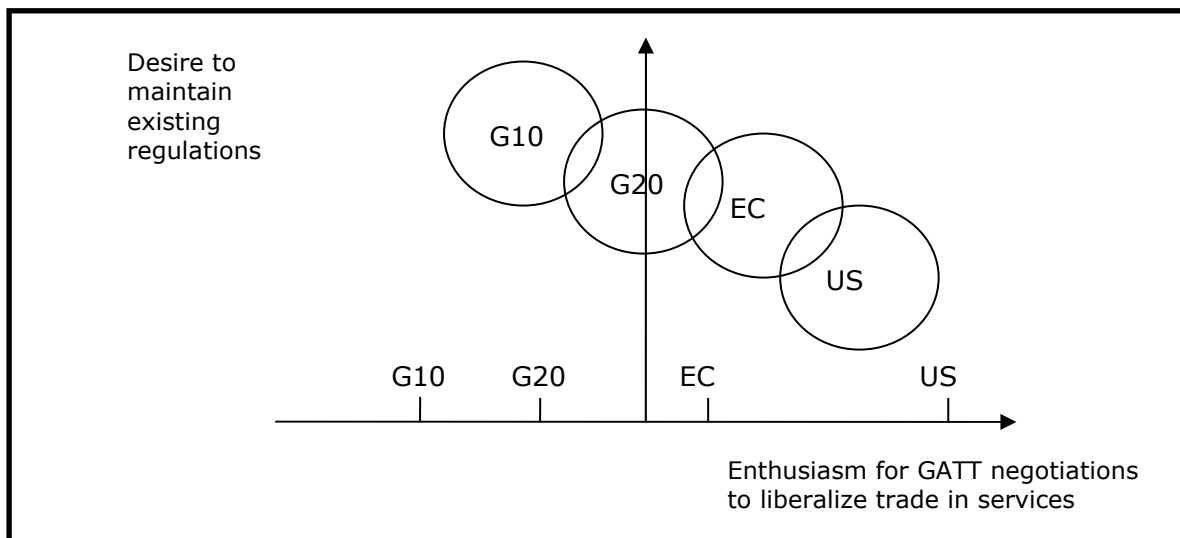
Chart 2: General Shift from Original Negotiation Positions



Source: John B. Richardson "What Really Happened at Punta del Este".

⁸³ Richardson appears to make no distinction between least developing or less developed and developing Members. It has therefore been assumed that these Members are from the full spectrum of developing countries. Radical refers to those who were most adamantly opposed to including services in the Round.

Chart 3: Overlap due to Indefinite or General Negotiating Statements



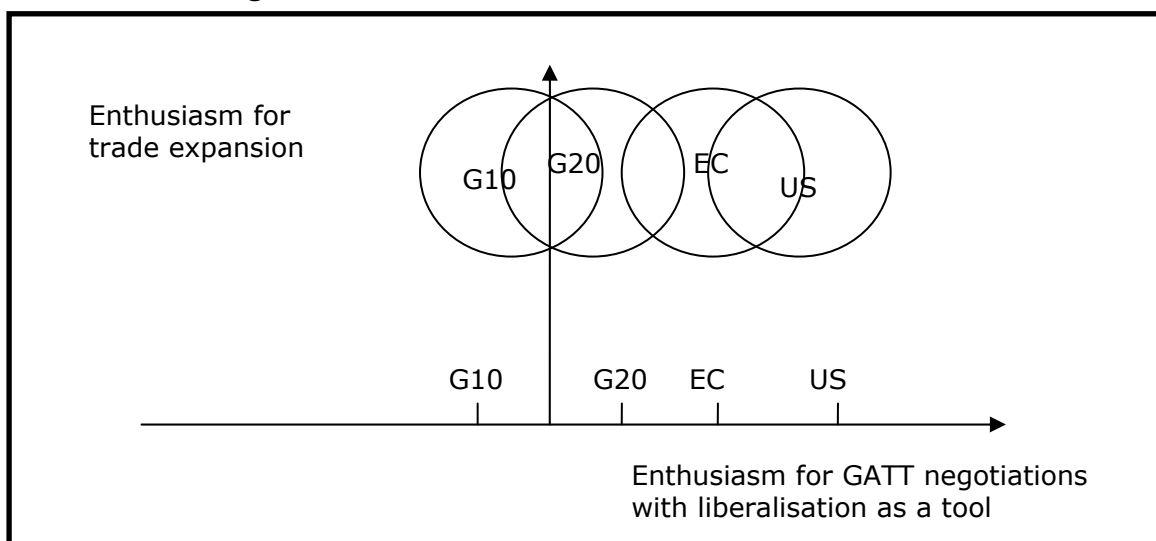
Source: John B. Richardson "What Really Happened at Punta del Este".

Charts 2 and 3 raise another aspect of multilateral negotiations; compromise on individual issues allowing the group as a whole to move from initial positions. While the possibility of a deadlock exists, the negotiators still retain the ability to move in the direction of consensus. This despite remaining apart on many issues as indicated in the difference between the positions noted in these two Charts. Notably, the US needed to make one major concession, to accept a separate negotiating forum for services.

The next Chart (4) is a depiction of the progression or evolution of negotiations and lobbying that was brought to bear by those Members supporting the US proposal (notably the EU and the US). It highlights the convergence by the resistant Members (G10, G20) and those that could agree to the conceptual inclusion of services balanced by the desire to continue the traditional trade expansion of goods.

This depicts the difference, in the case of the G10, G20, and the EU, between the desire to continue the multilateral work on lowering international trade barriers in goods and retaining traditional sovereign state monopoly power over the services sector. Through informal discussions and compromise by many delegates, the final text of the Ministerial Declaration reached, at least to some extent, a workable solution.

Chart 4: Convergence



Source: John B. Richardson "What Really Happened at Punta del Este".

In the final analysis, the US really did not concede much, relative to their initial proposal other than agreeing that services could be negotiated separately from the GATT. However, the developing countries were able to establish their primary objectives which were: a) keeping the services agenda and negotiations completely separate from the goods arena; and b) ensuring that special considerations would be extended to the developing and least developed countries in the framework agreement. These primary objectives are set out in the preamble of the GATS. Thus, the Declaration itself is a construction of compromises that address the major concerns and aspirations of all Members.

Despite the broad objectives that were attained through the negotiations, it is also important to look at the more substantive issue of what liberalising trade in services actually meant. According to Richardson, "[t]he first key element that caused individual positions to be modified emerged as soon as the original US proposal was subjected to analysis" (p 206). Questions regarding the meaning of liberalisation arose since "[m]any service sectors are regulated, some extremely heavily, by governments" (p 206). In other words, was liberalisation considered to equivalent to regulation? Were the two synonymous? The opinion arrived at by all the states, as related by Richardson, was that they were to be considered to be distinctly different.

All countries, in fact, came to the view that some regulation of services would and should continue to exist and that liberalization of trade, if it were agree, could therefore be equated neither with general deregulation nor with free trade in services (Richardson, p 206).

In fact, in some instances liberalisation is accompanied by increased regulatory oversight.

Uruguay Round Negotiations

This section will focus on the negotiations that took place during the Uruguay Round (1986 – 1994) in order to provide a context for analysing the final text of the Air Transport Annex in the GATS. Understanding how the negotiations proceeded provides a contextual basis for understanding how air transport came to be the only services sector that was excluded in its entirety from GATS coverage (notwithstanding the three specified exceptions). The importance of understanding how the negotiations evolved exposes the political forces that drive the multilateral liberalisation process and highlights the value of creating a single body of rules for governing international trade.

The launching of the Uruguay Round set in motion the broadest and longest multilateral trade negotiations since the GATT agreements began in 1947. For the first time trade negotiators, who previously had only negotiated tariff reductions for goods, designed and created a framework document for multilateral rules relating directly to international trade in services.

The negotiating mandate directed participating trade representative to begin talks on a broad range of issues based on general objectives that would shape the final agreements. The Group Negotiating Services (GNS) discussions reflected national concerns over how to create a framework agreement for trade in services that would fulfill the Ministerial mandate of transparency, progressive liberalisation, and ensure all Members would be able to benefit economically from any agreement. Since this was the first time services were considered in a multilateral forum and comprehensive services statistical data was virtually non-existent, negotiators were careful to cover everything conceivable that would or could be affected by their negotiations and decisions.

The initial phase of the negotiations consisted of creating six general elements to be discussed by delegates: 1) general negotiating guidelines and objectives; 2) definitional and statistical issues; 3) broad concepts on which principles and rules for trade in services, including possible disciplines for individual sectors, might be based; 4) coverage of the multilateral framework for trade in services; 5) existing international disciplines and arrangements; and 6) measures and practices contributing to or limiting the expansion of trade in services, specifically including any barriers perceived by individual participants, to which the conditions of transparency and progressive liberalization might be applicable.

A number of states had distinctive objectives including and beyond services that they hoped to have integrated in the final texts at the end of the Round. The US was committed to concluding an agreement on services while a group of traditionally non-aligned states formed the Cairns Group⁸⁴, and a proposal by the Swiss and Colombian Members sought to place broader interests (including the developing world) on the discussion table. The formation of traditionally non-aligned states was significant since this was the first time in post war history that traditional economic blocs were transcended.⁸⁵ Although a new Round would likely never be launched without the US and other G7 states, the growth in membership of developing countries, the formation of interest blocs, and the adherence to consensus decision-making meant that issues important to the developing world were to be seriously considered. This helped to shape the final GATS framework document and ensured negotiations over all the new sectors (natural resource-based products, textiles and clothing, agriculture, intellectual property rights, investment measures, and services) for both the developed and developing worlds were taken into account.

The Uruguay Round was officially launched 14 September 1986 at Punta del Este, Uruguay by adopting the Ministerial Declaration that set out the scope, structure, and length of the negotiations. Work was divided among the different working groups in order to focus on what would become known as sectoral issues. In keeping with demands made by many of the developing states negotiating on services, the working groups were to be distinct and separate from the GATT negotiations on goods. The formal structure established that the Trade Negotiations Committee (TNC) directed the Round as a whole. Under this committee were *inter alia*, the Group Negotiating Goods (GNG) and the Group of Negotiations on Services (GNS). In total there were fifteen negotiating groups. The distinctions between these groups and the work of each, were maintained throughout the entire Round (Croome, p 25), reflecting the mandate of the Punta del Este Ministerial Declaration. Although the focus of the study is directed toward the GATS and air transport specifically, it needs to be remembered that they still operated within the context of the overall Round.

⁸⁴ Argentina, Australia, Brazil, Canada, Chile, Columbia, Fiji, Hungary, Indonesia, Malaysia, Philippines, New Zealand, Thailand, and Uruguay.

⁸⁵ Raymond J. Krommenacker, "Services Negotiations: From Interest-lateralism to Multilateralism in the Context of the Servicization of the Economy", Paper for the Symposium on the New GATT Round of Multilateral Trade Negotiations: Legal and Economic Problems, 12 June 1987.

The mandate given to negotiators remained one of the widely misunderstood aspects of the Uruguay Round and the subsequent creation of both the WTO and trade in services. This Round, despite how some media and anti-globalisation groups presented the issues, was not about liberalisation at all costs regardless of the consequences. The objectives of the Declaration were "...to halt and reverse protectionism, remove distortions to trade, preserve GATT's principles and forward its objectives, and develop a more open, viable and durable multilateral trading system" (Croome, p 26). The difference between the work conducted under the direction of the negotiating mandate and the perception of external observers is significant and worth examining further in light of the services negotiations.

The internal work was conducted on the basis of the negotiating mandate and directed the new sectors to develop a framework agreement to create the legal foundation within which actual negotiations and national commitments could be made. In direct contrast to the growing anti-WTO voices over states losing their sovereignty, the institutional reality of the GATT (and subsequently the WTO) is a structure comprised of states and their representatives. It is the states that represent state interests and by extension corporate interests. Then and now lobby groups or individuals work through the state to achieve specific agendas.

The external perception by some observers suggests that there is a body of policy makers located outside the realm and jurisdiction of sovereign states, whose agenda is driven by trans-national or multinational corporate interests that are seeking greater economic control beyond the home state.⁸⁶ The implications attributed to this perspective are not merely distorted but are simplistic when related to the processes and operational structures that drive the multilateral trade liberalisation agenda of the WTO. This is particularly evident when examining the air transport sector where flag carriers have in many cases been closely linked to national governments and airline executives have a high degree of access to policy makers. This means corporate lobbyists focus on influencing national governments, which in turn promote these interests through the foreign affairs departments of national governments.

While it is arguable that large trans-national interests have a disproportionate amount of influence upon national policy makers and thereby influence the ongoing drive toward an economically interdependent global economy, it is equally incorrect to suggest that corporations have a direct impact or influence on the multilateral

⁸⁶ Scott Sinclair, *GATS: How the World Trade Organization's New "Services" Negotiations Threaten Democracy*, 2000, p 9.

negotiations or the secretariat. Unknown to many, the WTO bureaucracy is small with approximately 580 employees when compared to the International Monetary Fund (IMF)⁸⁷, which employs more than 2,600 and the World Bank (WB) over 10,000⁸⁸ (the Bretton Woods institutions). Included in the numbers for the WTO, only about half are professional secretariat personnel. These professionals interact with national governments and bureaucracies and have limited, if any, contact with corporate lobbyists. In addition, the secretariat is under constant scrutiny by Members to provide non-partisan information and is frequently reminded that the WTO is a "Member driven Organisation".⁸⁹

Completion of the Uruguay Round

The Uruguay Round officially concluded on 15 April 1994 in Marrakesh, Morocco, with the Ministerial Declaration "representing the 124 Governments and the European Communities".⁹⁰ On this date the "Final Agreement" opened for signature to end the longest running (1986 – 1994) and most comprehensive Round ever conducted during the history of the GATT. For the first time, Members agreed to include international trade in services and the first time there was agreement to create one body of multilaterally agreed rules that included a built in mandate for progressive liberalisation.

The outcome of the Round, as it related to the services sector of the world economy, meant that national governments intended to use multilateral rules as the basis for progressive liberalisation of internationally traded services. The objective was to enhance economic growth (nationally and internationally) and to assist developing and least developed nations to improve their trading position *vis-à-vis* the developed world. To achieve these lofty goals, it was believed that having the most favoured nation (MFN) principle of non-discrimination as the cornerstone, augmented by transparency rules, and backed by a dispute settlement body, would be the most rational method of achieving economic benefits for all Member States. That the membership now includes more than 75% (149 out of 189) of all sovereign states indicates there is a general political consensus that benefits accrued through economic interdependence far outweigh concerns over losing some degree of political sovereignty.

⁸⁷ As of May 2002, <http://www.imf.org>.

⁸⁸ As of May 2002, <http://www.worldbank.org>.

⁸⁹ This comment is not infrequently heard in committee and council meetings by country delegates.

⁹⁰ See: *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts*, GATT Secretariat, The Marrakesh Declaration, 15 April 1994.

Traditionally, many services sectors were provided universally under government authority (e.g. education, communication, and transportation) and thus were considered as primarily domestic policy concerns and non-tradable. The creation of the GATS reflects the broad political shift in many countries from treating trade in services as a purely domestic concern to understanding that trade in services can and do cross borders. Part of the reason that services were not traded internationally emanates from the lack of technology to support rapid and reliable infrastructure systems (e.g. telecommunications). The high level of technological development was not widely available until the GATS came into existence (1980s). However, the GATS framework rules are not what drive liberalisation in substance. Rather, it is a combination of the framework and the Members' schedules of specific commitments that determines the depth and scope of liberalisation.

The GATS: Obligations and Commitments

The GATS became an international legal document in 1994, at the same time the WTO became legally recognised as an international organisation (IO). Like other IOs, this defines the relationship between governments and not the private sector; corporate interests and communications that involve an IO must be addressed through the home state. Only official state representatives are permitted to attend and participate in the formal meetings, and decision-making process. While observers are permitted, they must be invited and approval by consensus needs to be given for official observer status of other IOs or non-governmental organisations (NGO's). These rules include not only the GATS but also the entire institutional structure of the WTO.

In design and substance, the GATS is a framework agreement that recognises an important and growing aspect of the world economy: services industries. It is a legal text that lays out the principles and ground rules for states to undertake progressive liberalisation of all services for the purpose of encouraging economic growth nationally and globally. The Agreement itself does not, however, dictate the how or when specific liberalisation must occur within each Member country. The actual liberalisation occurs only when states are prepared and willing to liberalise a sector or sub-sector and only to the level defined by the state itself. In other words, while the GATS contains universal principles and obligations that must be adhered to by WTO Members, the agreement is given life and meaning through the individual liberalisation commitments defined by each of the Members. What is provided for in the Agreement is the mandate to negotiate progressive liberalisation into the future (Article XIX).

The Agreement is both flexible and complex, the latter being a result of the Members desiring maximum flexibility. For example, the GATS covers *a priori* all services (a negative list) but has specified exceptions and a positive listing made by the Members in their schedules of specific commitments. The former ensures the Agreement is comprehensive while the latter gives individual Members maximum flexibility over the timing and scope of liberalisation commitments. The combination of general obligations laid out in the Agreement to which all Members are bound and the legal implications of specified commitments makes it complex and difficult for the average person to understand.

The GATS is divided into six parts plus a section on related instruments and appendixes. Part I provides the scope and definition of the Agreement followed by: Part II, General Obligations and Disciplines; Part III, specific commitments; Part IV, progressive liberalization; Part V, institutional provisions; Part VI final provisions; and at the back, the Annexes. A further and integral part of the GATS is the Members' schedule of specific commitments. The schedules are divided into two parts, which include the horizontal section (Part I) and the specific commitments (Part II). While each of these parts is an integral element to the agreement, it is beyond the scope and purpose of this paper to examine them in detail. It is however relevant to highlight the basic principles and general obligations of MFN⁹¹, transparency⁹², and national treatment⁹³, in order to understand why some of the arguments that Members used in the Review indicate a basic lack of understanding on the part of the air transport community. It is also useful to outline briefly the basic principles of market access⁹⁴ and dispute settlement⁹⁵ in the WTO, which work in conjunction with the general obligations.

⁹¹ Article II paragraph 1 states, "With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to 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." *The GATS: the General Agreement on Trade in Services and Related Instruments*, April 1994.

⁹² Article III paragraph 1 states, "Each Member shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Member is a signatory shall also be published." *The GATS: the General Agreement on Trade in Services and Related Instruments*, April 1994.

⁹³ Article XVII paragraph 1 states, "In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers." *The GATS: the General Agreement on Trade in Services and Related Instruments*, April 1994.

⁹⁴ Market access under the GATS is a clearly circumscribed obligation that is assumed by inscribing a particular sector in a Member's schedule of commitments. In the absence of qualifying limitations, the concept of market access, as defined in Article XVI, guarantees that there are no

There is also a formalised method for members to make commitments depending on the type of service and how it is normally delivered. To encompass all types of services and the manner in which they are normally supplied, four types or modes of service delivery are specified (see description below). States were also able to take MFN exemptions that would be reviewed by the whole membership after five years, with the goal that they be removed after ten years.

Purpose, Obligations and Principles

Preamble

The preamble of the GATS recognises that international trade in services are becoming an important sector for the “growth and development of the world economy” (preamble, the GATS) and that Members intend to develop a multilateral framework that can provide a basis for further international liberalisation of services constructed upon the principle of transparency. The process to achieve this goal is based on progressive (incremental) liberalisation over time and conducted through negotiation under conditions set out in successive trade rounds. The text specifically mentions that progressive liberalisation must proceed with the purpose of promoting economic growth for all members and recognises the need for member states to be able to advance national policy objectives, regulatory standards, and public goods services. There are no exceptions in this area that indicate or imply that states must liberalise at all costs and/or that the process and speed must be determined by the GATS.

Additionally, the preamble sets out the desire “to facilitate the increasing participation of developing countries in trade in services and the expansion of their service exports including, *inter alia*, through the strengthening of their domestic services capacity and its efficiency and competitiveness”. Finally, it takes into account the potential difficulties that face the least-developed states. It is therefore recognised that all states cannot liberalise at speeds equal to others, that the least developed states have greater economic difficulties and therefore this must be taken into account by developing and developed states alike. It seems clear that the intent of creating a multilateral framework for services liberalisation

restrictions pertaining to: a) the number of service suppliers; b) the value of service transactions or assets; c) the number of operations or quantity of output; d) the number of natural persons supplying a service; e) the type of legal entity or joint venture; f) the participation of foreign capital. Members wishing to maintain any of these six types of restrictions in a committed sector would need to specify the relevant measures in their schedules.

⁹⁵ The Dispute Settlement Understanding (DSU) is found in Annex 2 as the Understanding on Rules and Procedures Governing the Settlement of Disputes in the Marrakesh Agreement Establishing the World Trade Organization.

is for the purpose of including all members (least developed to developed states) in the potential economic benefits of a liberal trading system.

Notably, there does not exist either implicitly or explicitly, anything to suggest that Members must sacrifice national safety standards, social public policies, environmental standards, or national security issues. Instead, the preamble lays out objectives and goals that relate to the maintenance of sovereign aspirations and objectives. This is not to suggest or imply in any way that through progressive liberalisation of trade in services nations do not remain completely independent. Lowering barriers to international trade does increase the economic interdependence among states, but this differs vastly from a complete loss of sovereignty or democracy. In short, the preamble appears to embed services liberalisation within the realm of the sovereign state thereby ensuring that participation increases economic benefits for all Members through progressive liberalisation.

Definition of Services

The first section of the GATS sets out in one article, both the scope and the definition of trade in services. The scope is limited only through the "... measures by Members affecting trade in services" whereby measures are defined as the "... central, regional, or local governments and authorities: and non-governmental bodies in the exercise of powers delegated by central, regional, or local governments" (GATS paragraphs 3(a)(i) and 3(a)(ii)). In other words, authority rests within sovereign states regardless of the political structure or level of economic development.

The exercise of autonomous authority is further entrenched through the clarification in Article 1(3)(b) and 1(3)(c) that ensures governments retain control over sectors (industries) that are not commercially offered or are considered important to national policy objectives:

- (b) "services" includes any service in any sector except services supplied in the exercise of governmental authority:
- (c) "a service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

These two sub-articles ensure that although members of the WTO have legal obligations to the Agreements (all WTO agreements), in the case of services the liberalisation process is circumscribed by individual states through sector specific commitments, and in the multilateral forum of negotiations and ministerial

decisions (again state driven). The sub-articles (1(3)(b) and (c)) clarify that the power to liberalise further is not shifted away from the state. An emphasis is therefore placed on the sovereign right of states to determine individually the speed of liberalisation, control over sectors deemed to be inappropriate for multilateral liberalisation, or even privatisation. This also places the secretariat and multinational corporations as recipients of state policy and not the other way around, as suggested by some anti-globalisation advocates. By forming the WTO and in particular creating the GATS, Members have retained authority over national policy agendas, the scope of GATS, and the speed and timing of further liberalisation in the services sector.

The definition of services and government measures are also clarified in Article 1 since the delivery and consumption of services is more varied than for goods. While the latter can be visually determined at point of entry into a foreign territory, services oftentimes need the consumer and supplier to be located in the same physical space. In other instances it is the service that moves across borders. To accommodate these complexities, the negotiators defined services in reference to how they are delivered (provided) and have thus been categorised into four types (modes) of service delivery.

- (a) from the territory of one Member into the territory of any other Member;
- (b) in the territory of one Member to the service consumer of any other Member;
- (c) by a service supplier of one Member, through commercial presence in the territory of any other Member;
- (d) by a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Member.

In combination these four modes⁹⁶ of service delivery define international trade in services. The first is referred to as either "mode 1" or "cross-border supply". Here it is the service that travels across international borders (e.g. facsimiles, telexes, e-commerce). The supplier and the consumer are not located in the same physical place. "Mode 2" (consumption abroad) is when the service is delivered in country and consumed by a foreigner in the same country (e.g. a foreign tourist staying in a hotel). "Mode 3" (commercial presence) is when a company from country a opens a business (e.g. subsidiaries, branch offices) in country b. Mode 4 (temporary

⁹⁶ Modes of supply are found in the Members's schedules of specific commitments. In schedule templates they are found at the top along with the brief description of each type. Under the national treatment and market access columns only the numbers are used to denote the mode of service to which commitments are being made and are only listed when a commitment is entered.

movement of natural persons) is the actual movement of people from one country to provide services in another country for a short and determinate amount of time (e.g. expert consultants).

The final definition provided in Article 1 states that “a service supplied in the exercise of governmental authority” means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers” (Article 1(3)(c). Such a service is not covered by the GATS. Including this definition appears to emphasise the importance national governments place upon retaining control over sectors considered to be of national importance and therefore are beyond the scope of the GATS and the WTO. Moreover, there are no restrictions or positive listings that circumscribe the scope of government authority insofar as specific sectors or industries are concerned. This effectively excludes some services despite the *a priori* inclusion of all services in the GATS. However, any such Article 1 exclusion is limited to specific national conditions.

General Obligations and Disciplines: Part II

The general obligations and disciplines of the GATS contain the greatest number of articles and set the rules for the framework of the Agreement. Totalling fourteen articles, this section is a top down approach to the rules that must be followed by the Members. It encompasses obligations and disciplines that are universally binding on all, thereby establishing a set of rules covering all services and reflecting the desire by Members to have consistency guiding progressive liberalisation. Included in the framework are also a number of exceptions for the purposes of maintaining the ability of a Member to protect national policy making powers, *inter alia*, over areas of national security, protection of Balance of Payments (BOP), and domestic concerns relating to issues of public morals, health and safety standards, and the ability to enforce laws and regulations.

Probably the two most fundamental principles of the multilateral trade regime of the WTO (all agreements), embodied in this section of the GATS are: “trade without discrimination”, through MFN and transparency. While National treatment is a fundamental obligation within the WTO, in the GATS it is treated differently than the GATT agreement. Another, and equally important principle, is the recognition of special difficulties facing developing and least developed countries. The GATS was therefore written to acknowledge unique problems and potential difficulties of the different economic conditions of Members. In addition, there are also a number of articles that create a mandate for Members to continue negotiations on sectors needing finalisation at the end of the Uruguay Round.

MFN: Article II

The MFN principle has been one of the fundamental building blocks for multilateral trade since the inception of the GATT in 1947. It is a principle of non-discrimination among the Members to the agreement and has been carried over into the GATS (Article II). MFN means that "...each Member shall accord immediately and unconditionally to 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" (Article II paragraph 1). In other words, there is to be no arbitrary or unjustifiable discrimination either among Members or preferences given to non-Members.

Additionally, MFN remains a fundamental principle regardless of commitments by Members in their national schedules. However, despite the importance attributed to MFN, negotiators of the GATS agreed to recognise that in some instances MFN exemptions would be necessary to advance the liberalisation process. For those instances where states believed MFN would have a detrimental affect on a given sector or sub-sector the GATS provides states with the ability to take temporary exemptions. The exemptions taken had to be reviewed after five years (2000) and should be removed after a maximum of ten years.

Having a principle like MFN is an important aspect of the international trade liberalisation process because it ensures that preferential trade agreements cannot be constructed so that trading partners give preferential treatment to some states over others. MFN also separates trading rules from political tensions that may arise from time to time between states. Moreover, this principle does not state either implicitly or explicitly how or when states should begin to liberalise. What it does require is non-discriminatory treatment of others in sectors already liberalised, and when liberalising in the future treatment must be on an MFN basis in national schedules.

Article 3: Transparency

After the principle of non-discrimination through MFN treatment, transparency can be considered as the vehicle for ensuring discrimination does not exist within the domestic realm of national regulations. Transparency, as it is written into the GATS, provides the basis for constructing a set of rules for the timely publication of national measures that could affect international trade in services. Paragraph 1 clearly states that adherence to the rules on transparency can not affect "emergency situations", and only apply to measures "which pertain to or affect trade in services" and or the "operation of [the] Agreement." In addition to these

ground rules, consideration is also given (again) to the special needs of developing countries (paragraph 4).

Article 3bis: Disclosure of Confidential Information

Despite the provisions in Article 3 that specify measures *affecting* trade in services must be published or otherwise available in the public domain, this sub-article explicitly clarifies the ultimate authority resides with the Member.

Nothing in this Agreement shall require any Member to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private (GATS: Article 3bis).

Although the article is not lengthy, the scope is broad and augments the principle that the Members are not required to undertake any liberalisation that would affect sovereign rights over privacy laws or would in anyway affect the public interest.

The sectors that were mandated for negotiation at a future date included: Emergency Safeguard Measures (Article X), Government Procurement (Article XIII), Subsidies (Article XV), and Domestic Regulation (Article VI). In addition, Part II of the GATS recognises that there are situations, existing and potential, whereby national governments need to act in ways that could run counter to general obligations. To address the possibilities there are also articles that cover the potentiality and include: protection of confidential information (Article IIIBis); recognition of regional agreements (Article V); labour market integration agreements (Article Vbis) general exceptions (Article XIV); and national security (Article XIVbis). Through these articles, the negotiators have attempted to blend the desire for creating an agreement capable of promoting liberalisation of trade in services while recognising the need for states to retain important policy tools at the national level of governance.

Market Access

Market access sets the conditions under which a company from one Member can provide services to a consumer of another Member. Article XVI specifies six market access limitations (restrictions) that can be listed in the market access column of a schedule.

- a) The number of service suppliers;
- b) the value of service transactions or assets;
- c) the number of operations or quantity of output;
- d) the number of natural persons supplying a service;
- e) the type of legal entity or joint venture; and
- f) the participation of foreign capital.

These six points are the only type of market access limitations that can be specified in a schedule. They are called limitations because once entered the Member can no longer increase the restrictive levels, unless for reasons of national security, balance of payments problems or issues affecting the stability of a country. A Member can unilaterally determine the amount of liberalisation it will inscribe or it could negotiate bilaterally or multilaterally with other Member States.

National Treatment

National treatment is considered to be one of the fundamental principles of the WTO and is included in the GATT, TRIPS (Trade-related Aspects of Intellectual Property Rights), and the GATS. However, it is important to note that in the GATS national treatment is not a general principle and it is only applied when a specific commitment has been made in a Member's schedule. The key to understanding National Treatment is that foreign service suppliers are given equal opportunity to compete with domestic firms. This does *not* however mean that domestic and foreign firms must be treated in an identical manner.

Article XVII covers National Treatment and unlike market access there is no specific list. It is the Members who are responsible for ensuring that all potentially relevant measures (regulations) are listed. Here one may find limitations for discriminatory tax measures or residency requirements. It is up to each Member to decide what kind and how restrictive their limitations will be in the schedule.

Dispute Settlement

The WTO Dispute Settlement Understanding⁹⁷ is a comprehensive international dispute settlement framework that would enhance the existing dispute settlement systems in the bilateral agreements. This is due to its transparency, defined time frames, neutrality, 3rd Party participation, consideration for least developed and developing countries, and sanctioning power. Each of these issues works toward an efficient and stable environment when conducting international business.

Unlike air transport, where disputes are normally settled under the veil of diplomatic notes, the dispute settlement at the WTO is transparent. Parties that might be indirectly affected are informed of the proceedings within three days of the dispute being launched by the Dispute Settlement Body (DSB).⁹⁸ Most important however is the sanctioning ability that is built into the system.

⁹⁷ Op cit.

⁹⁸ The Dispute Settlement Body (DSB) is comprised of all the WTO Members. For a description of the dispute settlement procedures see:
http://www.wto.org/english/thewto_e/whatis_e/tif_e/dispt_e.html.

Agreements are not cancelled or withdrawn in the event of a large dispute and at the end there is sanctioning mechanism that can be enacted.

Summary

A comprehensive multilateral trading system based on one set of rules sets a standard of predictability and reliability. Transparency ensures that preferential treatment by some states over others can no longer be covered by national policy under any guise, and that downward spiralling trade wars between, or among states will be substantially reduced. Yes, one can argue that sovereignty is being reduced, however, to argue from that perspective also implies that this erosion is open-ended. Considering the actual text of the GATS, and all the qualifications regarding sovereign decision-making powers over the liberalisation process, the argument loses a significant amount of value. Moreover, when considering the states which have not yet joined the multilateral economic world (e.g. North Korea, Russia), and those who have, but have not liberalised trade in services significantly show dramatically lower economic growth than open trading states, regardless of size. Set against the bilateral framework that lacks transparency and is based solely on reciprocity, the multilateral system has much to offer. In particular this would be the case for smaller and/or economically weak states and would reduce the power politics that are inherent in air transport bilateral negotiations.

Chapter 5

Descriptive and Empirical Evidence

There are two parts to this chapter: the first is qualitative (descriptive) and the second gives a brief overview of the quantitative (statistical) analysis that was undertaken to place the work on an empirical foundation. In combination the two parts set the context for the following two case study chapters. Part I focuses on the actual Air Transport Review sessions (the Review) and the meetings about the Review prior to its actual commencement in September 2000. The purpose is to provide a synopsis of the written and oral submissions made throughout the Review sessions to give the reader a sense of participants' positions and the issues at stake. It should be kept in mind that because such a review had never before been held, many of the participants either did not actively contribute, or asked questions rather than taking a definitive position. Some Members did not prepare for meetings to the same level as others, taking a 'wait-and-see attitude'. The questions posed by many delegates were primarily directed toward establishing the procedural framework for the Review. Other Members were forthright in their positions about whether the GATS should be expanded to cover any part of this industry.

It is worth mentioning that multilateral meetings do not necessarily follow the pre-set agenda and this is particularly so when a topic is as complex and politically sensitive as air transport. Although Job No. 2451 (see Appendix 1) sets out a specific list of sub-sectors and topics to be covered, not all that is covered in the list conform to operational categories or national regulatory definitions. For example, fuelling is listed independently, although in reality it is often considered to fit into the classification of ground-handling or airport management services. Other services such as fire fighting (auxiliary services) may be provided by the local government or are in fact local community fire-fighting units that serve the airport as part of their district. Thus, despite the set agendas given out for each meeting, Members raised the same issues in different sessions often disregarding agenda items under discussion. Every attempt has been made to insert the relevant comments made throughout the Review under the appropriate agenda item, and in some instances arbitrary structure has been given in order to provide continuity for the reader.

After attending all the meetings, reviewing the submissions, and oral presentations, tentative conclusions are drawn about why Members took the positions they did and

what factors influenced a given policy position. It was clear that placing this information and collected data into an empirical study would help to verify or discount initial conclusions. Thus, Part II of this chapter is empirical; it sets out the data research and provides an overview of the statistical analysis undertaken. The outcome of this work indicates that most, but not all the independent variables that were used correlated to the conclusions arrived at through the oral and textual evaluations. In some instances it was found that for a few of the independent variables there were significant correlations and in others virtually none. The findings suggest that certain constant variables can be linked to a negotiating position, while others, such as some of the market variables, are not statistically significant but nevertheless appear to be important factors influencing a Member's position.

Part I: The Air Transport Review (2000-2003)⁹⁹

Pre-Review Meetings: Council for Trade in Services (CTS)

The preparatory discussions in the CTS meeting regarding the Review provide an insight into preliminary national positions over how and if air transport should be liberalised under the GATS. These discussions give us the Member's position, which reflects the policy platform of the national government. In the case of the EC, its position reflects the Community as a whole, and any differences among the Member States were worked out in advance of statements made during the meetings. While it is not possible to discern from these preliminary talks the actual negotiating position that would be taken in the official Review, it was possible to identify the positions Members would likely take in the Review itself.

The discussions preceding the mandated Review among WTO Members in the CTS were in three meetings (informal and formal)¹⁰⁰ over two years prior to the commencement of the official Review Sessions that began on 28 September 2000. During these preliminary meetings Members discussed: a) proposals for the scheduling of the Review; b) the substantive issues of the mandate that is written into the Annex (paragraph 5); and c) the scope of topics to be discussed. The discussions included agreeing to the list of industry topics (Job No. 2451¹⁰¹) compiled by the secretariat that would be covered throughout the Review and two

⁹⁹ For a complete list of reference codes to the Review documents and background papers see Appendix 3.

¹⁰⁰ The meetings were held on the following dates as part of the Council for Trade in Services (CTS) meetings: 24 November 1998, September 1999, and 14 April 2000.

¹⁰¹ See Appendix 1 for the full document list.

preliminary background papers (S/C/W/59, S/C/W/129¹⁰²). In addition, there were delegate submissions by New Zealand together with Chile and Singapore (S/C/W/113), Japan (S/C/W/134), Poland (Job No. 1430), an individual paper by New Zealand (Job No. 753), and ICAO (Job No. 6541).¹⁰³ In its written submission, ICAO outlined its position regarding jurisdictional and institutional issues *vis-à-vis* the WTO. The oral submission that was given at this time indicated the importance ICAO attaches to its historic role over the economic regulatory activity in international air transport.¹⁰⁴

Due to the preliminary nature of the three meetings, and the fact that they were not officially part of the Review, the discussions did not focus in depth on the substantive issues contained in the written submissions. However, the papers and delegate interventions provide initial indicators about the areas (sub-sectors) Members regarded as important topics to be discussed in the up-coming Review.

Written Submissions, Secretariat Background Papers, and Delegate Interventions

ICAO Presentation¹⁰⁵

The written submissions and oral presentation by ICAO¹⁰⁶ during this time highlighted its work regarding economic regulations throughout the industry and the importance it placed on its role as the multilateral body governing air transport. In each paper it stressed its position as the guardian of safety, in the commercial development of air transport, and in particular, the importance of articles 5, 7, 17, and 83¹⁰⁷ from the Chicago Convention. In essence these articles highlight the

¹⁰² S/C/W/129, dated 15 October 1999, is the updated version of S/C/W/59, dated 5 November 1998.

¹⁰³ Papers submitted informally obtain Job numbers while formal papers received S/C/W/** documentation numbers.

¹⁰⁴ "Communications from the International Civil Aviation Organisation" Job No. 679, 22 November 1999 and 8 February 2000. "Informational Exchange Meeting 24 November 1998" Statement by Representative of the International Civil Aviation Organization, 24 November 1998" Job No. 6541, 24 November 1998. "Communication from the International Civil Aviation Organization" S/C/W/63, 23 October 1998.

¹⁰⁵ The ICAO has ad hoc observer status at the WTO. This means that it can only attend meetings when it receives an explicit invitation. ICAO has submitted requests to attain official observer status, which would mean it could attend meetings without an invitation. This status request has, to date, been denied.

¹⁰⁶ Job No. 679, 8 February 2000.

¹⁰⁷ The following excerpts are from the ICAO statement (Job No. 6541), which appears to highlight the relevance and importance of ICAO's role in liberalizing international air transport. "1) Article 5 which provides for the overflight and non commercial landing for aircraft not engaged in scheduled international air services (non-scheduled, "charter" flights) with any commercial traffic in passengers cargo or mail subject to the conditions imposed by the State in which landing takes place. This explains why non-scheduled services tend to be regulated at the national, rather than the bilateral and regional level. However there are about 30 bilateral arrangements that have

degree to which the Agreement governs economic aspects of international air transport. Notably however, the main aspects of economic regulatory governance are substantially different to national commitments within the WTO framework and there are no transparency requirements.¹⁰⁸ Moreover, the entire structure is based on reciprocity and, under ICAO economic regulation, exists in the form of recommended policies and practices. As noted in the ICAO submission to the WTO meeting on 24 November 1998, "...the Convention on International Civil Aviation (Chicago, 1944, 185 Parties) does not accord commercial rights for air transport..." (oral statement by the ICAO Representative, with written text: Job No. 769). Specific regulations are found in the individual bilateral or plurilateral agreements between the negotiating states.

The first two Secretariat background papers (S/C/W/59, 1998 and S/C/W/129, 1999) are a preliminary attempt to document "developments in the sector" and are lacking in both substance and detail. Moreover, they do not reflect all aspects of the industry for the period being reviewed. However, they provide a substantive outline for the subsequent background papers and lay the foundation for the approach used by the Secretariat, which examined in depth the economic and regulatory standards and changes that occurred between 1993 and 1999. These preliminary documents also correspond with Job No. 2451, which is a detailed and comprehensive outline of all the air transport sub-sectors and the identification of commercial operations that exist within the "traffic rights" definition provided in the Annex on Air Transport Services.¹⁰⁹

provisions dealing with non-scheduled services. 2. Article 7 State shall not seek or obtain cabotage – the right of a foreign airline to carry domestic traffic – on an exclusive basis. The term "on an exclusive basis" has not been defined by ICAO, but the airlines of States of the European Union exercise this right as part of the single European market for air services. 3. Article 15 Airport Access and User Charges: (a) Access An [sic] airport open for public use by its national aircraft shall be open under uniform conditions to the aircraft of all other Contracting States. This represents an MFN type of approach, which is triggered by national use. (b) Charges for the use of airports and air navigation facilities shall not be higher than [sic] that charged national aircraft engaged in similar operations or similar international scheduled air services. ICAO policy and guidance on such charges is based on the principle of cost recovery; these charges to the user should not exceed the cost of providing the service. 4. Article 83 requires that States register their aeronautical agreements with ICAO which provides transparency in this sector." *Informational Exchange Meeting 24 November 1998*. "Statement by the Representative of the International Civil Aviation Organization", WTO Job No. 6541, 24 November 1998.

¹⁰⁸ There are approximately 3,000 bilateral agreements in existence and despite a requirement to register signed agreements with ICAO, only about 1,500 are registered.

¹⁰⁹ Paragraph 6. (d) of the Annex on Air Transport Services provides the definition of traffic rights. "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 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." *GATS: The General Agreement on Trade in Services and Related Instruments*, April 1994.

Delegate interventions

The interventions during the CTS meetings prior to the commencement of the Review focused primarily on procedural issues in order to establish a work programme for the actual Review. The interventions supported the proposal by New Zealand,¹¹⁰ which requested the Secretariat to prepare a background paper for Members to facilitate discussions during the Review. It was suggested by a number of Members that the background paper should follow the detailed list of sub-sectors (Job No. 2451) and provide an economic and regulatory overview of the developments throughout the sector between 1993 and 1999. Additionally, Ecuador, citing Article 4 of the GATS, backed by Morocco, specifically requested that developing country issues be addressed both in the Secretariat paper and during the Review discussions.¹¹¹

The proposals addressing the structure and format included two approaches. The first proposed that the Members undertake an examination of "the development in the sector" and "operation of the Annex" (New Zealand, the EC, Turkey, Australia¹¹², and Hong Kong, China) while the second wanted a blending of both elements (Switzerland and Hungary). Hong Kong, China responded to the Swiss proposal to blend the discussions by firmly disagreeing with the notion that developments in the sector and operation of the Annex could be blended; instead they should be defined and separate. It also believed that the Review meetings should be confined to the specifications in the Annex and nothing more. Japan and others, noted that only paragraph 5 should be examined but did not specify whether this should be separated into two distinct categories or dealt with as one

¹¹⁰ New Zealand submitted two papers in advance of the Air Transport Review. See: Job No. 1059, 23 November 1998 and Job No. 753, 10 February 2000. New Zealand, together with Chile and Singapore submitted a joint paper, S/C/W/113, 15 July 1999.

¹¹¹ The following is Article IV of the GATS reproduced in its entirety. "Increasing Participation of Developing Countries". 1. The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, relating to: (a) the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia* through access to technology on a commercial basis; (b) the improvement of their access to distribution channels and information networks; and (c) the liberalization of market access in sectors and modes of supply of export interest to them. 2. Developed country Members, and to the extent possible other Members, shall establish contact points within two years from the date of entry into force of the WTO Agreement to facilitate the access of developing Members' service suppliers to information, related to their respective markets, concerning: (a) commercial and technical aspects of the supply of services; (b) registration, recognition and obtaining of professional qualifications; and (c) the availability of services technology. 3. Special priority shall be given to the least-developed country Members in the implementation of paragraphs 1 and 2. Particular account shall be taken of the serious difficulty of the least developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs.

¹¹² Australia submitted Job No. 6512, 23 November 1998 for the pre-review meetings.

unit.¹¹³ New Zealand agreed with the proposed dates and background papers, noting that the structure of both should follow “the developments in the sector, and the operation of the Annex”. It also requested other delegates to prepare papers in advance of the meetings. Speakers that followed this intervention generally supported New Zealand’s position, adding only comments that specified distinct sub-sectors.¹¹⁴ Otherwise there was no contentious debate throughout the meeting.

Oral commentary ranged from suggesting competition policy should be included in the Review (Japan¹¹⁵ and Korea) to uncertainty about allowing the Secretariat to produce a matrix of the sector.¹¹⁶ Hungary supported the proposal of updated secretariat background papers but thought the topics covered needed to be factual.

The US¹¹⁷ spoke only to clarify the Korean comments, saying that the Members should propose and clarify rather than the secretariat. Korea responded that the Members should present answers. Morocco emphasised that Members should keep in mind the impact multilateral liberalisation of this sector under the GATS would have on development issues and Mexico asked if the meetings were to be “Sessions”.

The Chair clarified that the Review was to be held in “special meetings”. He then summarised the meeting looking for consensus. First, the proposed scheduling would be accepted and the special meetings would be held in September and December 2000. Second, Members would take into consideration the impact on the developing countries, and third, based on the proposal by Australia, the Review would be forward looking with a separation between recent developments in the sector and the operation of the Annex. To summarise the meeting, the Chairman told the delegates that the Secretariat would commence work to update and finalise the existing background papers (W/59 and W/129), circulate them and then engage Members in submitting ideas for the first meeting.

¹¹³ These comments were made at the April 2000 CTS meeting (from my own notes).

¹¹⁴ Turkey’s intervention specifically supported examining ground-handling and catering.

¹¹⁵ Japan submitted one paper during the pre-review period. See S/C/W/134, 10 February 2000.

¹¹⁶ The EC suggested the Secretariat prepare a matrix of the sector.

¹¹⁷ The US submitted one paper during the pre-review period. See S/C/W/71, 24 November 1998.

First Session: 28-29 September 2000

Written Submissions, Secretariat Background Papers, and Delegate Interventions

The first Review Session consisted of reviewing seven papers submitted by Members¹¹⁸, and the first in a series of secretariat background papers.¹¹⁹ During this Session, it became apparent that Members differed vastly over the substance and purpose of the Review with the differences forming into two general groups. In one group, delegates were firmly against any expansion of the Annex while the other saw the Review as the appropriate forum for establishing which sub-sectors in air transport could be considered for coverage by the GATS. The Members that explicitly supported using the Review as a tool for a general assessment of the industry and nothing more felt that bilateralism would and should remain intact. This group included the US, Japan, Brazil, Jordan, Poland¹²⁰, Cuba, and other developing countries. These Members questioned the need for expansion of GATS coverage and argued that the bilateral system of economic regulation had worked well for international liberalisation purposes and would continue to do so. This same group of Members was also concerned that expanded coverage might negatively impact ICAO's role in governing international air transport affairs. However, despite the apparent importance of such concerns, there were few specifics cited.

The US stated in the first Session that "the United States [would] not have a position on this issue until after the review is completed"¹²¹ (US delegate), and "that the Council should review developments in the air transport sector and the operation of the Annex before considering the possible further application of the

¹¹⁸ See, "The Review of Air Transport", Communication from Poland, Job 1430, 8 March 2000; "Developments in the Air Transport Services Sector", Communication from New Zealand, Document S/C/W/165, 15 September 2000; "The Evolution of Air Transport in Chile", Communication by Chile, Document S/C/W/166, 18 September 2000; an informal note by Chile, 1 August 2000; "Communication from the European Communities and their Member States: The Review of the GATS Annex on Air Transport Services", S/C/W/168, 26 September 2000; "Communication from Australia: The Mandated Review of the GATS Annex on Air Transport Services", S/C/W/167, 18 September 2000; and an informal paper from Australia, Job No. 3202, 19 May 2000.

¹¹⁹ See, "Developments in the Air Transport Sector since the Conclusion of the Uruguay Round, Part One", 3 August 2000; "Air Transport Services – Background Note", 5 November 1998, S/C/W/59; and "Recent Trade Related Activities of the International Organizations in the Field of Air Transport", S/C/W/129, 15 October 1999.

¹²⁰ Poland was one of the initial states to ask for clarification over the possible relationship between the GATS and ICAO. However, after its first submission of its paper, it made no interventions. This is most likely because of its intent to enter the European Union and the position taken by the European Communities throughout the Review sessions.

¹²¹ This statement was made during the first Review Session at Geneva, Switzerland by the US representative, 4 September 2000.

Agreement in this sector”.¹²² The US made it clear that it viewed the Review sessions as a forum for industry discussions and not for altering the Annex either in substance or form. To emphasize its position it stated that sub-sectors specifically covered in bilaterals are considered to be “directly related to the exercise of traffic rights”.¹²³ While this was not the only intervention, it provided a strong indication that the US *et al* intended to use the historical content of bilateral agreements as the basis for limiting extensive liberalisation through the GATS forum or preventing it altogether.

Other interventions pertaining to the link between traffic rights and sub-sectors were more specific (e.g. ground-handling, air taxis, franchising and wet leasing). In each case the sub-sectors were cited as part of existing bilaterals and therefore beyond the purview of the GATS. It is thus possible to discern that while the US sought further liberalisation, it wanted to achieve this under established practice (bilaterals) and following its vision of how air transport should be liberalised. This also suggests that the US perceives that it can probably gain – or give up less – through bilaterally negotiated agreements, rather than within the multilateral arena.

On the other side of the debate, supporters of using the Review to establish a consensus over the sub-sectors not “directly related to the exercise of traffic rights” included: the European Communities (EC) and small open economies like Australia, New Zealand, Chile, Switzerland, and Norway. These Members believed that discussions about the state of the industry should be held, and in accordance with paragraph 5, Members should then seek to identify sub-sectors that could be specifically covered by the GATS, although without specifying whether this could be done through altering the text of the Annex or by a consensus agreement. Thus, the two largest members, the EC and the US, took vastly different positions over how best to achieve further liberalisation of international air transport.

Those supporting multilateral coverage claimed not only that the Annex should be expanded as per paragraph 5 (noted above), but also that the Review Sessions should be used to address the perceived ambiguity of paragraph 2(b), and to take the opportunity to clarify which air transport services are or are not “directly related to the exercise of traffic rights”.¹²⁴ They argued that establishing a consensus on

¹²² Ibid.

¹²³ Second Review Session, 4-5 December 2000.

¹²⁴ The basic problem with the Air Transport Annex is that it tries to define the scope by saying what is and is not covered. From a legal perspective, only one should be defined not both. Abdel-Hamid Mamdouh, Director of Trade in Services Division, Interview 23 October 2000.

the text of the Annex would contribute to an improved document with greater clarity.

Despite the differences of perception and intention, it is important for our purposes to expose the underlying rationale for the positions taken by asking the following questions: what would states gain from a multilateral arrangement that they could not otherwise achieve in the bilaterals and conversely, what is gained through the retention of bilateral coverage over the sub-sector industries? The answers can be found in two vastly different arenas.

For the small economies, the relatively small capital pool each possesses would benefit from a multilateral arrangement including traffic rights, and in some instances (e.g. Australia, Chile, and New Zealand) their geographic distance from other markets can be exacerbated through bilateral restrictions. This includes the most contentious issues of foreign ownership restrictions and cabotage.¹²⁵

In the case of the EC, multilateral liberalisation of the sub-sectors is complex due to the political issues involving competency over air transport.¹²⁶ The EU Member States retain authority over air transport, while the Commission represents all the Member States in the WTO and has negotiating authority over trade. Another possible reason for taking this stance over multilateral liberalisation is that EC Member States have very competitive sub-sector corporations that have global market positions. This leads to a situation whereby the Commission and Member States support liberalisation within the GATS albeit each for different reasons. The Member States that have global corporations in the sub-sectors would benefit from a single set of multilateral rules while the Commission would expand its competence over covered sub-sectors.

The differences between the two sides of the debate were clearly highlighted in the submissions and interventions. Despite having agreed to a rough work programme in the meetings leading up to the Review, Members' written and oral submissions were wide-ranging and did not adhere to the agenda set out by the Chairman. In most of the presentations Members outlined their general positions on liberalisation and did not specifically adhere to the agreed approach of discussing the operation of the Annex before dealing with the more sensitive issue of which, sub-sectors if any, should be considered for future GATS coverage.

¹²⁵ Op cit.

¹²⁶ While the Commission has competence in the WTO for all Member States, it does not have full competence over air transport. However, due to the November 2003 ruling by the European Court of Justice (ECJ) all the Member State bilaterals must be renegotiated to ensure the nationality clause conforms to EU law.

Session Agenda: Sub-sector Review

Maintenance, Repair and Overhaul (MRO)

Maintenance, Repair and Overhaul of aircraft (MRO)¹²⁷ is one of the three sub-sectors covered by the GATS through the specified exemption in the Annex. Although discussion pertaining to this sub-sector was extremely short, this is not surprising as further liberalisation of the covered sub-sectors would occur within the GATS 2000 Services negotiations. The comments that were made did not have a common thread and ranged from New Zealand noting that the separation of MRO from government and/or airline ownership was not dissimilar to other sub-sectors not yet covered by the GATS (paragraph 9, S/W/M/49), to Cuba submitting that MRO is directly related to traffic rights – and only covered by the GATS as an exception. Other comments, by the EC, Canada, Brazil, and Korea were made about strengthening or addressing specific areas relating to terms of trade (S/C/W/49).

Computer Reservation Systems (CRS)

Although the meeting agenda listed CRS, there was little discussion beyond the introduction by the secretariat and a few short comments by New Zealand, the EC and Thailand. Other commentary came from different Members about the lack of commitments and the large number of MFN exemptions that had been taken.

Specifically, New Zealand submitted that CRS should come under competition law not the bilaterals, while the EC noted the technological development of the industry and how far it has changed from the time of the Uruguay Round. Today CRSs have evolved into Global Distribution Systems (GDS) and through this change have become completely separated from the airlines, which first created CRS. Due to the high concentration of operators, the EC, like New Zealand believe in the “merits of pro-competitive principles being applied to this particular sector” (oral comments). The only developing country comment came from Thailand, noting “the benefits of liberalization had only focused on the benefits for developed countries”.

Selling and Marketing

The EC noted that market conditions and changes in this sub-sector were similar to CRS. Because of the technological and market changes in all three of the covered sub-sectors, the EC suggested that Members discuss updating the definitions. Although supported by some Members, this suggestion was not taken any further.

¹²⁷ This does not include work on aircraft that are in service and classified as ‘line maintenance’.

All three topics were discussed throughout the Review sessions when commentary involved whether these covered sub-sectors were directly related to traffic rights.

Franchising

On the topic of franchising there was slightly more debate than the covered sub-sectors, probably due to how it was defined in the Secretariat background papers (S/C/W/163). It was suggested that franchising might not be linked to traffic rights. According to the secretariat paper a franchise airline can be equated with other non-aviation type businesses.

[A]lthough in one sense a franchise airline is virtually identical to a regional airline it is the purpose of the actual franchise that differentiates the two types of corporations. A franchise is ultimately for the dissemination of a brand identity to a broader market and is therefore primarily a marketing tool not unlike other franchises (e.g. Body Shop, McDonalds Etc.)[sic]. A franchise does not alter underlying traffic rights for either corporate partner. Nor does franchising arbitrarily affect or alter established route structures (S/C/W/163, p 34).

No Member spoke strongly to agree with this position and a number (Korea, Jordan, and the US) adamantly stated that they considered franchising to be the same as code-sharing. It was therefore considered to be directly related to traffic rights and hence definitively excluded from the GATS (paragraphs: 50, 51, 52 and 65 of S/C/M/49).

Freight Forwarding and Warehousing

Although only Hong Kong, China (S/C/M/49, paragraph 67) made a comment on this sub-sector, it was in the form of requesting the secretariat to provide a note on the Organisation for Economic Co-operation and Development (OECD) work in this area and to include it in the cargo section of the Review.

Rental and Leasing¹²⁸

The only part of leasing that was given any serious attention was that of wet leasing¹²⁹ due in part to the differences between the two largest markets, the US and the EC. The US does not permit American carriers to wet lease from foreign companies whereas the EU does. Thus, it was not surprising that the US stated

¹²⁸ In air transport there are four types of leasing arrangements. "[A] leased aircraft is an aircraft used under a contractual leasing arrangement; a wet-leased aircraft includes a crew: a dry-leased aircraft does not include a crew: a damp-leased aircraft is a term used in some cases to refer to a wet-leased aircraft that includes a cockpit crew but not cabin attendants." *Manual on the Regulation of International Air Transport*, Doc 9626, p. 5.2-2.

¹²⁹ The EC and the US have completely different regulations regarding wet leasing. In the US carriers are only permitted to wet-lease from US companies. In the EC, foreign wet-leasing is permitted under certain conditions.

clearly that it considered rental and leasing to be directly related to traffic rights (S/C/M/49, paragraph 65). This position was openly supported by Tunisia and implicitly supported by others in more general statements.

The EC did not specifically disagree with the US *et al* but rather talked about safety standards and regulations. They stressed these were not conflicting interests such that “the introduction into the market of a foreign leased plane did not necessarily endanger safety standards” (S/C/M/49, paragraph 68).

Catering

Although airline catering is usually considered to be an integral part of ground-handling, the WTO Members agreed to accept catering as a separate sub-sector for the purposes of the Review. This acceptance opens the debate over whether catering can be considered within the scope of paragraph 2(b).¹³⁰ During the review of the developments in the sector, catering did not raise a debate over its relationship to paragraph 2(b), nor to implied comments that catering is regulated (safety and health standards) by states in accordance with other food and restaurant services.

Indeed, during the entire first Review Session, catering was only referred to specifically by two of the five Members that had submitted discussion papers (New Zealand, and the EC¹³¹). In both cases the written submissions and the presentations by the delegates specifically mentioned catering within the context of ground-handling services (reference was also made to fuelling) despite the fact that it is comprised of a total of 15 distinct industrial elements including catering and fuelling.¹³²

While New Zealand referred to catering in the context of ground-handling and said that this sector appears to be regulated “...in the same manner as all food service providers...” (S/C/W/165, p 2), the text is set in the context of an explanatory note of New Zealand’s economic regulations and safety standards. The paper notes that this industry (and ground-handling) is open, competitive, and economically viable as a separate entity from ground-handling or airlines. Although not stated explicitly, New Zealand used its own competitive structure to imply that a

¹³⁰ Paragraph 2 states: The Agreement, including its dispute settlement procedures, shall not apply to measures affecting: ... (b) services directly related to the exercise of traffic rights, ...”.

¹³¹ See Document S/C/W/165 from New Zealand, and S/C/W/168 from the EC.

¹³² Ground-handling is made up of: ramp, cargo/mail, passenger/baggage, aircraft servicing, aircraft line maintenance, load control/communications, unit load device (ULD) control, surface transport, security, flight operations, administration/supervision, fuelling and representation/accommodation.

liberalised market is superior to one that is closed to foreign suppliers (S/C/W/165, p 2). Additionally, the paper appears to establish that although a competitive ground-handling industry is considered possible without compromising safety, catering is specifically mentioned as a sub-sector that is regulated by individual states. During the presentation of the written submission, the New Zealand delegate was more explicit about considering catering to be a unique industry within the sub-sector of ground-handling, which was not directly related to the exercise of traffic rights. Catering was considered to be a sub-sector of food service suppliers.

In S/C/W/168, the EC is more explicit than New Zealand by stating that catering, within the context of sub-sector services, is not directly related to the exercise of traffic rights despite having been traditionally supplied by airlines. It notes the following. "In this context it is clear, that a broad range of services sub-sectors are actually not related to the exercise of traffic rights themselves, but rather serve as supporting services: these sub-sectors (catering, refuelling, etc.) are self-contained activities already covered by the CPC, and already liberalised in many domestic markets" (S/C/W/168, p 4). It notes also the consolidation of catering at the global level and how airlines have been increasingly out-sourcing or creating independent subsidiaries.

Although addressing catering in such detail may be considered as minutia in the context of such a wider-ranging session, it is important to note given that this particular sub-sector may be the first to be considered for coverage under the GATS.

Second Session: 4-5 December 2000

The second Review Session took place over one and a half days beginning 4 December 2000. Although it was scheduled to discuss the secretariat background papers consisting of the following sub-sectors: fuelling, ground-handling, airport services, air navigation services, general aviation, and general aspects of commercial air transport services¹³³; the oral interventions reverted frequently to topics from the previous meetings (CRS, Marketing and Sales and MRO). Additionally, delegates reviewed an excerpt of the OECD document relating to air cargo (S/C/W/181), which is a typology of leasing provisions contained in bilaterals

¹³³ See WTO secretariat background papers: S/C/W/163/Add.1 and S/C/W/163/Add.2.

registered with ICAO (S/C/W/182). There were also two new written submissions from Australia and New Zealand and one from ICAO.¹³⁴

Notably, the secretariat was asked to give a negotiating history from the Uruguay Round about the intent of the negotiators at that time. The secretariat was also requested to provide a legal interpretation "... on the legal ability of the CTS to amend or interpret the Annex (S/C/M/50, p 17). The raising of such questions is important because it highlights the lack of certainty over what the Review could actually accomplish and the vast differences of opinions that were surfacing in the discussions. While the secretariat must remain under the direction of the Members and non-partisan in its expert opinions, it also is looked upon as a source of factual legal and institutional information that can be utilised by the Members.

At the specific request by the Members, the Director of the Services Division spoke about the Uruguay Round drafting of the Annex. It was highlighted that the intent of the Review process was not to exclude international air transport from GATS coverage in perpetuity. He noted that exclusion reflected the divergent Member State perspectives, and the difficulty in reconciling bilateral arrangements due to, in some instances, scarce resources (e.g. slot allocation), MFN, market access, and national treatment. It was emphasised that the WTO and the GATS' coverage over air transport would not impinge on national regulatory standards since the WTO was *not* in the business of regulation. Examples were cited from other politically sensitive sectors such as telecommunication and intellectual property rights and the role of their respective international organisations (e.g. the International Telecommunications Union (ITU), and the World Intellectual Property Organisation (WIPO)). In this context, he noted that "trade law is about opportunity, not about outcomes ... [and] ... the MFN problem relates to the criteria by which scarce resources are allocated rather than the sharing out on a first-come, first-served basis". This introduction was intended to broaden the scope of the discussions so that delegates might not focus too much attention on detail in advance of reviewing the broader agenda of the Review.

The question over the legal ability of the Council to "amend or interpret the Annex" was given later in the meeting and while it was considered to be a legal opinion, it

¹³⁴ See "The GATS Review, an Opportunity for Phase Reform of Air Transport Services", Communication from Australia, document S/C/W/179, 14 November 2000; "The Review of the GATS Annex on Air Transport Services", S/C/W/185, 1 December 2000, from New Zealand; "Excerpts from the OECD Document "Principles for the Liberalization of Air Cargo", S/C/W/181, 30 November 2000 and; "Typology of the Bilateral Air Services Agreements Containing Leasing Provisions", S/C/W/182, 30 November 2000.

was also extremely diplomatic. In other words there would still be some room for interpretation. Two legal interpretations were given.

[I]f there was a formal interpretation it would be done in the General Council or by the Ministers. But the WTO Agreement then went on to say that in the case of an interpretation of a multilateral trade agreement in Annex 1, which covers the GATS, they shall exercise their authority on the basis of a recommendation by the Council (CTS) overseeing the functioning of that agreement. So it was clearly laid down, that this Council would make a recommendation on the interpretation and the General Council would adopt it. This seems to leave very little scope for them not to adopt it (S/C/W/50, p 17).

The second, on changing the coverage of the agreement, was that the CTS could through a consensus make a recommendation to the General Council.

[I]f Members wanted to change [the coverage] by saying that some services which are directly related would now be added to the coverage of the agreement, that would constitute an amendment of the Annex which was part of the GATS. So it would fall under Article X of the WTO Agreement where it says that the Councils listed in paragraph 5 might submit proposals to amend the provisions of the corresponding multilateral trade agreement to the Ministerial Conference. In other words, this Council could submit a proposal to amend the GATS to the General Council. And it stipulated that the proposal would have to remain on the table for 90 days and after that 90 days any decision by the Ministerial Conference to submit the amendment should be taken by consensus. Anyway, the basic procedure would be the same: the Council for Trade in Services would have the responsibility to submit a proposal for amendment to the General Council, representing the Ministerial Conference, and the amendment would be adopted by consensus (S/C/W/50, p 18).

Whether this opinion changed the mind of any delegate who submitted comments to the effect that the CTS had no authority to modify anything and was only mandated to review the Annex is unknown. No argument or comments were made in response to the secretariat's commentary on the topic.

The next speaker, ICAO, then presented the ongoing work in its organisation. It seemed that the purpose of the presentation was to inform the trade representatives and the WTO secretariat that ICAO was working toward developing guidelines for the liberalisation that was occurring in many areas of the international air transport sector. It is possible to see two levels of communication that ICAO wanted to impress upon the trade delegates. First, in emphasising its historical role as the internationally recognised body over safety and technical regulations it was defining what it considered to be ICAO's exclusive domain. Second, that it was intending to ensure economic liberalisation under the GATS would not compromise its work programme. In the presentation it highlighted two points to emphasize its concerns over the potential expansion of the Annex. "[W]e

do intend to take a look to check all this work against three basic WTO criteria: MFN, national treatment, and transparency. We are also building on existing material and recent experience to develop a template" (oral presentation by the ICAO representative, 4 December 2000).

Written Submissions, Secretariat Background Papers, and Delegate Interventions

ICAO Presentation

The general thrust of the presentation by the ICAO representative was to highlight ongoing work and recent initiatives and report briefly on the world-wide ICAO Conference that had been held in June 2000. Highlighted was work that had been undertaken at ICAO in the areas currently under review at the WTO. Within this context it was pointed out that in sub-sectors experiencing rapid liberalisation (e.g. ground-handling) ICAO had been able, through its navigation commission, to "introduce new aviation standards". This was presented as "...a good example of the interrelationship of the economic and the safety aspects..." that it was in a position to ensure (S/C/M/50, p 3).

Following this, the representative highlighted ICAO's efforts in the field of economic regulation and how it could promote international liberalisation that had already begun in different regions of the world. Although not stated, the intended work programme reflected almost exactly the work agenda for the Review and for the first time included issues of MFN, national treatment and transparency. The representative also assured the delegates that ICAO would continue to cooperate with the WTO and "share its expertise" with Members and the secretariat.

Not only do these comments show ICAO's willingness to participate as much as possible in the WTO Air Transport Review, its work programme also suggests that there is a lack of understanding about the liberalisation process under the GATS. Coverage does not imply or impinge on ICAO's authority in this realm. On the contrary, its role over safety and technical issues would be correspondingly increased since the GATS rules have nothing to do with safety and technical oversight.

Session Agenda: Sub-sector Review

Refuelling

Refuelling or aircraft fuelling was introduced by the Chairman, noting that the detailed study undertaken by the secretariat indicated "...the link with hard rights was extremely thin..." (S/C/W/50, p 3) as aircraft not bound by traffic rights (e.g.

general aviation and military) were also serviced. In response the Swiss delegate noted that Switzerland considered fuelling to be an integral part of ground-handling (see below). Rather than suggesting fuelling should not be covered, the intent was to add weight to the argument by Switzerland, the EC, *et al* that ground-handling is not directly related to traffic rights and therefore should be covered by the GATS. This was stated in support of the EC's position.

Ground-handling

The topic of Ground-handling created the greatest amount of discussion among the delegates. This was possibly due to the contentious nature of ground-handling during the Uruguay Round and the writing of the Annex.¹³⁵ Some Members claimed that while they believed ground-handling was directly related to traffic rights per say and therefore to be excluded from expansion, they could accept that some of the 15 sub-areas might be considered for inclusion should coverage of the Annex be expanded.

One of the strongest advocates of considering ground-handling for GATS coverage was the EC with support by, *inter alia*, New Zealand, Australia, and Chile. In fact the EC went so far as to say that "[i]t appeared to the Community that ground-handling services were already covered by the GATS since they did not affect the rights of Members to distribute traffic rights, or the right of air carriers to use them" (S/C/M/50, p 4). In the EC's view, there was no longer a link between air traffic rights and ground-handling.

Other reasons cited for inclusion by the EC are based on the same findings as the Secretariat paper (S/C/W/163Add.1), although this document did not suggest either implicitly or explicitly that ground-handling should be covered by the GATS. The paper did note however, that beginning in the early 1990s international consolidation began to occur while at the same time airlines began to sell-off these operations to non-airline companies. Using the IATA criteria for what constitutes ground-handling the secretariat study found that by 2000 the industry around the world was open and competitive with few, if any foreign ownership restrictions. Third party handling was permitted in most airports and only a few (primarily in the Middle East) were actual monopoly operations.

¹³⁵ According to delegates who participated in the Uruguay Round and the writing of the Annex, ground-handling was a contentious issue. Initially it was to be included under GATS coverage, and then it was taken off the list. Later in the negotiations it was returned to the list where it remained until it was removed before the document was finalised. From discussions with participants who asked not to be named.

The actual debate, like for other sub-sectors being reviewed, ended up centering on the definition of “directly related to the exercise of traffic rights” and whether the CTS in Special Session could make such a decision. On one side of the debate were the EC, New Zealand, Australia, Switzerland, and the Dominican Republic, with Hong Kong, China stating that it was leaning toward this position. On the other side was the US, Brazil, Morocco and in part Canada *et al.* These delegates argued that it was clear that because ground-handling was specifically covered by the bilaterals it was beyond the scope of a GATS expansion.¹³⁶

Mexico submitted the most extreme version of all, and declared that “the Council was not entitled, nor able to interpret what was and was not covered by the Annex. Paragraph 5 authorized a discussion of the possibility of extending the Annex and at this time Mexico was not ready to do so” (S/C/M/50, p 7). Rather than discuss the point raised, others who favoured expansion of the GATS for this sector raised their flags to provide comments on why this particular sector should be covered.

Airport Management Services

The discussion on airport management was dominated by the secretariat explaining how it designed and undertook its study of airport management. Comments by Members were limited to the EC, Australia, New Zealand, and Canada. Each gave a description of how their airport management services had been either privatised or operated on a competitive basis with government oversight. New Zealand was the only delegation to emphasize that the secretariat study highlighted the lack of a strong link between these services and the exercise of traffic rights. It also stated that with regard to scarce resources and concerns over safety and environmental concerns, the GATS framework has sufficient flexibility to accommodate these issues (S/C/M/50, p 9).

Air Navigation Services

Air navigation services are considered to be one of the most complex parts of the whole industry and the area where international coordination is paramount. While each country operates its own navigation system, coordination with neighbouring airspace must be taken into account. Of the three delegates that had comments, two (the EC and Hong Kong, China) asked for further clarification of the secretariat study and how this sub-sector might be linked to Article I of the GATS and whether a link could be made with paragraph 2 or 3 of the Annex. Canada stated

¹³⁶ See S/C/M/50, pp 3-7 for the discussion among the delegates, and S/C/W/163Add.1, pp 4-15 for the secretariat study.

unequivocally that it considered air navigation to come under the exercise of government authority and therefore clearly beyond the scope of the GATS.¹³⁷

Council for Trade in Services (CTS), Special Session: 8 October 2001

Formally, the third dedicated Review session took place on 9 October 2001, however, the CTS held a Special Session meeting on 8 October, which included two written submissions (S/CSS/W/59, and S/CSS/W/92) that pertained directly to the Review. It is noteworthy to mention this since it highlights the degree to which Members use the broader multilateral forum to advance negotiating proposals. In both papers, the negotiating proposals were controversial and addressed aspects of the Review that were very contentious, particularly to those who did not want the GATS to be expanded.

Norway (S/CSS/W/59, p 8) proposed the inclusion of transit rights (First and Second Freedoms) as horizontal commitments, in addition to proposing the inclusion of ground-handling and ancillary services. Given that most would agree these two freedoms do constitute traffic rights and the Annex specifically excludes the coverage of such rights, the suggestion was provocative to other Members. The proposal was included within a larger set of negotiating proposals and began by asking Members to increase commitments in the schedules. The main focus however was to introduce aspects of air transport that were being discussed in the Review sessions in order to create a link to the Services negotiations.

New Zealand submitted a proposal that also went to the core of the Review debates by presenting its interpretation of the Annex text regarding what is directly related to traffic rights and how to 'test' this interpretation. The test is as follows.

Those services where the supply of such a service is constrained to the holder of the traffic rights are clearly "directly related to the exercise of traffic rights", whereas services able to be supplied by a range of services suppliers irrespective of whether or not these suppliers are in a position to exercise traffic rights could not be argued to be "directly related to the exercise of traffic rights" (S/CSS/W/92, p 2).

It then used this logic to list the sub-sectors (ancillary services) it believed met the above test and therefore were not directly related to traffic rights. These included: ground-handling, airport management services, air traffic control services, general aviation services and domestic air services.

¹³⁷ Canada controls one of the largest air space areas in the world and is not a signatory to the International Air Services Transit Agreement (IASTA).

The response to the two proposals was, as expected, strong and negative. The response to Norway's proposal was the strongest with Members reiterating their support for ICAO to retain oversight in this area. Those in favour of expanding GATS to cover air transport supported all or part of the New Zealand proposal and those against stated that the topic was under discussion in the Review and therefore could not and should not be addressed in this negotiating forum.

Third Session: 9 October 2001¹³⁸

Written Submissions, Secretariat Background Papers, and Delegate Interventions

Due to the dramatic and tragic events on 11 September in the US, and the relevance and implications this held for topics under discussion in the Review, the Chairman suggested that the normal protocol of the meetings be waived. Standard procedure invites official observers (in this case ICAO) to speak after the normal agenda items, however for this meeting they were requested to give the opening comments.

ICAO Presentation

ICAO gave a detailed overview of decisions that had been taken at ICAO resulting directly from the 11 September 2001. Due to the detail and scope of steps being taken, the text of the presentation is reproduced below.

The representative of ICAO indicated that the ICAO assembly strongly condemned the acts of terrorism as well as of the misuse of civil aircraft with passengers and crew on board as weapons of destruction. The downturn in air travel due to security concerns, and the traffic flow management difficulties generated by a higher level of security measures were noted. The assembly requested ICAO to develop, on an urgent basis, a detailed plan of action to address new and emerging forms of threats, with priority being given to a comprehensive review of the existing aviation security legal instruments, standards and recommended practices. The aim of this exercise was to consider the establishment of an ICAO security oversight audit programme and to establish special funding for urgent action in the field of aviation security. The assembly adopted two resolutions: one, containing the consolidated statement of continuing ICAO policies related to the safeguarding of international civil aviation against acts of unlawful interference; and the other, containing the declaration on the misuse of civil aircraft as weapons of destruction. The Council of ICAO was directed to convene, at the earliest date, an international high level ministerial conference on aviation security in order to quickly further these objectives.

¹³⁸ In the CTS, Special Session held on 8 October 2001 there were discussions pertaining to air transport and the Air Transport Review. Norway had submitted a paper (S/CSS/W/59) that advocated inclusion of transit rights, or first and second freedoms, as horizontal commitments.

Economic liberalization issues, including the impact of enhanced security requirements, were discussed at the Economic Commission. In the discussion, the view was expressed that in the field of international civil aviation, the issues of relationship between safety and security, and the effective and sustained participation of developing States raised fundamental concerns and questions. The currently specific nature of air transport was noted, together with the extent to which States were ready to provide subsidies and assistance for their airlines. There was broad support for the convening of the 5th world-wide Air Transport Conference in March 2003, to address issues relating to liberalization including air carrier ownership and control, market access, product distribution, fair competition and safeguards, conditions of carriage, consumer interests, dispute resolution and transparency. The conference was intended to develop a framework for the progressive liberalization of international air transport, with safeguards to ensure fair competition and safety and security, including measures to ensure effective and sustained participation of developing countries. This would also include a review of the existing guidelines on ground-handling.

There was strong support for ICAO to play a primary role in dealing with air transport matters. It was felt that the constitutional role of ICAO should be maintained and strengthened. In this context the proposed memorandum of understanding, to be developed between the ICAO and the WTO, was considered to be an important approach to clarify the respective jurisdictional roles, particularly as regards to ICAO's responsibilities with respect to safety, security and environmental protection. Views were also expressed that any switch to the GATS as an approach to liberalization would need to ensure that the current gains of liberalization were not lost and that there would be an added benefit to the aviation sector in its entirety. On the question of overflight, an element for possible coverage by the GATS, an appeal was made to the states that were not yet parties to the International Air Transit Services Agreement, to consider applying the provisions of the agreement, at least on a preliminary basis, during the present crisis. Attention was also drawn to the cancellation of war risk coverage on a seven-day notice by the insurance industry. While a number of governments had taken action to indemnify the carriers against such risk, it was pointed out that such action, taken mainly by developed countries, was creating distortions in the market place. There was broad support for the Council to establish a Working Group, as a matter of urgency, to deal with the issue of war risk coverage and in particular to find a solution in relation to developing countries where neither the national carriers nor the governments concerned were in the position to pay for or indemnify the air carriers for war risk (S/C/M/57, pp 1-2).¹³⁹

Arguably, the steps taken by ICAO as outlined above were absolutely necessary, however, it strongly emphasises it is the only multilateral body that has the ability and authority to manage economic liberalisation because of its ability to ensure safety aspects of the global industry. It appears that ICAO took the opportunity of 11 September to openly place itself as the only relevant international body for air

¹³⁹ Details of the proceedings of the Assembly and of the convening of 5th Air Transport Conference are available at the ICAO website: <http://www.icao.org>.

transport. While many Members agreed with this position, it appeared to be a political declaration of who should have authority over economic regulatory affairs. The presentation also triggered one of the most active debates on maintaining the bilateral framework under ICAO as the preferred avenue for liberalisation or the possibility of using the multilateral system of the WTO. At no time did this debate include traffic rights but rather the definition of what constitutes being “directly related to the exercise of traffic rights”.

Brazil: Presentation

The written submission from Brazil (S/C/W/201) was presented in three parts: an overview of Brazilian deregulation and domestic policies; the importance of environmental issues relating to air transport; and the Brazilian perspective on liberalisation. The common theme throughout the paper advocated (implicitly and explicitly) that Members should support the current bilateral system and ICAO’s oversight role in economic regulation and safety. Regarding GATS expansion, Brazil emphasized its position that no expansion of the GATS would be acceptable.

US: Presentation

The US made a wide-ranging and strong statement about the importance of maintaining the bilateral system (S/C/W/198). To augment its argument, emphasis was placed on the liberalisation that had already occurred, at least in the US and the EC, and on the corresponding lack of liberalisation that took place under the three sub-sectors covered by the GATS.

Delegate Interventions

The Australian, New Zealand, and Chilean delegates responded in strong terms to the US presentation and paper. In particular, the Australian delegate used rather evocative language for a formal session, in what appeared to be frustration with the US position. Following this animated exchange a number of delegates spoke either to support the US position or the Australian intervention. This exchange will be discussed in greater detail in the subsequent two chapters.

The last part of the meeting for that day included a second formal presentation by ICAO on its policies for airports and air navigation charges, a summary of which can be found in S/C/W/188, and wide-ranging commentary unrelated to this presentation.

Members made an effort to state their own positions regarding what might or might not be “directly related to traffic rights” and a number specifically asked for the Review to be extended in order to better address what they considered to be

unfinished business. The topics of cargo, general aviation and airport services were only touched upon in passing at this meeting.

Session Agenda: Secretariat Background Papers

The final set of Secretariat background papers (S/C/W/163Add.3 – S/C/W/163Add.6 and S/C/W/200) were presented at this meeting. These papers included a range of more technical topics including: an overview of air navigation systems, the development and changes of Air Services Agreements (ASAs), airline industry (passenger and cargo) development, foreign ownership issues, and multimodal operations.

Throughout the meeting the Secretariat papers received little attention until New Zealand raised the issue that the background papers had been largely ignored. Following New Zealand and Australia, the EC also made comments. Each took the opportunity to link the technical aspects to their individual perspectives on the need to address further, existing market barriers such as foreign ownership restrictions and sub-sectors for which they were particularly interested in being covered by the GATS. The US, Japan, and Brazil all responded, although not on substantive issues. The US wanted to ensure that all the documents were de-restricted, which was supported by Brazil. Japan gave a wide ranging commentary on the state of Japanese ownership and control standards, its approach to code-sharing, slot allocation, and stated that it could not support a separate regulatory environment for cargo. From the Japanese perspective cargo and passenger airlines were inextricably linked.

There were no comments on the 'operation of the Annex', which led the Chairman to propose the continuation of the meetings in order to further discuss topics that had received little or no attention.

Fourth Session: 18 March 2002

Written Submissions, Secretariat Background Papers, and Delegate Interventions

The joint submission (S/C/W/206) presented by Australia, New Zealand, and Chile was a succinct overview from their perspective of the importance of keeping multilateral liberalisation options open rather than clinging to the bilateral system on the sole basis that it existed. The paper points to a number of avenues being pursued that go beyond the traditional bilateral boundaries and argues that the GATS is also a forum that should be evaluated and considered for further liberalisation of the sector.

In particular the paper notes that the Review has shown that the issue is "...no longer whether the reciprocity-based system is in need of reform but how this reform process might be best approached" (S/C/W/206, p 1). It presented a list of four questions for discussion that go to the core of the debate about bilateral versus multilateral liberalisation. The questions were provocative given the opposition to any form of GATS expansion by a number of the delegates. However, delegates chose to remain quiet on the specifics, which resulted in very limited substantive discussion.

Following the presentation of the joint written submission the fourth Review's agenda was divided into three parts: 1) developments in the sector, 2) operation of the Annex; and 3) possible further steps for the Review. The discussion regarding developments in the sector was primarily led by the Members that supported expansion of the GATS with only a few interventions by Members that had not participated much throughout the Review. These Members made short statements in support of the bilateral system and the importance of retaining ICAO as the premier institution for global oversight. This continued until Canada raised its strong opposition to including first and second freedoms in the GATS.

Shortly thereafter Japan intervened with a strong statement about how the Review was to be an exchange of views and that this objective had been accomplished. It stated that there was a "...consensus that the Chicago regime had worked effectively in the area of promoting competition after the conclusion of the Uruguay Round" (S/C/W/134). Thus, it submitted that there was no longer any need to continue the Review. This declaration effectively launched a debate over whether the Review should be ended with Members joining one of the two camps.

The second agenda item on the operation of the Annex sparked few comments and no debate. New Zealand and the EC were the only speakers on this topic and both noted the documents in which their positions could be found. The third part of the meeting, while short, established that there was no consensus to end the Review. New Zealand noted that the Annex was silent on how a Review should be ended, thus without a consensus on this topic the Review would have to continue.

The last two secretariat papers submitted to the Review (S/C/W/200 and S/C/W/200Add.1) were in essence executive summaries of the entire S/C/W/163 series of background documents and did not introduce any new topics. This summary had been requested by the delegates due to the volume of text written by the Secretariat.

Fifth Session: 2 October 2003

In the official WTO documents and records, this part of the Review is separated since the meetings were no longer dedicated to the Review; instead they were conducted with other Council meetings. Although the fifth, sixth and seventh meetings of the Review are presented here individually according to the dates they were held, officially they are recorded in the minutes as one meeting (S/C/M/68). The reason for consolidating the minutes was due to the singularity of the topic: how to end the Review and when to set the start date for the next mandated Review. On this topic, Members had difficulty reaching a consensus due to controversy over systemic issues about whether the Annex text was being given an interpretation. Due to the vast difference between the two sides of the debate, deciding how to close the Review and set a date for the next one was difficult. In order to accommodate this problem the chairperson suggested that the item be left open and the meeting recessed rather than ended. This happened again at the subsequent meeting held on 9 October, consensus only being reached at the end of the seventh meeting, which took place on 24 October.

ICAO Presentation

The oral presentation given by the representative from ICAO was to provide WTO Members with a synopsis of the Fifth Worldwide Air Transport Conference that had been held in Montreal from 24 to 28 March 2003. The results of the Conference were provided in document Job(03)/117, distributed to Members for this session, and the presentation covered most of the detail provided in the document. In essence the representative emphasised that the outcome of the conference "... consisted of the Declaration of Global Principles for the Liberalization of International Air Transport, two recommendations, conclusions and models for use in air transport. It was noted that the Declaration was adopted by acclamation.

Australian and New Zealand Presentation

Following the ICAO presentation there was a discussion over the economic regulatory role of ICAO. In keeping with the entire Review, there were in effect two sides. One side emphasised the importance of ICAO and liberalisation through reciprocity within the bilateral system, and the other advocated a shift toward the WTO multilateral system due to what were considered limitations of the bilateral system.

The presentations by Australia and New Zealand appear to have three objectives: 1) to state their disappointment with the first Review regarding the lack of consensus to expand GATS coverage, 2) to state that they believe paragraph 5 of

the Annex instructs Members to commence the second Review in 2005¹⁴⁰, and 3) to note the ICAO conference had concluded that “states should use multilateral avenues as appropriate” (S/C/M/68, paragraph 19). These three points were supported by like-minded Members (*inter alia* Chile and the EC).

Both the written and oral submissions by Australia and New Zealand recognised that no consensus would be reached regarding expanding coverage of the GATS to any further sub-sectors. Thus, the informal paper proposed ending the current Review on the condition that the Members reach an agreement regarding when the second Review would commence. The importance attached to this position is emphasised under point 4 of their paper where they state: “...we propose that in agreeing to closure of the current Review we commit to a commencement date for the next Review at this CTS meeting”. Despite the clarity of this statement, they went further by adding in the next sentence that they “...see agreement on a date for recommencement that is consistent with the Annex mandate to be integral to closure” (Job(03)/193, p 2). In other words, although they were offering to give up their position over expanding the GATS in the first Review, they were going to ensure that those wishing to maintain the status quo of the bilateral system could not delay the start of the next Review unnecessarily.

Given that the authors knew that establishing a starting date for the second Review would be contentious, they offered a compromise in order to establish their good will and flexibility. From the perspective of these two Members, paragraph 5 “... at least every five years...” means there should be a new Review started five years after the start date of the first Review (2000). To show their flexibility and offer a point for negotiation they suggested the second Review could have a start date of mid 2006. At the same time, they also indicated in strong terms that any date beyond 2006 would be unacceptable to them and if 2006 could not be agreed upon they would “...consider that further work to form a common understanding of progress in the current Review [would] be necessary” (Job(03)/193, p 3). Those who supported this position submitted that paragraph 5 meant from the starting date of the first Review, however in keeping with the spirit of flexibility shown by Australia and New Zealand they could be part of a consensus and accept 2006 as the date to commence the next Review.

¹⁴⁰ All Members wishing to expand coverage of the GATS support 2005 as the starting year for the second Review, whereas those Members wishing to ensure that no changes are made to the Annex would have the start date as five years from the end of the first Review.

There was no overt disagreement; instead Members who took an opposing stand to the above perspective supported in full the ICAO representative's presentation and the role of ICAO regarding economic regulation of the industry. As expected, the Members supporting the retention of the bilateral system as the preferred means of pursuing further liberalisation also took the position that the GATS should not be expanded. This group pointedly expressed their support for ensuring that ICAO remains the only multilateral body governing further liberalisation of air transport and the primary body overseeing the industry. They also took the position that paragraph 5 and the phrase "...at least every five years..." should be interpreted to mean five years from the end of the first Review. This would place the beginning of the next Review as 2008 rather than 2005.

At the outset of the discussion Members seemed to be willing to accept the compromise proposal. Members that interpreted the Annex text (paragraph 5) to mean that a Review should be scheduled every five years from the end of the previous Review put forth that they appreciated the flexibility shown in the proposal and could probably go along if a consensus started to appear. At the same time, each added a qualifying statement of how their interpretation of text differed from that of the Australian and New Zealand proposal. In a few cases, such as Brazil, India, Cuba *et al*, the delegates would not accept a consensus before they consulted with their national authorities and none were willing to take a decision *ad referendum*.

For all present at the meeting it quickly became clear that there was a desire by most to reach a consensus. Numerous delegates who had not participated throughout the Review intervened to show their support for the compromise proposal set out in Australia and New Zealand's paper. To an outsider the issue of dates of ending and starting a Review may seem insignificant. However, it is important since no discussion over GATS expansion can exist outside of the Review and it is certain that future discussions will relate back to the timing and length of each previous Review in order to further the movement toward an interpretation of the Annex. It is thus noteworthy that most of the active participants in the first Review formally stated their preference and that agreeing to a consensus did not mean they changed their position.

Sixth Session: 9 October 2003

The sixth session was officially dedicated to negotiating how to end the current Review and the start date for the second Review. The delegates who said they had to first consult with their authorities stated that they could go along with the

proposed compromise dates in order to reach a consensus; that is all except Cuba. Shortly thereafter the chairman noted the movement toward a consensus and asked the delegate from Cuba "...whether the Council might be able to take a decision *ad referendum* in order to allow the delegation from Cuba time to respond within one or two weeks" (S/C/M/68). Although the Cuban delegate indicated that it would have a decision in one or two weeks, the decision to decide *ad referendum* was not acknowledged.

The statement by Cuba had the effect of stimulating yet another round of comments pertaining to the Annex interpretation and the need for flexibility to achieve a consensus. Numerous delegates referred to their own interpretation of paragraph 5, adding that they appreciated the flexibility of others and would likewise be flexible. Despite these repetitive interventions, a number of delegates did agree outright to a commencement date no earlier than mid-2006.

After Cuba's statement, the Chairperson attempted to move things forward by asking Cuba directly if it could consider a decision *ad referendum*. Cuba stated that it was not willing to take such a decision, however it was certain that it would receive instructions within a week or two. Subsequently the Chair presented a proposal that the Council decide to conclude the first Review and set the commencement date for the second Review to begin in mid-2006. This proposal instigated a flurry of signals from delegates wishing to speak on the issue. The delegates that supported the Australian/New Zealand proposal (e.g. the EC) reiterated that they would not agree to end the current Review unless a start date for the second Review had been established and a consensus reached.

Progress toward reaching any consensus halted abruptly when the EC representative stated that her delegation's preference would be to keep the Review open, however, it could have gone along with a consensus to end this Review if the commencement date for the next was established, as proposed, in 2005. The representative noted that while others would have the next Review begin in 2008 her delegation would not agree to this. The argument was based on what she called systemic reasons. In concluding the EC statement she said the EC looked forward to setting a date for the next Review meeting to discuss issues that still needed to be examined, making it clear that there was no consensus therefore the Review was still ongoing.

In response, Brazil requested that the Council continue discussing the formal closing and start date. The EC reiterated that in its view the next Review would have to begin in 2005, according to the terms of the Annex, and that while it would

like to reach a consensus, having a starting date in 2006 “touched upon systemic issues” (S/C/M/68, p 11). Although never discussed or explained, the systemic issues likely referred to the possibility that a later date than 2005 would set a precedence for the timing of future Review sessions. Moreover, through delays and inactivity it would be possible that the Annex would become immutable and there would be no possibility of expanding coverage of the GATS over this sector.¹⁴¹ Following the EC intervention, the meeting was again reduced to a debate of the interpretation of the Australian/New Zealand paper and the respective positions regarding the interpretation of paragraph 5 in the Annex.

In response to the Brazil-EC exchange, the US sought clarification on the Australia/New Zealand paper regarding the two paragraphs (10 and 11) under discussion and suggested that Members reflect on how to assist the EC with its ‘systemic’ problem. The representative gave a brief overview of the divergent positions between the US and the EC and found the proposed compromise to be a solution to end the current Review. However, it was noted that the US also had concerns about systemic issues, given the divergent interpretations of the Annex text on the periodicity of the Review sessions.

Switzerland then proposed a slight alteration to the Australia/New Zealand paper: it suggested that the start of the next Review be taken at the last regular meeting of the Council in 2005 and the substantive Review to begin in the first half of 2006. A number of Members spoke to say that in order to reach a consensus to end the Review they could agree with either the original proposal or the slightly altered Swiss version. However, Brazil stated it could only accept mid 2006 and not early 2006, nor could they accept an *ad referendum* decision.

Discussion continued until the Chairman proposed that the Members reflect on a short text that could be the basis for concluding the Review: “the Council decides to conclude the first review mandated under paragraph 5 of the Annex on Air Transport Services and decides that the formal commencement of the second review shall take place at the last regular meeting of the Council for Trade in Services of 2005” (S/C/M/68, p 13). It was then agreed to continue the meeting on 23 October in order to give Members time to consult with their governments

¹⁴¹ The concern about the Annex becoming immutable was voiced during discussions with the EC delegates at the Review.

Seventh Session: 24 October 2003

The final Review session highlighted the overriding concern of delegates that the Chairman's proposed text did not in any way begin to interpret paragraph 5 of the Annex and that the majority wanted to reach a consensus and end the Review. The delegates in favour of the bilateral system of economic regulations stated strongly and frequently that agreeing to the closing text could not in any way indicate or suggest that an interpretation of paragraph 5 was taken. Those in favour of expanding the GATS were satisfied that scheduling a date in 2005 to establish effective commencement for early to mid 2006 met their objectives of holding the next Review as close to the five-year period after 2000.

However, at the start of the meeting Cuba raised the issue of interpretation. Although the Cuban delegate conveyed her government's flexibility regarding the original Australian/New Zealand proposal, she believed that the Chairman's text was worded in a way that interpreted the text and she could not go along with this. The next intervention came from Canada with a request to move to informal mode; a way to have a more open discussion. From this point the other delegates took the position that the text did not pre-judge or interpret paragraph 5; therefore there was no interpretation and they encouraged "everyone" (meaning Cuba) to be flexible.

Progress appeared to resume with Argentina suggesting that a second sentence about not prejudging a Member's interpretation of the Chairman's text. Clarity then had to be given regarding translation, as Cuba believed that interpretation still remained to be done in the Spanish version. Cuba also requested that all statements be put "on record".

The most serious point of contention arose between Australia and the US. Australia had intervened to explain the rationale behind the original proposal to end the session. It "... sought to note that the closure of the review until its formal re-opening in 2005 was without prejudice to the right of Members to seek specific commitments from Members under Articles XVI [market access] and XVII [national treatment] of the GATS in relation to services not directly related to traffic rights such as ground-handling services" (S/C/M/68, p 18). Although the statement was supported by New Zealand, there was a strong response from the US and Japan.

Both delegations had been active participants throughout the Review and had spoken strongly on more than one occasion about their belief that everything included in a bilateral agreement was "directly related" to traffic rights (US position) and the three sub-sectors listed in the Annex were exceptions, meaning they too

were directly related to traffic rights. Both delegates stated in strong terms that they could not agree with the statement made by Australia.

The entire process of ending the Review could easily have stalled on this point, however the Chairman quickly re-directed the discussion back to the wording of the proposed closing text. He reminded the delegates that the scheduled discussion related to ending the Review, not the scope of the Annex. The Chairman took this opportunity to end the meeting by proposing that Cuba work with the Secretariat on the Spanish wording of the text, and summarised that all the statements were 'on record'. He immediately proposed to formally adopt the text and asked if there were objections. Without waiting, he adjourned the meeting.

Summary

Although it is tempting to say that the first Review amounted to nothing or very little, it does in fact provide a good insight into the importance that Members attach to international air transport and that the basis of debate is not about whether to liberalise the industry, but rather in which forum, bilateral or multilateral and the reasons behind this choice. Those in favour of the bilateral system argue that there is a fundamental incompatibility between the principle of MFN and reciprocity in the bilaterals, in addition to emphasising the traditional role of ICAO and the success of liberalisation under the bilaterals.

Those in favour of expanding the GATS to cover some sub-sectors of air transport maintain a diametrically opposite position. While many different arguments were put forth, the ones that stood out were issues of distance to major trading partners, access to international capital, and how some of the sub-sectors were no longer in the sole domain of airlines. It was noted that many of the corporations involved in the infrastructure industries were non air transport conglomerates, therefore the link to being directly related to traffic rights had already been broken. It was notable that most of the corporations in question are world market leaders seeking to expand their interests and are headquartered in Member States supporting expansion. It was argued by this side that the two systems can operate simultaneously without difficulty as seen by the three sub-sectors already covered under the Annex. The true *problematique* however is the text of the Annex, which can be read from and understood from different perspectives.

Key to the debate must be clarified before much progress can be made: what is the meaning of "directly related to traffic rights" as noted in paragraph 2(b) of the Annex. Currently there is no clarification about the precise meaning. The other point of contention discussed previously in this study is paragraph 5 of the

Annex.¹⁴² As noted in the debates between and among the Members, one group argues the marking point is the commencement date of the first Review (2000), the others state it is five years from the end of the Review. This would likely be argued into the future regardless how long the Review lasted.

It is clear from submissions and interventions during the Review that Members supporting expansion of the GATS to this sector also advocate that future Reviews occur on a timely and regular basis. Those opposed sought to ensure that future Reviews would be delayed for as long as possible. The ambiguity of the Annex text allowed each to adhere to their staked out position. However, the overview of the meetings does not reveal the complete picture regarding why one position was taken, over another. Nor is it clear that these positions will be sure to remain the same into the future. Thus, the next part of the chapter will provide an overview of the statistical analysis that was done in order to uncover some of the reasons Members argued for or against expansion.

Part II: Empirical Evidence

Including an empirical section in the study is intended to not only deepen the scope of the study and to improve understanding of why Members took a particular position in the Review, but to establish a framework from which to test the initial observations of the written submissions and interventions. It is intended to provide a basis for drawing a comparative analysis between the two methodologies in an attempt to uncover as many of the factors as possible that influence a Member's position in multilateral trade negotiations. The comparison is important because it helps to understand multilateral negotiations and why they might be preferred over bilateral ones and vice versa. From this information one can begin to understand the incentives behind specific positions and where Members believe their BATNA is located. Using both observation and data analysis the researcher is able to test expected results and when a difference is found, raise questions as to the reason(s).

Reading the paper submissions and listening to the delegate interventions provided a set of information that, while subjective, gives a degree of understanding about the national policy objectives. From this vantage point one can begin to understand some of the reasons Members took radically different positions and what these choices were based upon. Adding an empirical analysis allows

¹⁴² Op cit.

observable elements to be tested, in order to uncover whether initial expectations were or were not met or indeed exceeded.

Dependent Variable

The selection of dependent and independent variables was drawn from Member's submissions and interventions. The criteria for the selection were based on sub-sectors that Members highlighted, emphasised, or repeated during the Review. Data was then collected for a nine-year period (1995-2004) in sub-sectors that were discussed and where consistent and reliable data could be found for each of the eight cases (see Chapters 6 and 7 for the case analysis). The most contentious issue and the one that divided the Members most clearly was the operation of the Annex and whether or not coverage should be expanded. On the basis of this clearly demarcated divide among the delegates the dependent variable for the empirical analysis was established.

In seven of the eight cases, the Members were categorical in their positions while the eighth might have accepted expansion but only in one sub-sector. Thus, for the analysis this Member was categorised with the pro-bilateral cases. After selecting the cases, each position was coded as -1, 0, or +1.¹⁴³ The variable was then labelled as ATRPos, standing for Air Transport Position. Minus one represents Members who were against expansion, zero for those that made no comment and plus one for those who advocated expansion of GATS coverage. The next step was to determine the independent variables that might influence a Member's position throughout the Review.

Independent Variables

Noted above, the independent variable selection was based on the Members written and oral submissions and where the data was considered reliable. Both criteria fit within the theoretical framework that claims the marketplace both affects and influences national policy makers. This in turn establishes the basis from which a country is willing to negotiate and the limits negotiators are given by their political masters. For each of the cases (chapters 6 and 7), the same independent variables were used and the full data set covers a sequential nine-year period. The period begins with the same years as was used in the Secretariat research and includes four subsequent years in order to show change over time and to reduce the distorting effects of exogenous events that contribute to the normal cyclical nature

¹⁴³ See Appendixes 4 to 7 for the full list of Members' positions throughout the Review.

of the whole industry. While the tragic events of September 11, 2001 had a massive impact on the global industry, the Iraqi invasion (2003) and the outbreak of SARS (2003) impacted the industry at a more regional level.¹⁴⁴

In order to reduce the short-term distortion created by the above mentioned exogenous events, and to take a sample from three time periods that were roughly similar in spacing, 1997, 1999, and 2003 were chosen (see appendixes 8-15 for the full data set). In addition, the choice of years would provide data from before the Review (1997), the beginning of the Review (2000) and 2003 because it was far enough away (in time) from 11 September 2001. It was also the last year of the Review and the effects of the Iraqi invasion and the SARS outbreak were considered to be regional and short-term. Linear regression was then used to identify the degree of significance for each of the independent variables to see if they correlated to the Review observations. See Tables: 1, 2, and 3 below for the outcome of the linear regression exercise.

It is noteworthy that only one Member actually withdrew from its original position (Poland) and although it was beyond the scope of this paper to analyse this specifically, it is possible to make a supposition that the change came as a result of Poland's imminent accession to the EU (the EU supports expansion of the GATS).¹⁴⁵ This exception aside, all Members maintained a solid position regarding whether to expand the GATS to some selected sub-sectors of air transport. It was therefore possible to establish the position taken by delegates in the Review as the dependent variable. Using the above points, the independent variables selected include:

- the great circle distance to the two major markets of the EC and the US,
- the GDP (US\$ constant 2000);
- the types of Air Services Agreements the Member has signed;
- the corporate health of a Member's flag carrier(s) (revenue/loss);
- the sub-sectors of airport services;
- ground-handling; and
- airport cargo volumes.

Each will be addressed in turn.

¹⁴⁴ See "CEO Brief", April 2003, IATA. p 2.

http://www.iata.org/NR/ContentConnector/CS2000/SiteInterface/sites/pressroom/file/ceo_brief_apr_2003.pdf

¹⁴⁵ "The Strict Distributive Strategy for a Bargaining Coalition: the Like Minded Group in the World Trade Organization" in *Negotiating Trade: Developing Countries in the WTO and NAFTA*, ed. John S. Odell, pp 115-144.

The findings from the statistical analysis are presented below, by input variable, to show how each is related to the positions taken by the case study Members (see the following two Chapters for a more detailed discussion).

One argument of this study maintains that market forces, as represented by Members' corporations, have a strong impact on the negotiating position of a Member within the WTO. Whether or not influence is a direct result of domestic peddling by corporate representatives and/or hired lobbyists is not the issue. The point being made is that policy makers and trade representatives would be aware of whether their industries are economically stable, growing or in distress. In other words, the more successful and dynamic a corporation becomes in the global market the more likely the Member will advocate multilateral liberalisation, at least for the specific sector. The opposite would also be true. Thus, what we expected to find in the data analysis using linear regression is a strong link between the areas that were considered to be important issues to the Members.

Drawing from the submissions and interventions, ground-handling, airport services management, and the distance to and from major trading partners were found to be very important elements for Members advocating multilateral liberalisation, including the one Member (Canada) that was categorised in the pro-bilateral camp. In addition the study has taken into account other factors that are in part reflective of national economic growth, liberalising trends within the industry as a whole and the economic health of the flag carriers to see if any of these give us further insights about the degree of influence any one or more of the independent variables are likely to impact on the dependent variable.

Table 1: 1997 Coefficients(a)¹⁴⁶

Model		Unstandardized coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	-1.980	.613		-3.229	.004
	DistEC	-3.24E-005	.000	-.128	-.755	.459
	DistUS	.000	.000	.655	3.510	.002
	GDP	1.87E-005	.000	.244	1.532	.141
	ASAs	.242	.087	.482	2.790	.011
	RevLoss	8.00E-007	.000	.327	1.712	.102
	APSSs	-.071	.132	-.087	-.541	.594
	GHg	-.164	.340	-.093	-.481	.635
	APcargo	-5.67E-007	.000	-.378	-2.153	.043

a. Dependent Variable: ATRPos

¹⁴⁶ Data for the regression exercise included the data from 30 Member States.

Table 2: 2000 Coefficients(a)

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	-1.996	.593		-3.367	.004
	DistEC	-3.25E-005	.000	-.131	-.787	.442
	DistUS	.000	.000	.466	2.593	.019
	GDP	5.81E-006	.000	.087	.506	.620
	ASAs	.296	.080	.584	3.686	.002
	RevLoss	1.24E-006	.000	.411	2.307	.034
	APs	.048	.117	.067	.411	.686
	GHg	-.089	.169	-.087	-.528	.604
	APcargo	-4.90E-007	.000	-.427	-2.387	.029

a. Dependent Variable: ATRpos

Table 3: 2003 Coefficients(a)

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	-1.926	.797		-2.417	.028
	DistEC	-5.03E-005	.000	-.204	-1.007	.329
	DistUS	.000	.000	.445	1.697	.109
	GDP	1.81E-005	.000	.268	1.503	.152
	ASAs	.268	.089	.534	3.021	.008
	RevLoss	4.23E-007	.000	.229	1.065	.303
	APs	.038	.141	.055	.269	.791
	GHg	.071	.287	.053	.246	.809
	APcargo	-2.87E-007	.000	-.277	-1.581	.133

a. Dependent Variable: ATRpos

Distance to the Two Major Markets (EC and US)

Using an on-line calculation programme, it was possible to construct a database of great circle mileage between the international hub airports for the case studies.¹⁴⁷ In some cases (e.g. US, EC, and Canada) the top three to five airports were used. This was done in order to factor in the geographical size of countries. The routes between cities are only approximate since they do not take into account the need for aircraft to refuel or routings that would normally be used when taking into account jet streams or over-flight prohibitions. In some instances airlines do not operate non-stop flights for the distances shown. Nevertheless, the data provides a rough estimate of the obstacles that need to be overcome by airlines located great distances from major markets, as noted in the Review by some delegates. In particular New Zealand and Chile referred to the competitive disadvantages they faced because of their geographic location from major markets.

¹⁴⁷ Great Circle Mapper, <http://gc.kls2.com>

Since the issue of distance was raised in the Review and linked to the need for further liberalisation on a multilateral basis, the data was collected to see if, in fact, distance from either market was statistically significant.

Distance to the EC Market

In all three years, the distance from a Member's main international airport to the EC market remained statistically insignificant. Nevertheless the trend showed this variable to be slightly more significant in the last year (2003) than the first (1997). Based on the years used in the linear regression, it is possible that not enough years were used and that by inputting more years, the outcomes might indicate movement toward becoming statistically significant. Although it would be tempting to remove either the variable from the testing in order to improve the results of other variables it was decided to keep all testing the same for each of the sample years. This was done for the purposes of having a data set that could be compared across time and accept that the statistical analysis does not always correspond with Member positions.

In all markets except South America the EU has a strategic advantage over the US due to the shorter distances, which appears to be reflected in the lower statistical significance over the seven-year period (the years covered by the three-year sample set). Given that some Members spoke about distance as an impediment to being able to compete effectively in the international market by linking this to their belief that multilateral liberalisation would be beneficial to achieve this end, the shorter distances to the EU would be statistically less significant.

During the period of time covered by the sample set, the EU Third Package was already in place and operating. However, since we are looking at the EC as a whole and not the individual Members States it is difficult to give any precise observations. On the one hand the EU had begun to liberalise beyond its borders with neighbouring countries and individual Member States had signed open skies agreements with the US. The liberalising trend had begun albeit in a fragmented manner due to the lack of negotiating authority by the Commission over air transport.

Distance to the US Market

The exact opposite trend can be observed in the relevance of the distance from the US market: over the sample period, distance to the US market produced significant results in 1997 but then they decrease. Like the EU case, this raises questions about the sample size and whether this pattern can be correlated over time. The

pattern indicates that the distance to the US is becoming insignificant over time. Unfortunately it is beyond the scope of this study to run a regression analysis for longer periods and/or if the degree of liberalisation directly impacts the relevance of distance.

In 1997, the first year of the sample, the importance of having access to this market is very significant, registering .002. At this point in time, open skies agreements were still relatively few with most countries having Bermuda II type agreements. As noted earlier, Bermuda II agreements specify the number of airlines that can be designated by a state and the entry city to which they can fly. Although more liberal than the original Bermuda I type ASAs, Bermuda II agreements are considered to be restrictive.

The significance of the distances to the US market is less in 2000 (.019), and again in 2003 (.109). Given that these distances are statistically significant, it is possible to suggest that the US would have a stronger negotiating position over the speed, degree, and amount of liberalisation in a bilateral setting. However, if the pattern of decreasing significance holds true over time, then this perceived strength would also correspondingly diminish. Whether this would have a strong influence on future US negotiators remains unclear without first examining other factors that could possibly influence their position.

GDP Using US\$ Constant 2000 (per capita)

Due to the inclusion of cases that are not classified as high income or developed countries (Brazil and Chile), Gross Domestic Product (GDP) was included to see if economic development factored into the delegates' positions. In each of the years, the data revealed that GDP was either completely insignificant or just barely significant. There were also no discernible indicators that provided a potential pattern formation. Indeed, the results were random. When taking into account arguments for or against multilateral liberalisation, only Chile cited potential gains in GDP. It specifically highlighted its recent economic growth as a factor of shifting to a market driven economy and liberalisation policies that had been put in place, including the air transport sector.

A number of other trials were run using: PPP (constant 2000 international \$); travel services (% of commercial service exports); and travel services (% of commercial service imports). In each of the trials no statistical significance was found for any of the years and therefore not included.

Air Services Agreements (ASAs)

The linear regression results for ASAs were the most statistically significant of all the independent variables. To ensure that there were no random anomalies, the analysis was run using a number of different inputs. In each case, ASAs were statistically significant, indicating that the more liberal a Member's ASAs the more likely that Member would advocate expanding the GATS to parts of air transport. To determine whether a Member has liberal ASAs, all the available ASAs of the Member were collected and then put into categories.

The method used for coding the type of ASA was drawn from the standard elements of a bilateral agreement. In total there were seven 'types' of agreements. The first and most restrictive is the original Bermuda I (BI) type agreement, which was based on the first bilateral agreement signed between the US and the UK in 1944 in Bermuda. This set the standard for other bilateral agreements between countries. The second is when states have liberalised the original agreement through diplomatic letters of understanding (MBI). Normally this is done to increase the number of designated aircraft permitted rather than negotiate a new bilateral. BI or MBI agreements have been signed and/or modified between 1944 and 1976. The third group is coded as Bermuda II, which was first signed in 1977 in Bermuda between the US and the UK and is considered to be more liberal than BI. The major changes occurred in freedom of aircraft type and how tariffs are set. The fourth type is a modified version of the BII (MBII) using the same criteria as MBI.

The fifth type of agreement is the Open Skies type (OS), which first appeared in 1992 between the Netherlands and the US, and is much more liberal regarding destination choices, tariffs, and the ability to use third and fourth freedoms. The number of airlines a state wishes to designate is unrestricted so long as the state adheres to the articles pertaining to ownership and effective control of the designated carrier. This type of agreement was followed by the first plurilateral agreement, consisting of five states.¹⁴⁸ Although this agreement has been heralded as a breakthrough in the march toward international liberalisation, it remains based on the principles of a bilateral whereby ownership and control, and foreign ownership restrictions are still present, albeit more liberal than other agreements.

The final type of agreement is a Common Aviation Area (CAA). Of all the types this is the most liberal insofar as it removes foreign ownership restrictions among the members and all participants are considered to be domestic operators within the

¹⁴⁸ The original signatories to the agreement include the US, Chile, New Zealand, Brunei, and Singapore.

territory of the Members. Although third party bilaterals still remain in force, the signatories to a CAA have effectively removed the standard restrictions of the bilateral framework.

The greatest percentage of agreements between countries remains in the BII or MBII level of liberalisation. However, this is based on the number of agreements that were found and not on the total number of agreements in existence. For the purposes of the analysis, each type was assigned a number from one to seven, indicating the degree of liberalisation. Through this method it was possible to determine that states with the most liberal agreements, regardless of how many, would be more likely to support GATS liberalisation than those who had less liberal agreements. The break point appears between the plurilateral agreements and a CAA for the study cases.

All the cases supporting GATS liberalisation have entered into a CAA except Chile and all cases supporting bilaterals except the US have not signed agreements more liberal than MBII agreements.¹⁴⁹ For a listing of the agreements found and ranked see Appendix 10.

Net Revenue or Losses of a Member's Flag Carrier(s)

The data collected for regression analysis was to test if there might be a correlation between the position of a Member regarding GATS expansion and the profitability of the flag carrier(s). In order to provide some comparison between the EC and the US, the six largest international carriers were chosen.

The results of the linear regression exercise showed that there was no discernable pattern of increasing or decreasing importance for the three sample years. However, two of the three years (1997 and 2000) produced statistically significant results. Using 2000 as a demarcation point, the bulk of the flag carriers (except New Zealand) remained in a positive revenue position. However after 2000 most carriers saw a marked decline and post 11 September 2001 saw, as can be expected, dramatic losses. The differences appear to reside in the post 2000 period, whereby those in favour of GATS expansion had carriers that either remained profitable throughout, or had stemmed the losses and were moving toward increasing revenues. In each of the cases where Members preferred retaining the bilateral framework, the carriers exhibited the largest sustained losses.

¹⁴⁹ After the data for study was collected Canada and the US have signed an Open Skies agreement. Nevertheless it still places Canada as a less liberal country according to the study's ranking as it has not signed a plurilateral or CAA agreement.

Airport Management Services

The results of the data analysis for airport services gave no significant results. The only pattern that appeared showed that over time the correlation diminished. These results could have been due to the imbalance of the data that arose from the fact that over the period in question, the EC based corporations were dominant at the outset, with very few other non-EC corporations participating in this area. This imbalance increased over time and by 2004 the top five international operators were all from EC Member States. Despite the lack of interesting results from the linear regression exercise, during the sessions this was one of the sectors for which delegates that were pro-expansion of the GATS advocated coverage.

Ground-handling

Although ground-handling is one of the sub-sector industries almost included by the Annex during the Uruguay Round and was discussed frequently throughout the Review, the linear regression exercises produced no significant results. Indeed, in each of the years it was consistently the most insignificant of all the independent variables. Nevertheless, like airport services, the global players of this industry are primarily EC based and interested in expanding further in the international market.

Airport Cargo Volumes

The regression analysis for the volume of cargo handled at Members' airports returned positive values insofar as each year indicated some level of significance. Although the results do not reveal a distinctive pattern or trend in either a positive or negative direction, each of the three years showed this sub-sector's relevance to the study. Cargo traffic, although not often at the forefront of airline liberalisation discussions, is the facilitator for modern global trade. It permits just-in-time manufacturing operations and opens up global trade for perishables and overnight package delivery services.

Looking at national cargo volumes allows us to understand the importance of ensuring the efficient movement of goods across borders. In this study the relevance relates to how much national control Members believe is required. GATS coverage of this sector would directly impact national airlines. In each of the cases the Members wishing to retain the bilateral framework have airlines that have not enjoyed sustained profitability over the period in question.

Initial Observations

It is difficult to ascertain at the outset how closely the discussions throughout the Review relate to the data analysis. However, taking both sets of information into account linkages can be observed between the results of the independent variables and the Members' position in the Review (dependent variable) as verified through oral and written submissions. It is fairly clear that while individual market sectors were important factors for the Members, they produced relatively unimportant results in the linear regression exercise. At the other end of the scale, the ASAs were not directly discussed in the Review, yet they consistently produced significant results in the statistical analysis. Nevertheless, the key to liberalisation remains embedded within the ASAs and therefore directly affect the key market sectors. Looking at the results leads us to suggest that the market inputs do have an impact on a Member's position. In order to strengthen this initial observation it is necessary to go a step further and examine specific cases to see if the linkages strengthen or weaken. It is also important to look at the cases in order to determine which findings were expected, and which were unexpected.

Chapter 6

States in Favour of Expanding GATS Coverage over Air Transport

The cases that are examined in this study were selected on the basis of active participation (oral and written) in the first Review and, as much as possible, for geographical representation. Members that are in favour of expanding GATS coverage over sub-sectors of the air transport industry include: the European Communities (EC), Australia, New Zealand, and Chile. While the cases represent Members from different geographical regions it was not possible to include any African Members due to the lack of oral or written submissions (see Appendix 3 for a complete list of written submissions and notation of oral participation) and available data that was either coherent or reliable.¹⁵⁰ Attention was also given to the level of economic development where possible.

While the EC is not a state in the traditional understanding of a nation state, it has full negotiating authority within the WTO on behalf of its Member States and represents one of the world's largest single markets. Australia and New Zealand are developed states and both are geographically distant from either the US market or the European market. Chile, while not officially considered to be one of the developed states, has vastly improved its economic standing over the past fifteen years¹⁵¹ through liberal economic reform. These Member States roughly match geographic locations of States who took an opposing stance (see next chapter).

The analysis for each of the cases follows approximately the same criteria. First the interventions (oral and written) will be noted, followed by dependent and independent variables that were used in the linear regression exercise and the observations about a Member's incentives and possible BATNA. What is being looked at are the factors thought to influence a Members' negotiating positions and

¹⁵⁰ During the research phase of the Secretariat Background Papers, every effort was made to find reliable data in order to be able to include this region of the air transport industry. In most of the sub-sectors and in the core airline (flag carrier) sector there was very little information. The only sub-sector where any reliable information was available was ground-handling, which was included in S/C/W/163Add1.

¹⁵¹ "Solid fiscal management and a deepening of reforms during the 1990s cemented a favourable investment climate and improved the resilience of the economy. Trade liberalization triggered significant export diversification into forestry, fishing, wines, fruits, and other agro-based products. As a result, Chile decreased its dependence on copper and grew at an unprecedented 6.8 percent per year until 1999, when it was affected by the East Asian crisis. Since then, the country has avoided recession and restored growth, albeit at lower levels, with real GDP per capita growing at an average of 1.25 percent annually between 1998 and 2003." World Bank 2005, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/CHILEEXTN>.

include *inter alia*: geo-strategic location, level of GDP¹⁵² in standard 2000 US dollars, liberalising patterns within the bilateral framework, and some of the sub-sector industries¹⁵³ including flag carriers' revenue and losses, ground-handling, airport management services, and airport cargo handling. All were considered to have relevance and/or an influence on a Member's position at the outset of the study. For the cases, unlike the linear regression exercise, the full data set is presented in line charts and data tables in order to examine the actual changes over time in a realistic context.

According to negotiating theory, one needs to examine the ever-changing market conditions (domestic and international) to determine where a State's BATNA is located and how the different factors are exhibited in a negotiating forum. BATNA is also considered to be an important factor for determining the incentives influencing the formulation of a government's policy position. Although each of the cases holds the same position regarding GATS expansion, the underlying incentives and perceived BATNA are different. For the EC it is *inter alia* about integration (political and economic) and negotiating authority over air transport. Despite prolonged efforts by the Commission to acquire this authority the Member States have refused.¹⁵⁴ Any inclusion of sub-sectors would give the Commission the authority to be the single voice on behalf of the Member States in negotiations.

Chile, New Zealand and Australia have similar incentives that are based on access to markets and the perceived disadvantage of distance to their trading partners. New Zealand and Australia are economically developed and members of the OECD. Although Chile's has enjoyed strong economic growth since adopting an open market economy it remains classified as a developing country. A common incentive for each of these three States would be in terms of voice; each would gain a stronger voice within the multilateral arena than they have in the bilateral setting. All three have advocated liberalising the air transport industry beyond Open Skies,

¹⁵² Noted in Chapter 5, this variable was included in the statistical analysis to see whether or not GDP plays a significant role in a Member's position regarding multilateral or bilateral liberalisation. Intuitively, this measure would be difficult to argue since there were Members from developing and developed countries arguing for both positions and there are no least developing countries in the study due to lack of participation and data beyond GDP levels. The intuitive conclusions were backed up by the statistical analysis. Regardless how GDP was factored into the analysis the findings were consistent; there is no link between the level of GDP and the position taken throughout the Review. See Tables 1, 2, and 3 above in Chapter 5.

¹⁵³ The choice of sub-sectors was based on the consistency and availability of data for at least six years. In many instances there was available data for nine years. In other instances such as some of the sub-sectors it was not possible to acquire enough or accurate enough data to include in the study, as noted above in Chapter 5.

¹⁵⁴ Numerous speeches were given by Neil Kinnock during the 1990s advocating the need to move beyond a fragmented European transport structure that was based on individual states and not the EU as a whole.

are liberal and open trading nations, and strong advocates of the multilateral trading system.

The EC

Position on Expanding GATS Coverage in the Air Transport Review

The EC was one of the more active participants throughout the Review and it was clear from the outset that it was pushing to expand the coverage of the GATS to ancillary services (sub-sectors). In total it submitted three papers (pre-Review included) and made regular interventions to other presentations and papers. The EC delegates and representatives from each of their Member States met for a few hours prior to each Review session in order to ensure that all were represented with one voice during the meetings. It is also known that industry experts (operators and advisors) were consulted throughout the Review.¹⁵⁵

It noted that “[t]he review is an opportunity to reach a clearer understanding of the services, that Members agree are not directly related to the exercise of traffic rights pursuant to paragraph 2 and are thus presumably covered” (S/C/W/168, p 3). It also raised the notion that any regulatory changes need to ensure increased operating efficiency for industry players and that Members should take the “...opportunity to address the tension between an increasingly globalised market and the limitations of the current regulatory framework” (S/C/W/168, p 4).

A two-track approach was taken: one addressed the operation of the Annex and the other highlighted significant changes in market structure over the preceding number of years. It argued that the former needed to be examined due to the lack of a precise definition in the text over what constituted “directly related to traffic rights” in order to adequately address changes in the latter. Its written and oral submissions listed the sub-sectors that can and have been divested from core airline operations as potential areas that could be covered by the GATS.

The reasoning suggests that once independent companies are created and oftentimes owned by non-aviation corporations, they no longer are bound by foreign ownership restrictions and they can operate without having to acquire or hold traffic rights. As independent sectors they can be directly linked to the United Nations Central Product Classification (CPC) in areas other than transport (e.g.

¹⁵⁵ It is known that the proposed Common Aviation Area between the EC and the US was primarily designed and written by the air transport experts at the Association of European Airlines, with input from representatives of Swissair.

catering would fall under Division 64¹⁵⁶). A virtual shopping list of ancillary services in air transport are listed in the first written submission (S/C/W/168) and reiterated throughout the Review.

In each of the papers submitted, including one which was first submitted in the CTS Special Session (S/CSS/W/41), the EC presented how economic efficiencies could be gained through multilateral liberalisation while at the same time ensuring that safety and regulatory standards are maintained. It argued that the European experience of liberalisation supported the findings of the economic and regulatory overview provided in the Secretariat background papers, which gave numerous examples of sub-sectors that operated independently of airline ownership and control, and therefore did not require traffic rights to conduct business operations. The list included: ground-handling, airport management services, leasing or rental services without an operator (dry leasing) and services auxiliary to all modes of transport when delivered in an air transport context (e.g. cargo handling and storage and warehousing).

Economic Development

Each of the 15 Member States of the EC is classified by the World Bank as a high-income OECD member country. In combination the 15 form the largest single market in the world.¹⁵⁷ The EC is an active participant in the WTO and is considered to be a liberal trading bloc in many areas of trade in goods and services (excluding agriculture). The political and economic integration of the European Member States has been continually working towards taking down all the historical barriers to trade within the Union, including air transport. Shown in the two charts below (1-2), all the Member States have enjoyed a continual rise in GDP over the nine-year period being studied. For the full set of GDP data see Appendix 8. In terms of the statistical analysis there is some degree of significance. The EC's interventions noted the economic growth of all Member States during and after the creation of a single internal air transport market and made direct linkages to the economic importance of this industry.

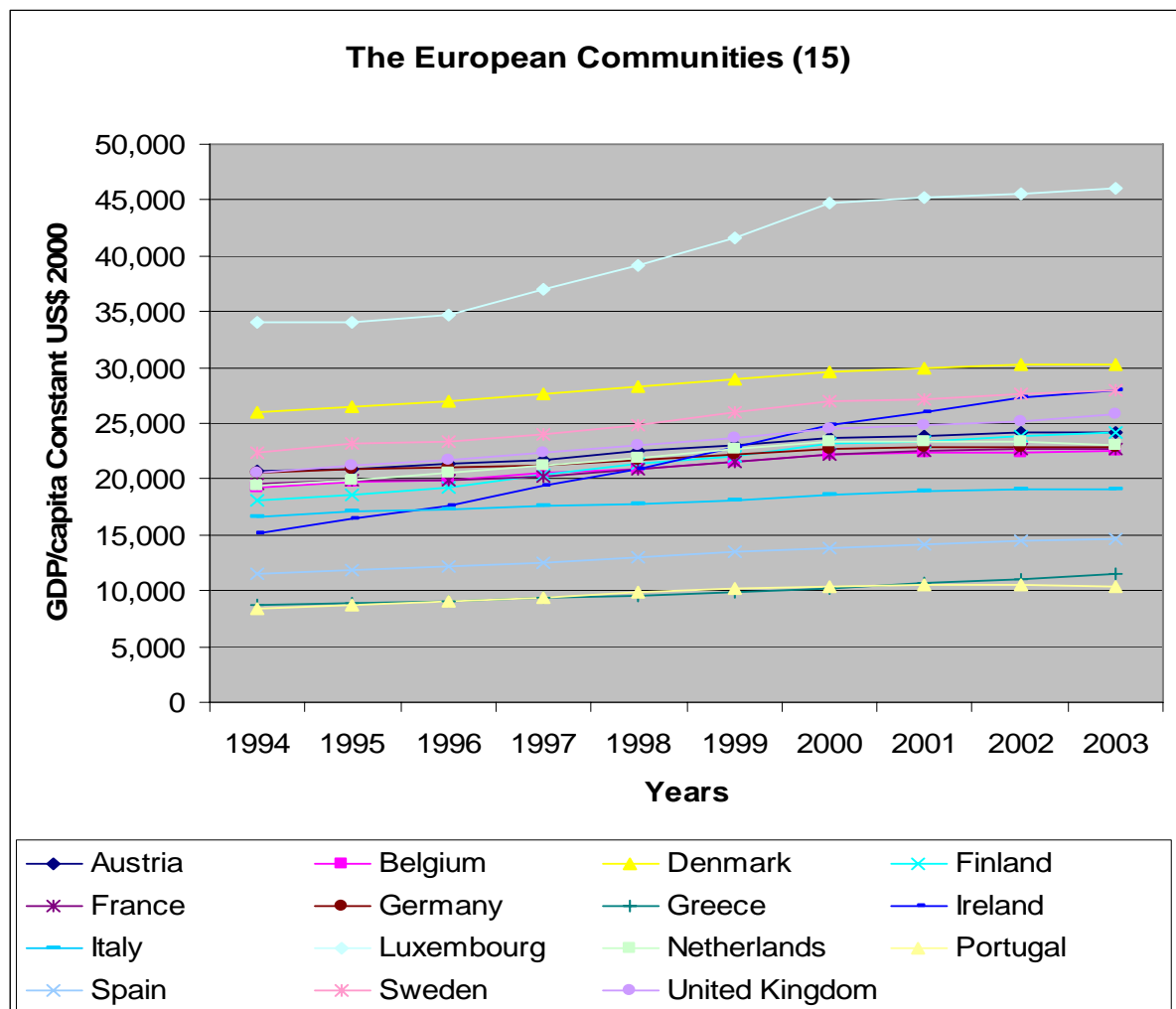
In the EC's first written submission they noted that "... air transport services are an essential facilitator of trade and actually a precondition for the expansion of other economic activities, and thus form, with other service sectors such as construction

¹⁵⁶ "Sub-divisions 6421 and 6431 of the UN CPC refer to the service of meals and beverages "in transport" facilities", instancing trains and ships. They also cover airline catering. They fall under Division 64, "Hotel and Restaurant Services"." S/C/W/163, p 51 and *United Nations Central Product Classification*, 1991.

¹⁵⁷ "World Development Indicators", World Bank 2005.

or telecommunication, the infrastructural backbone necessary for the development of any economy" (S/C/W/168, p 3).

Chart 1



Geostrategic Location

When compared to the US, the EC is located in a geographically advantageous position in terms of origin/destination and transit. Many of the major European cities (e.g. Amsterdam, London, or Paris) are located on the northern great circle routes, are closer in absolute distance to the large Asian markets, are part of the transatlantic market, and are proximate to the Middle East, Africa and the Indian sub-continent. The only potential markets further from Europe than the US are in South America, however, Southern European countries (e.g. Spain and Portugal) have direct links to these markets.

Some people may take issue with categorising the EC as one market, particularly since bilateral negotiations in air transport are still conducted at the Member State level with third countries, despite increasing EC participation. From this

perspective, evaluating distance to the EC market as one rather than 15 or 25 may be contested. However, since the EC is the representative of all Member States in the WTO, depicting it as one is appropriate in this instance.

For the data analysis the main international hubs were used as departure and arrival points in the same manner as for the US data; in each case the airports were a reflection of the top entry points into the EC. In each of the three years used for the data analysis, the distance to the EC market returned very insignificant numbers showing that the distance to this major market had little if any bearing upon a Member's position in the Review. However, despite the unexpectedly poor numbers, a trend appeared indicating that over time statistical significance is increasing. This indicates that something from the other independent variables was also changing and therefore impacting the results in this category.

For example, a noticeable difference appears with the Air Services Agreements (ASAs) variable. Both increased in significance over the same period. If the significance is linked to increased liberalisation of agreements, then it is relevant to note that 1997 (the first input year) was the same time that the Third Liberalisation Package came fully into effect. It can therefore be assumed that the more liberalised the agreements, the greater the statistical significance becomes for the EC market. This means that other Members' position in future Reviews could be influenced by their distance to the EC market and position that the EC adopts.

ASAs and Foreign Ownership Limitations

The EU began liberalising the air transport sector in 1988 through the implementation of what are known as the Three Packages, which laid out the institutional steps to create a single aviation market (see Chapter 3 for details). The process began in 1988 and was completed in 1997. The first phase took two years to implement and the second and final stages each took three years. In launching this process the Member States of the EU were the first countries to create a common aviation area, the most liberal of the different types of international agreements.

Although geographically regional, the structure has overcome one of the most contentious and restrictive elements of the bilateral agreements. Foreign ownership limitations and designation criteria among the Member States were dropped, allowing a national of any Member to start, own and operate an airline in any other Member State. The common area also permitted stand-alone cabotage operations, the so-called ninth freedom (ICAO Doc 9626, p 4.1-10). The EC noted in their first written submission that "... all restrictions on market access and

investment have now been removed allowing airlines from any of the Member States to fly any route according to market principles” (S/C/W/168, p 1).

Foreign Ownership Restrictions

Although the liberalisation of the European market removed ownership barriers internally, each Member State continued to negotiate third-country bilaterals on their own, which included ownership and designation articles. That is until a ruling by the European Court of Justice (ECJ) in 2002 (see Chapter 3 for more details) that the foreign ownership and designation criteria were in conflict with European law.¹⁵⁸ Although the Courts did not give full negotiating authority to the Commission, the ruling did instruct the Member States to bring all of their third-country ASAs into conformity with EU law. In the re-negotiated bilaterals designation of airlines must be on the basis of “Community Carrier” rather than the traditional “flag carrier”. The only exceptions were with the European Economic Area (EEA) countries and Switzerland due to agreements that already existed and thus already compatible with the court ruling.

Through membership in the EEA, Norway, Iceland, Liechtenstein, and two comprehensive bilateral agreements with Switzerland, foreign ownership restrictions no longer exist. For all other bilateral agreements the foreign ownership levels for all Member States is set at 49%. These countries have also had to make arrangements with third-party countries to accommodate the agreement with the EU. Not surprisingly, Switzerland and Norway took the same position as the EC or backed EC interventions throughout the Review.

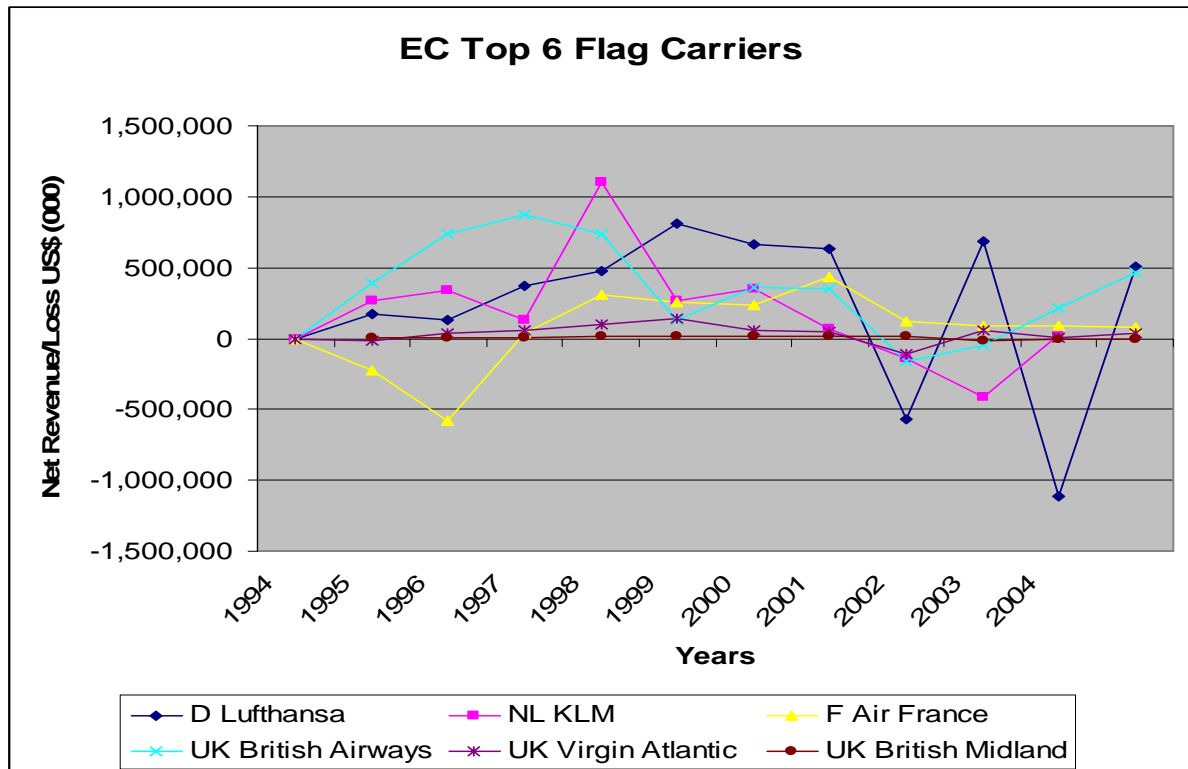
Flag Carriers’ Revenue/Loss¹⁵⁹

For the nine-year period of the study, the revenue/loss results among the six largest European carriers were quite varied (Chart 2 below). In the period prior to the Review (1994-1999) the carriers posted mixed results; one or two carriers achieved large net profits while others lost or maintained a relatively stable position. For all carriers the period beginning in 1997 and lasting approximately two years, net revenue was positive. Two dramatic events that were outside the normal cyclical nature of the industry appear to have had strong impacts on the revenues of all carriers. The first was a direct result of the terrorist attacks in the US on 11 September 2001 and the second was the outbreak of SARS in 2003.

¹⁵⁸ Op Cit.

¹⁵⁹ See Appendix 11 for the full data table of revenue and loss for all flag carriers in the study.

Chart 2



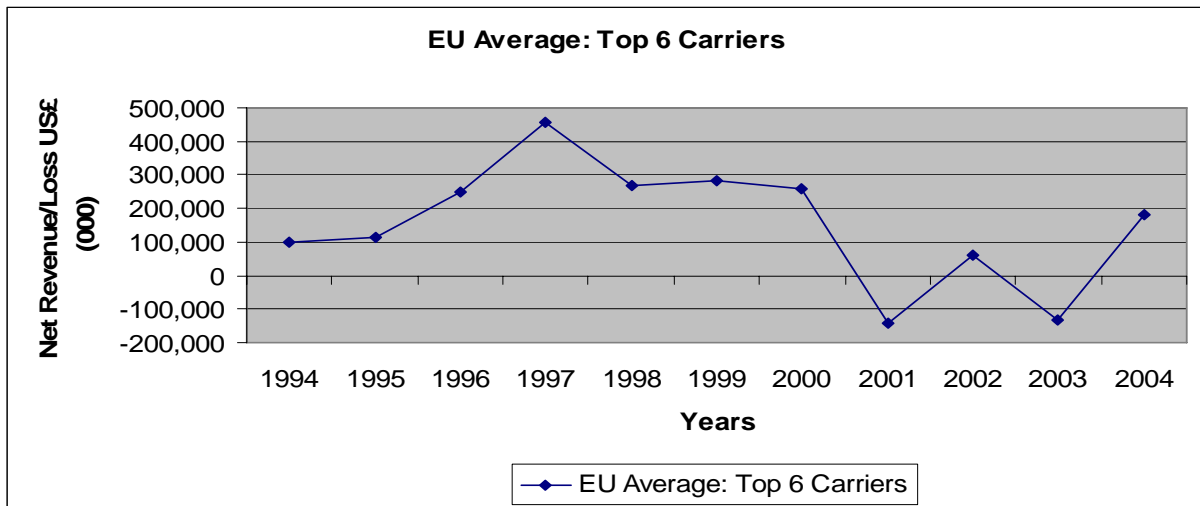
Note: KLM and Air France merged in 2004.

These are reflected clearly when looking at the averages of the revenue/loss data in Chart 3.

Once an average is taken, it is easier to see that overall the net revenue showed a marked increase leading up to and including 1997 whereupon the returns began to diminish. There was a marked downturn in 1998 with radical losses occurring prior to and including 2001. Despite a rather sharp turn-around in 2002, 2003 saw profits fall to the same level as 2001. Thereafter the industry has enjoyed a relatively stable return to profit.

Given the historical linkages between the European flag carriers and the State, it would be normal to assume that the State would advocate further liberalisation when the flag carriers were enjoying increasing net revenues and the status quo when they were experiencing losses. However, this was not the case given that there was a marked downward trend in the period prior to and during the Review. Possibly this could be accounted for because the EC is not a State in the traditional sense and it has never had independent authority over the carriers in the same way as the individual Member States.

Chart 3



Moreover, in the period following the application of the Third Package that created the common aviation area, the low cost (non-flag carriers) sector appeared, increased rapidly, and took market share away from the traditional flag carriers. Thus, while one part of the airline sector was experiencing a downward trend in revenues, others were experiencing exactly the opposite. The data for the low cost sector has not been included since it remains currently an internal market (domestic) and therefore not subject to bilateral negotiations and access to traffic rights.

Ground-handling

Traditionally, ground-handling was a department within an airline – and still is for many airlines. However, due to many airlines downsizing operations and outsourcing many non-core activities, the ground-handling sub-sector of air transport began to undergo dramatic changes. While independent handlers have been around for many years, domestic and international mergers began consolidating the industry in the early 1990s. In 1993, the establishment of the European single market began the first and very limited opening of the ground-handling market. Until then ground-handling remained dominated by monopoly suppliers and was the preserve of the nationally controlled airport authorities and/or the national flag carriers. Most often, the national flag carrier established reciprocal handling arrangements with other flag carriers, sometimes under the auspices of State negotiated bilateral agreements. Where bilaterals provided for self-handling or third party handling, the foreign-designated airlines did not need to be handled by the host-country flag carrier (S/C/W/163Add1, p 11).

From the empirical data (see Table 1) it is possible to see the emergence of independent handlers that not only operated at the national level but also, in the cases of Switzerland (a non-EU country) and the UK, at the global level. An independent subsidiary of KLM had also begun to expand globally in the cargo sector (Cargo Service Centre Holding B.B.). Once started the consolidation of the industry continued. The years 1993, 2000 and 2004 show that not only has the industry grown and consolidated, but also for the first time non-air transport corporations began purchasing independent handling corporations. Tables 1-3 highlight the size and reach of the early independent ground-handling corporations.

Table 1: Independent Ground-handlers 1993

Ground-Handling Corporations	Airports	Employees	Headquarters	Turnover (US\$ Million)
DynAir	519 (US)	5600	US	519
Jet Aviation	14 (12 worldwide)	331	Switzerland	233
Belgavia (Aviapartner Grp)	4 (Europe)	1350	Belgium	119
Ogden	85 (worldwide)	14000	US	28.5
Servisair	55 (worldwide)		UK	
GroundAir Services	8 (Germany)	350	Germany	4.9

Source: "Handling Focus", Airport Support, September 1993 (also used in S/C/W/163Add1, p 15).

After the implementation of the Three Packages, the ground-handling sector began consolidating throughout Europe, and around the world. This appears to be the result of the internal liberalisation in the EC and downsizing at US airlines, which saw infrastructure industries like ground-handling sold off from the airlines. In 1993 there were six large ground-handling corporations that generated a total of approximately 1.4 billion US dollars. By 2000 the number of large independent companies had grown to eight with four located in the EU, three in the US and one in Switzerland. Three were global (Switzerland, Germany, US), two regional (North America and Asia) and three operated throughout Europe. At this point in time the companies in Europe had revenues of 1.3 billion US dollars whereas the US corporations were earning approximately 700 million US dollars. Comparing Table 1 (above) with Table 2 (below) it is clear that this sub-sector industry began to undergo global expansion and international consolidation. By 2000, airlines were no longer the sole operators of ground-handling.

Table 2: Independent Global Ground-handlers 2000¹⁶⁰

Ground-Handling Corporations	Airports	Employees	Countries	Client Airlines	Head-quarters	Ownership	Turnover 1998 (millions)
Swissport (purchased DynAir in 1999)*	119	+13,000	23 (5 continents)	+320	Switzerland	SRairGroup	625
Frankfurt Airport		12,573	8		Germany	Frankfurt Airport	486
Ogden Aviation** (Provisional purchase agreement by Menzies PLC, August 2000)	145	5,500 (2000 more in joint ventures)	20 (5 continents)	500	USA (UK)	Ogden Corp	310
Servisair	101	10,000	11	375	UK/France	Penauille	305
GlobeGround (purchased Hudson General in 1999)	85	17,000	23 4 continents		Germany	Lufthansa Group	260
AviaPartner	27 (1996:8)	+4000 (1996: 3,425)	6 (Europe only)		Belgium	Verougstaete family (75%)	243
Worldwide Flight Services (WFS) (acquired by Castle Harlan III March 1999 and purchased Miami Aircraft Support and Aerolink International in 1999)	98	10,000	14	+300	USA	Castle Harlan Partners III	220
ASIG	41	3,900	5		USA	Ranger Aerospace	170

* Ogden is also a partner of ADR Handling. This is a joint venture between Ogden and Aeroporti di Roma.

** Inter alia, Swissport affiliates or partner companies as of May 2000 include: Aerogate Munich, Air Littoral Assistance, DAHACO, Dutchport, Havas, Miascor, NFS, Q.A.S and Serlipsa.

Note: Swissport turnover includes DynAir and GlobeGround figures include Hudson General, both of which were acquired in 1999.

Note: Cargo Service Center Holding B.B, is not listed as a supplier since they only provide ground services for cargo.¹⁶¹

¹⁶⁰ Only Swissport and GlobeGround are airline subsidiaries.

¹⁶¹ *Airline Business*, January 2000; <http://www.asig.com>; <http://www.servisair.co.uk>; <http://www.swissport.com>; <http://www.frankfurt-airport.com>; <http://www.globeground.com>; "A New Age of Global Ground Handling? Going it alone in vastly different markets" Ogden Aviation, Bob Kievits, Managing Director, 30 November 1999; *Regulatory Affairs Review* Volume 28 No. 3 IATA 1999; and "The Swissport Profile", Swissport, May 2000.

The pattern of growth and corporate consolidation continued and by 2003 the landscape had again changed quite dramatically, showing the European carriers as market leaders in what had become a global industry on its own right. Based on the top eight global ground-handling corporations, the economic value of the whole sector (including fuelling, but not catering) amounted to approximately US\$ 2.6 billion, and employed more than 76,000 persons. While these figures do not include all ground-handling service providers, they do indicate that this sector represents a significant economic element of air transport in broad terms. Two trends appeared to be emerging: 1) a competitive bidding process for the various operational licences awarded by airport authorities; and 2) independent global operators are emerging at primary hub airports in all geographic regions of the world.

The global market has rapidly consolidated. What is of particular interest in this process is the emergence of global service providers that are non-US-based multinational corporations. This is in strong contrast to the pre-1996 period when US-based independent handlers (DynAir, Hudson General, and Ogden) were among

Table 3: Top 7 Ground-handling Corporations¹⁶²

Country	Company	Principal Business	Revenues (Euro Millions)	Reach
Spain	Swissport (Ferrovial)	Construction	836	Global
France	Servisair Globeground (Penaule Polysewices)	Ground-Handling	792	Global
Germany	Fraport	Airport Service Provider	608	Europe
UK	BBAviation Services	Aviation services and material technology	600	Europe/ North America
France	Vinci	Construction and Maintenance	500	Global
UK	Menzies	Support services, distribution and aviation	389	Global
Belgium	Aviapartner	Ground-Handling	267	Europe

¹⁶² Ferovial. "Acquisitions of Swissport and Webber", 21 September 2005, p 25, <http://www.ferovial.com>.

the largest providers due in part to the large US market and restrictive policies that prohibited self-handling or a competitive third-party market. In 2004 the number of leading corporations in the industry was reduced from eight to seven and the number of non-aviation corporations owning ground-handling companies increased.

Table 3 gives a brief overview of the sector consolidation and the increasing participation of non-industry owners.

What the above three tables show is the growth and vitality of the Europeans in this sub-sector industry and thus their interest since the Uruguay Round to have ground-handling covered by the GATS despite the lack of statistical significance throughout the years in the linear regression exercise.

Airport Cargo

The airport cargo sub-sector represents a cross-section of operators that include ground handlers, warehouse operators, airport service providers, airlines, customs, and freight forwarders. In the EU, airports operate on a market basis and thus there is no set division regarding the type of company (air transport or non-air transport) that handles any specific area for the movement and storage of goods. Looking at the largest international airports and the total movement of cargo provides a good indication of the importance it has to economic growth and development (national and global). Below, Charts 4 and 5 provide an overview of the total amount of goods handled and the breakdown at the six largest airports. In each of the six (except the UK) growth has been steady over the study period, reflecting the degree of competition among the European airports.

When consolidating each total, it was found that the sheer volume passing through the UK had the ability to alter the overall numbers of the six airports. Although it would have been tempting to remove the UK as an anomaly, because of its size and the importance of the UK market to all aspects of international air transport, it was purposely included.

Chart 4

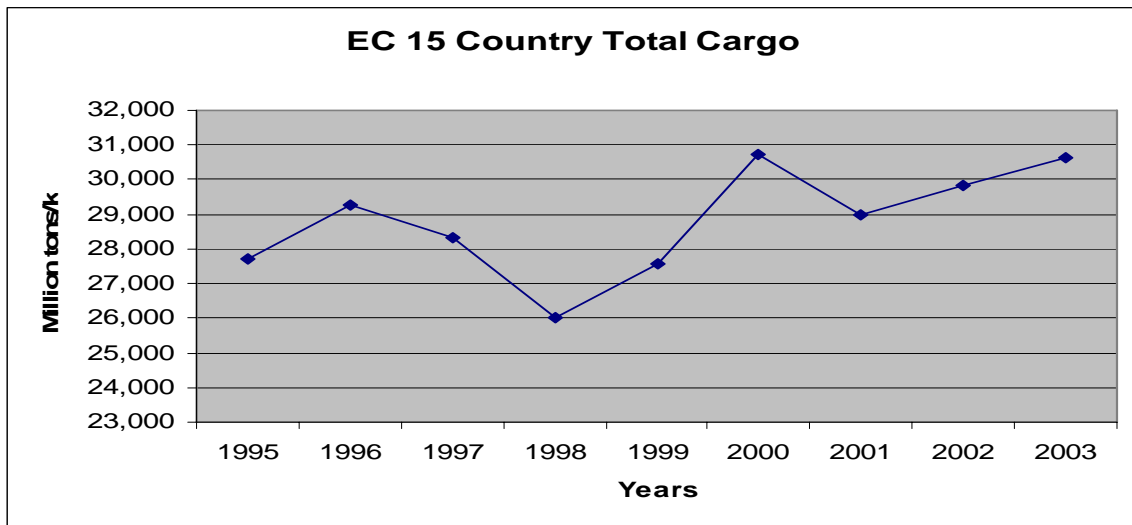
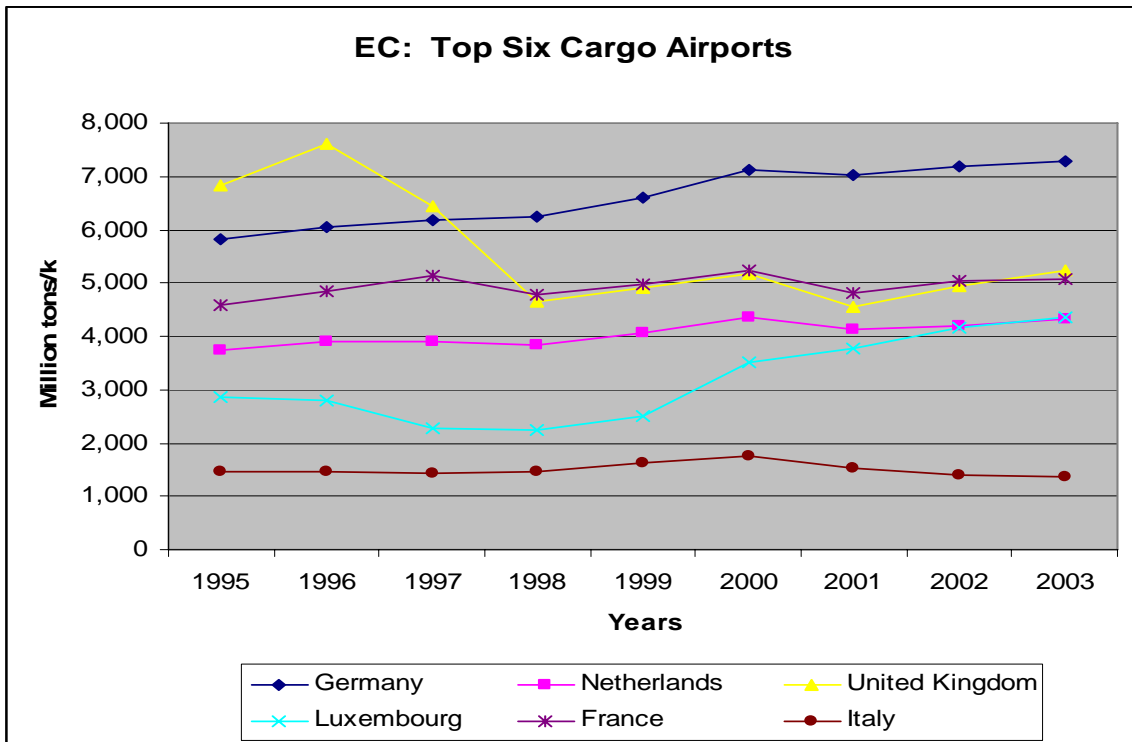


Chart 5



This is one of the sub-sectors the EC advocated to have covered by the GATS because it's considered it to be an aspect of ground-handling and an important element of multi-modal transportation. Cargo handling is also one of the sub-sectors that EC corporations are dominant in the world market. Thus from a market perspective having one set of transparent rules under the WTO rather than a plethora of bilaterals, each with their own conditions and restrictions, it is not surprising that GATS coverage would be welcomed.

Airport Management Services,

In this sub-sector the European corporations have become major international players with steady expansion of operations both in the EU and throughout the world. The corporations operating in this area have expanded through buying airports (or percentages thereof) and/or acquiring management and development contracts. The number of corporations that have either entered this market since 1994 or have expanded operations globally has grown in both size and number. There has been dramatic global expansion and an increasing trend toward large corporations as a result of the construction sector entering this market. Chart 6 is presented to show the revenue growth of the top five airport services management corporations. Notably all are EC based.

Chart 6



Although governments own most international airports around the globe, an increasing number are now privatized and permit foreign ownership and foreign operators to run the airports. In this area the EC based corporations have aggressively expanded their international presence. It is notable that these are also the largest airport services corporations in the global marketplace.

Incentives and BATNA

The EU is not a state in the traditional sense and thus the incentives that drive it to support expansion of the GATS over air transport are more nuanced (some might

say complicated) than for other Members. As noted above, while the internal aviation area of the EU has been liberalised, the external authority (third-country relations) has remained until 2002 under the sole jurisdiction of Member States. Thus, in keeping with the political and economic integration objectives of the Commission it is not surprising that absent any other factors, the EC would seek to obtain negotiating authority over any part of the air transport sector. Once a sub-sector is covered by GATS the EC would automatically gain negotiating authority. Although the statistical analysis indicated that the market based independent variables were rather insignificant, the actual market trends match the importance of these sub-sectors to the EC that were observed in the descriptive section of the analysis.

From the economic (GDP) stand point the statistical analysis does not indicate much significance nor does it show either a negative or positive growth pattern. The statements and interventions support this finding. Beyond noting that an efficient air transport system is critical to the economic well being of a state, no direct linkages were made to GDP growth levels. Looking at the raw figures, there are no discernable comparisons that can be made between GDP and other independent variables.

In contrast to the lack of indicators and statistical significance of the GDP variable, ASAs were consistently significant in the data analysis, showing a tendency to increase over the period used for the linear regression exercise. This finding strongly supports comments made by the EC that creating a single market has benefited the air transport sector in terms of economic size and employment figures. In addition, there is industry support for a common aviation type agreement with the US and others.

In terms of geostrategic location, the data analysis shows that there appears to be an inverse link to the degree of liberalisation in the EC. Although the results did not show a strong statistical significance, an apparent trend was revealed indicating that the EC is becoming more significant for other Members. This suggests that in the future others who enter into common aviation type agreements with the EC will be more likely to support some degree of GATS expansion in future Reviews.

From the market perspective, the revenue/loss variable showed little significance statistically, nor was it referred to by the EC during the Review. Although the findings are counter-intuitive, given the history for strong government participation and support of their flag carriers; clearly this tendency has diminished with the liberalisation of the EC market and the creation of a common aviation area.

The negotiating theory's proposition that markets have a strong impact on a negotiating position was not born out by the data analysis. In each of the market sub-sectors that were analysed, none produced significant results nor were there obvious tendencies to one direction or the other. However, during the Review the EC referred specifically to each of the sub-sector examined in this study. This observation supports the theory's position that Members will advocate multilateral coverage for industries that are significant operators in the world market. This would be the case for ground-handling, airport services management and airport cargo handling.

Thus, in the case of the EC it has an interest in expanding GATS coverage on the basis of domestic objectives achieved through the multilateral process rather than bilateral and that a number of corporations in this sector are world market leaders with an interest in a set of rules that are transparent and reliable with increased market access.

Australia

Position on Expanding GATS Coverage in the Air Transport Review

Australia was one of the strongest advocates of GATS expansion in the Review. It not only supported expanding coverage over sub-sectors of air transport through written submission and oral presentations, it gave forthright interventions when others hailed the attributes of the bilateral system. It submitted numerous papers to this end on their own and in conjunction with other like minded Members such as New Zealand, Chile, and Singapore.

Prior to the Review, Australia advocated greater commitments for the covered sectors, noting that the Annex on Air Transport services "...did not supersede any bilateral obligation relating to these elements which was in place at the time the GATS entered into force" (Job No. 6512, p 2). It noted that economic regulation was primarily bilateral and therefore this was Australia's principal method of pursuing liberalisation. While it strongly advocated pursuing liberalisation of the industry, it remained focused on the covered sectors. Two years later, its stance shifted from using the bilateral approach as the best vehicle for liberalisation to advocating the multilateral approach.

One of the first statements Australia made at the beginning of the Review was about the inevitability of continuing liberalisation of the air transport industry. It acknowledged that it was through bilaterally negotiated ASAs that liberalisation had taken place, but pointed out "...the bilateral system has practical limitations that have become ... apparent over the [previous] five years" (Session transcripts). It

also highlighted that bilateral liberalisation limitations have been recognised, extending "...beyond market access to limiting the quality of opportunity and the chances to operate in the international air services soundly and economically" (Session transcripts).

The first proposal it submitted listed cargo services (dedicated freight), non-scheduled services, and ownership and control as sub-sectors it wanted covered by an extension of the Annex. It also noted that any change, whether regional or multilateral, must contain the same basic elements of the bilateral system, which are: 1) universality, 2) well understood principles, and 3) the ability of governments to tailor changes to meet national interests (S/C/W/167, p 2). These points are of particular interest since Members that were against expanding GATS coverage used these same ones to argue for excluding this sector.

Although Australia listed specific areas it would consider for expansion, the thrust of its argument was that liberalisation must proceed on the basis of individual national interests and timing. It argued the only forum outside the bilateral system that could achieve this goal was the GATS. It went on to highlight that while covered sectors are subject to general obligations of the GATS, Members make specific commitments at their own timing. While the general obligations such as MFN presented complex issues that need to be worked out carefully, particularly areas involving allocation of scarce resources, Australia noted that a precedent already exists in the telecom sector (radio frequencies) that could be tailored to air transport.

To Australia the GATS provides a forum that is open, transparent, and most importantly one that allows progressive liberalisation to occur at the timing of each Member. It argued that locking in existing liberal elements would ensure Members could not withdraw from commitments. It believes that for developing nations, Article IV¹⁶³ would provide increasing participation taking into account their level of development and particular needs. For everyone, Article XIX¹⁶⁴ ensures that

¹⁶³ Article IV of the GATS pertains to "Increasing Participation of Developing Countries". "1. The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, relating to: (a) the strengthening of their domestic services capacity and its efficiency and competitiveness, inter alia through access to technology on a commercial basis; (b) the improvement of their access to distribution channels and information networks; and (c) the liberalization of market access in sectors and modes of supply of export interest to them." *The GATS: the General Agreement on Trade in Services and Related Instruments*, April 1994.

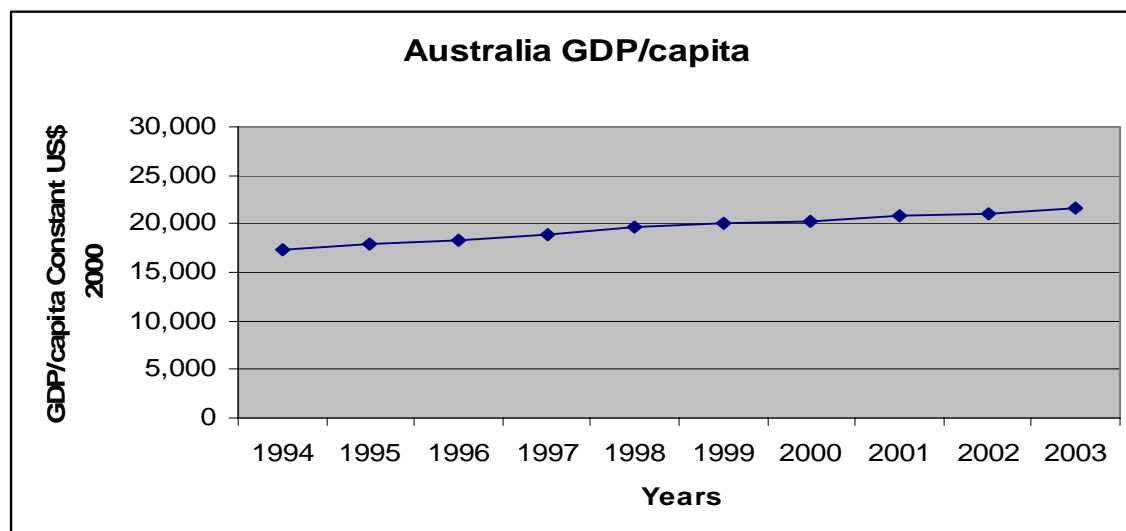
¹⁶⁴ Article XIX is found in Part IV of the GATS that addresses progressive liberalisation. Article XIX paragraph 2 states, "The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market

progressive liberalisation through negotiation would proceed into the future and not be solely dependent on unilateral policy objectives of the more powerful over the weaker. Moreover, any liberalisation commitments made in the schedules of specific commitments would accrue to others, unlike the bilateral system that restricts benefits to the participants only.

Economic Development

Australia is an OECD high-income country. As indicated in the Chart 7, it has enjoyed a steady increase in GDP throughout the period of this study. Although there appears to be very little correlation between GDP and the revenue/loss figures of the flag carrier (Chart 8), it clearly links economic stability and growth to the air transport sector.

Chart 7



Having a GDP below US\$25,000 (constant US\$ 2000), and a small population provides a limited base for capital investment. Relative to other economies such as the US or Japan, Australia is considered to be a smaller economy with less to negotiate and is at a disadvantage in bilateral negotiations.

Geostrategic Location: Distance to Major Markets (US and EU)

From a geostrategic perspective, Australia is located in a poor position. It is not located on a great circle route between large markets, it is not one of the main manufacturing centres for sought-after goods, and it is very distant from the two

access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV." *The GATS: the General Agreement on Trade in Services and Related Instruments*, April 1994.

major markets of this study (the US and the EC). Its only comparative advantage is its location relatively close to the Asian markets for goods and tourism. If economic regulatory restrictions make trade more costly, most markets beyond Asia increase transport costs significantly due to vast transport distances. In short, Australia would benefit from lower transport costs, which it sees as occurring through greater liberalisation of air transport.

Since the US market is closer to Australia than Europe, the importance of distance correlates to the statistical analysis insofar as access to this market would be desired before access to the EU market. Thus, a more liberal US policy would be beneficial for Australia. If however the statistical trend is correct, then the importance of the EU to Australia will increase over time. The change would be facilitated through further liberalisation of either the EU or Australia or if they were to conclude a common aviation area.

ASAs and Foreign Ownership Limitations

The position taken by Australia in the Review is consistent with the data analysis results that suggest a Member will likely support multilateral liberalisation over the bilaterals if it has concluded an agreement more liberal than an Open Skies agreement. Australia is one of the countries that adopted a policy to work actively toward creating a liberal air transport environment beyond the traditional bilateral agreement. Although most of its fifty-seven ASAs are standard Bermuda II agreements, it has been a strong proponent for the multilateral liberalisation of sub-sector industries in the WTO. This indicates that it had difficulty advancing its liberalisation agenda in the bilateral forum.

Australia has taken the first steps beyond the traditional bilateral and signed an agreement with New Zealand, creating a common aviation area. One could argue that because this is just between two countries it remains no more than a bilateral. However, a key element in a traditional bilateral agreement is the reciprocal foreign ownership restrictions, which limit carrier designation. In this agreement these limitations have been removed, therefore it is not classified as a traditional ASA. "An example of a restrictive ASA is that with the United States. It is quite open in terms of access for Australian and US airlines but, apart from New Zealand, no major third country has airline rights to fly the Australia-United States route".¹⁶⁵

¹⁶⁵ Research Brief No. 14, *Liberalisation of international passenger airline services*, Richard Webb, Economics, Commerce and Industrial Relations Section, on behalf of the Parliament of Australia, 24 March 2006.

New Zealand has this right based on the negotiated agreement between the US and Australia, which makes an allowance for the established common aviation area.

Foreign Ownership Restrictions

According to a government research brief, Australia has two sets of foreign ownership requirements, one for Qantas and one for other Australian international airlines.¹⁶⁶ For the latter carriers, the foreign ownership limitation is limited to forty-nine per cent. The ownership of Qantas by foreign interests is limited to a total of thirty-five per cent and twenty-five per cent for a single foreign owner. The condition of effective control by Australians must also be demonstrated. These restrictions do not apply *vis-à-vis* New Zealand since the signing of the Single Aviation Market (SAM) in 1996. Although foreign ownership and effective control restrictions remain, these now apply jointly to Australian and New Zealand nationals. The limitation for foreign interests is capped at fifty per cent.¹⁶⁷

Despite these existing restrictions, Australia explicitly stated their desire to move away from the standard ownership and effective control article found in bilateral agreements. In S/C/W/167 it states that it "...intends to focus [its] efforts on three main subjects...", which included "...the removal of substantive ownership and effective control restrictions on international airlines" (p 3). It also provided an explanation claiming these restrictions limit benefits and provide an advantage to the bilateral partner with greater economic resources.

In domestic operations Australia permits what is often referred to as end-to-end cabotage or the so-called ninth freedom. This is when foreign interests set-up, own and operate a domestic airline in a foreign state. For example, Virgin Blue was wholly owned by Richard Branson who is a UK citizen. Under the terms and conditions permitted by Australia, the airline was considered to be Australian since it was legally registered in the country and its principal place of business was Australia.

Flag Carrier Revenue/Loss

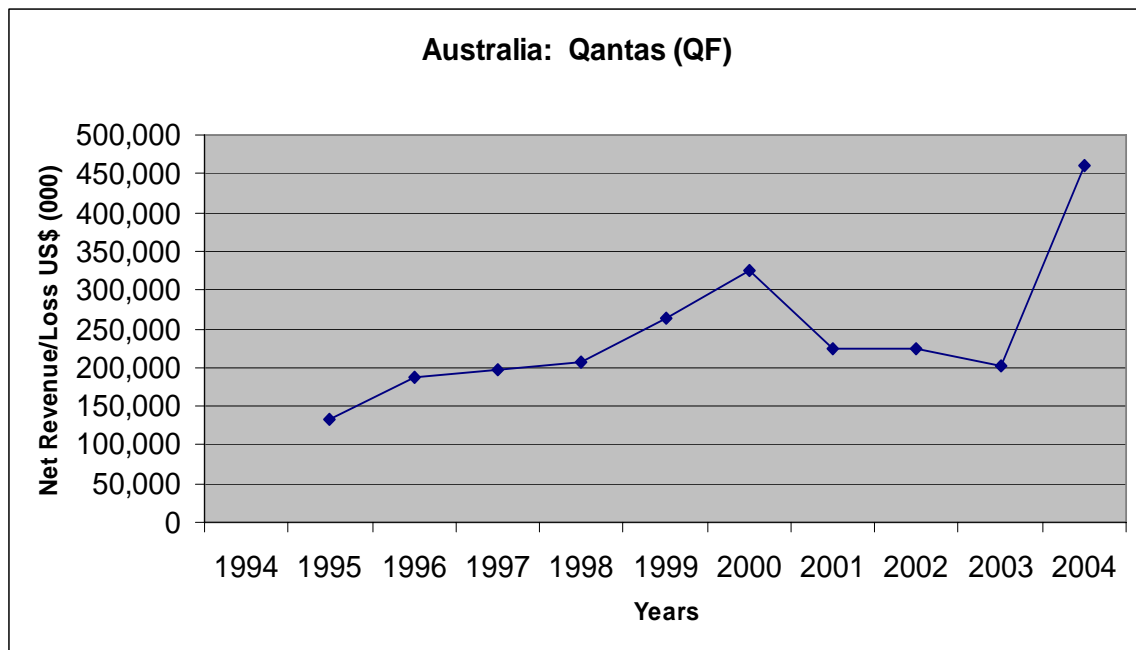
Despite the stated disadvantages of the bilateral system and the lack of access to large amounts of capital for the air transport sector, the Australian flag carrier Qantas posted net revenues prior to and during the Review. Chart 8 below shows that Qantas' net revenues increased rapidly during the period covered by the secretariat background papers (1994-2000), with the greatest increases realised

¹⁶⁶ Ibid.

¹⁶⁷ *Australia-New Zealand Single Aviation Market Arrangements*, 1 November 1996, Article 8, p 3.

between 1998 and 2000. Subsequently revenues fell and like most other international airlines Qantas was impacted by the events of 11 September 2001 and was unable to recover until the SARS crisis ended after 2003. Since that time however, Qantas has continued to make financial gains. During the nine year period of the study Qantas did not incur any losses.

Chart 8



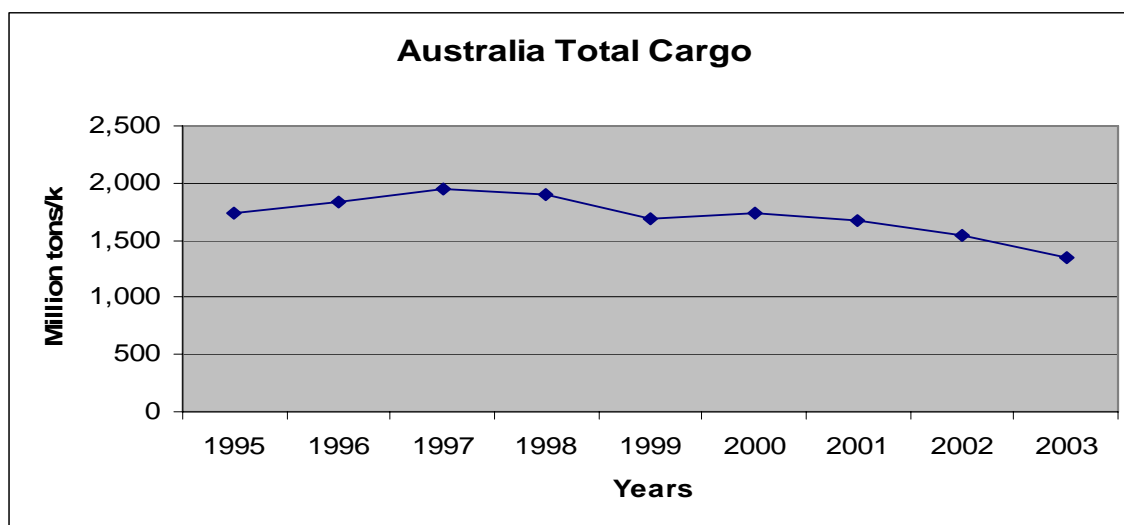
Ground-handling

Despite not having any corporations that are world market participants, Australia supported other Members who were asking to have ground-handling services included under any GATS expansion.

Airport Cargo

The cargo handling sub-sector appears to reflect a picture that does not have any correlation to the above sub-sectors. The volumes handled during the period of the study (Chart 9) do not vary greatly other than to indicate a slight downward trend. It differs from the GDP figures and the flag carrier revenues, which both show an increasing trend (see Charts 7 and 8 above). It is clear from the submissions and interventions on liberalising the cargo sector, Australia believes that the amount of cargo handled could be increased further through liberalisation and by separating cargo from passenger operations.

Chart 9



In the oral presentation during the second Review session, Australia noted that air cargo should be considered as a sector in its own right and "...already covered to a large extent by the GATS...". Knowing it had already been established that Members could not make market access or national treatment commitments in sectors excluded by the GATS, it was a challenging statement to Members wishing to ensure no expansion would occur during this Review. The statement also appeared to refer to an Asian Pacific Economic Cooperation (APEC) recommendation that showed its Members having some degree of experience with more liberal cargo arrangements than in the passenger area.¹⁶⁸ In particular it was argued that liberalising this sector under the GATS would provide "...one more option to help free up the movements of goods..." across borders.

Airport Management Services

From 1994 to 2000 Australia had only one large international airport management services corporation, which was a jointly owned property development group. Australia noted that a non-aviation corporation having management contracts at four Australian airports might have strengthened the already liberal market perspective in the air transport sector. Beyond supporting others who specifically championed this sub-sector, Australia did not present its own specific arguments. It wasn't until after the Review ended when an Australian private investment equity fund entered the international market that an Australian company started to gain a foothold in the world market for these services.

¹⁶⁸ "Implementing the Eight Recommendations for a Competitive Air Services: For Information", Australia, Job No. 3203, 19 May 2000.

Incentives and BATNA

The incentives motivating Australia to actively pursue multilateral liberalisation in the air transport sector in general and the Review in particular appear to be driven by four of the independent variables used in the study. Three of the variables were argued by Australia throughout the Review and the fourth, liberal ASAs, is drawn from the statistical analysis. In combination the incentives to pursue GATS expansion tell us that Australia finds its BATNA located in the multilateral arena rather than the bilateral.

Its arguments are based on success with the liberalisation it has already achieved, including the common aviation area type agreement with New Zealand. It is a small, high income, open market economy that is distant from its main trading partners (excluding Asia). Its flag carrier has consistently produced net profits over the years, including the post 11 September 2001 period and throughout the SARS crisis, which negatively affected the revenue of many carriers. Despite not having a sub-sector industry that is a global market player and thus no incentive to promote the interests of specific corporations, its positive experience with liberalisation has given it sufficient incentives to continue pursuing what it sees as the best avenue for its industry and economy. The only sub-sector or independent variable that was not particularly positive is the cargo sector, strengthening Australia's argument that the bilateral system has reached the limits of its ability to deliver further liberalisation, and sees the multilateral system bringing economic benefits to the sector in the future.

New Zealand

Position on Expanding GATS Coverage in the Air Transport Review

New Zealand was also a very strong advocate for expanding the GATS to cover aspects of air transport. Not only did its position not waiver throughout the sessions, a lot of time was invested in preparing written submissions and it actively participated in every meeting. New Zealand's stated position was based on the "...desire to move beyond the traditional bilateral system through the negotiation of regional and multilateral air services agreements" (S/C/W/165).

New Zealand is ideologically directed toward progressive liberalisation in all economic affairs. Having an open international transportation regime (air or maritime) is a critical element of its belief that economic efficiencies would be gained through progressive liberalisation under a single set of multilateral rules. Moreover, as a small developed economy, New Zealand would gain a stronger voice within a multilateral framework with the economic powers of Japan or the US. A

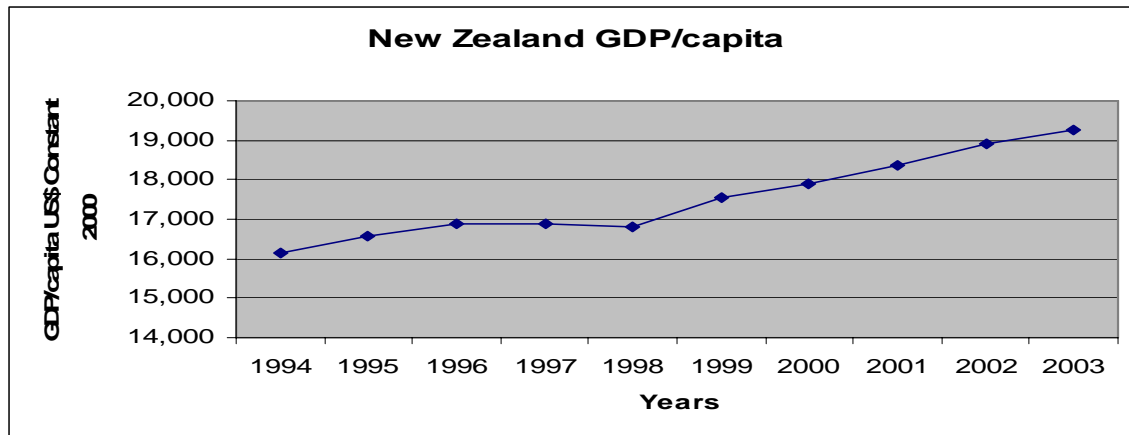
possible example for this stance could be found in the negotiations leading up to the creation of a liberal plurilateral agreement (2000). It is arguable that New Zealand was able to extract concessions from the US because it was not alone in the original negotiations but had the support of the other negotiating partners (Chile, Brunei, and Singapore). It is therefore questionable whether the final outcome of a pure bilateral with the US would have achieved the same level of liberalisation.

The written submission S/C/S/165 and oral presentation during the first Review Session echoed the early submission given in conjunction with Chile and Singapore (S/C/W/113) that emphasised the desire to increase the scope of the GATS over some air transport services (not including traffic rights). New Zealand has consistently argued that a single set of multilateral rules would benefit the whole of international air transport, particularly the affiliated sub-sector industries. It argued that the WTO is a good forum for building on liberalisation that has already occurred in the sector and to use cargo as a forerunner for expanding coverage of the GATS. New Zealand's position regarding cabotage is that it is seen as a "matter of commercial presence", rather than one of traffic rights. One of their strongest positions relates to foreign ownership restrictions. They advocate replacing the traditional definition of "ownership and effective control" with "place of incorporation and principal place of business whilst retaining effective control" (S/C/M/49, p 2).

Economic Development

Despite being physically located very distant from most of their trading partners, New Zealand is a high income OECD country that has enjoyed steady economic growth over the years. They have a small, open, free market economy and are known for advocating liberal trade policies in all economic areas. Its GDP figures appear to support its liberal ideology and economic openness through a steady increase over the period of the study.

Chart 10



Geostrategic Location: Distance to Major Markets (US and EU)

New Zealand is at a serious disadvantage in terms of distance to markets and thus lacks a competitive advantage in exporting goods (see Appendix 9). It is neither close to major markets nor located strategically to benefit from being a transit point for goods and people. Additionally, it have a relatively small domestic market, which under the bilateral system of foreign ownership restrictions also limits access to foreign capital. These points were raised numerous times by its delegates and included in some of their written submissions. Like Australia it perceives that the bilateral system has reached its limits, arguing that New Zealand and the global industry would be better served by allowing some of the air transport sub-sectors to be covered by the GATS.

ASAs and Foreign Ownership Limitations

In keeping with its efforts to be as competitive as possible, New Zealand has supported liberalisation of air transport through all available options. It was keen to sign Open Skies agreements and participated actively in liberalisation efforts within APEC and through the five-member plurilateral agreement. During the negotiations of the plurilateral agreement it advocated radical liberalisation of the ownership and control restrictions. Although unsuccessful in achieving this goal, it was able to ensure that restrictive "ownership and effective" control was not part of the final agreement. New Zealand continues to negotiate agreements that include more liberal terms for the designation of carriers whereby "principal place of business" and "place of incorporation" are the criteria required for the partners to

designate a carrier that wishes to operate between the two countries of the agreement.¹⁶⁹

Together with Australia it has created a common aviation area and negotiated liberal cargo agreements with other countries. It has also worked toward increasing the number of designated carriers with their bilateral partners; of the forty-seven bilaterals there are only five that do not permit more than one designated airline (S/C/W/165, p 4).

Foreign Ownership Restrictions

Twenty-five per cent of a New Zealand international airline may be owned by a single foreign carrier and thirty-five per cent may be owned by foreign carriers in aggregate, with a maximum overall foreign ownership level of forty-nine per cent. Its overall level of foreign ownership matches the levels of the EC. New Zealand also supports moving away from strict adherence to designation being linked to ownership and control levels. It would like to establish that designation could apply to a group of states that are substantially owned and effectively controlled, to assist developing states in particular. The underlying criterion for this position is the recognition that many airlines that are based in smaller states have difficulties accessing sufficient capital. It argues this is one of the reasons many airlines fail and in other cases the reason for injection of public money into a failing airline (S/C/W/165). Moreover, New Zealand also argued that "...national ownership criteria, restricts broader integration" (S/C/W/165).

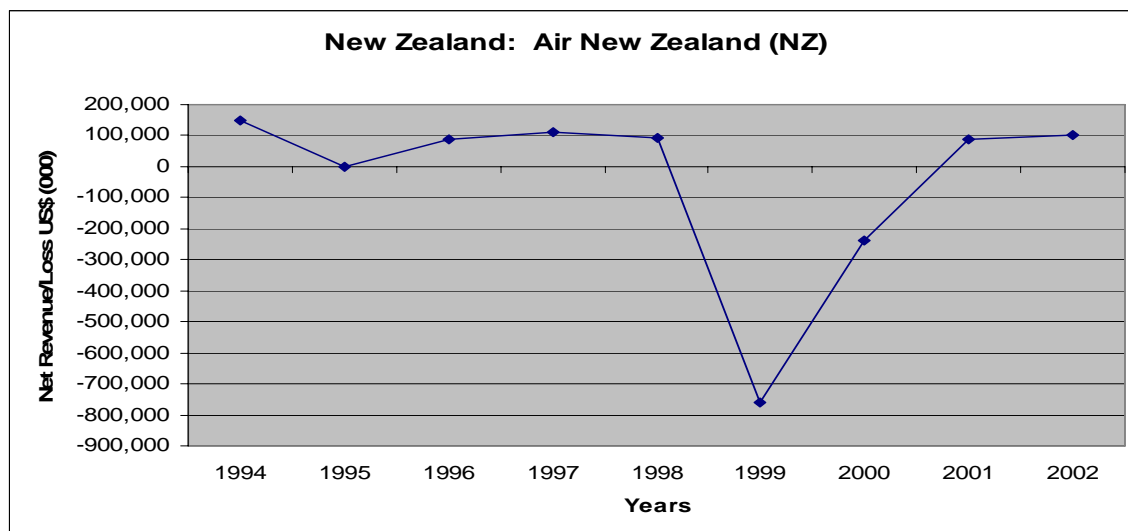
Flag Carrier Revenue/Loss

The chart below shows that New Zealand's flag carrier sustained heavy losses during the period leading up to the Review in 2000. Despite a national policy to promote private sector independence, losing the flag carrier was clearly not an acceptable option for New Zealand's Government. In 2001 public funds were injected into the airline and the Government took an eighty-two per cent share in ownership to ensure the survival of its flag carrier.¹⁷⁰ Based on comments made throughout the Review New Zealand believes that by relaxing foreign ownership restrictions it might have been possible to avoid a public bailout of Air New Zealand.

¹⁶⁹ "Air Services Agreement Signed with Vietnam", Hon. Paul Swain, Government Spokesperson, New Zealand, 17 October 2003, <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=18145>.

¹⁷⁰ *Asian Economic News*, "Wellington Announces Bailout terms for Air New Zealand" 3 December 2001.

Chart 11



Ground-handling

New Zealand supports the expansion of coverage by the GATS over ground-handling despite not having any corporations with stakes in the global handling market. They do however support open and competitive third-party handling at their airports and maintain no foreign ownership restrictions. Foreign based third-party operators can and have established a commercial presence in New Zealand offering services on a competitive basis. The main international airport has three foreign third-party handlers (2 US and 1 Fijian), which operate in all areas of the airport except surface transport and security (S/C/W/163Add.1). Beginning with the pre-Review sessions, New Zealand advocated expansion of the GATS to include ground-handling.

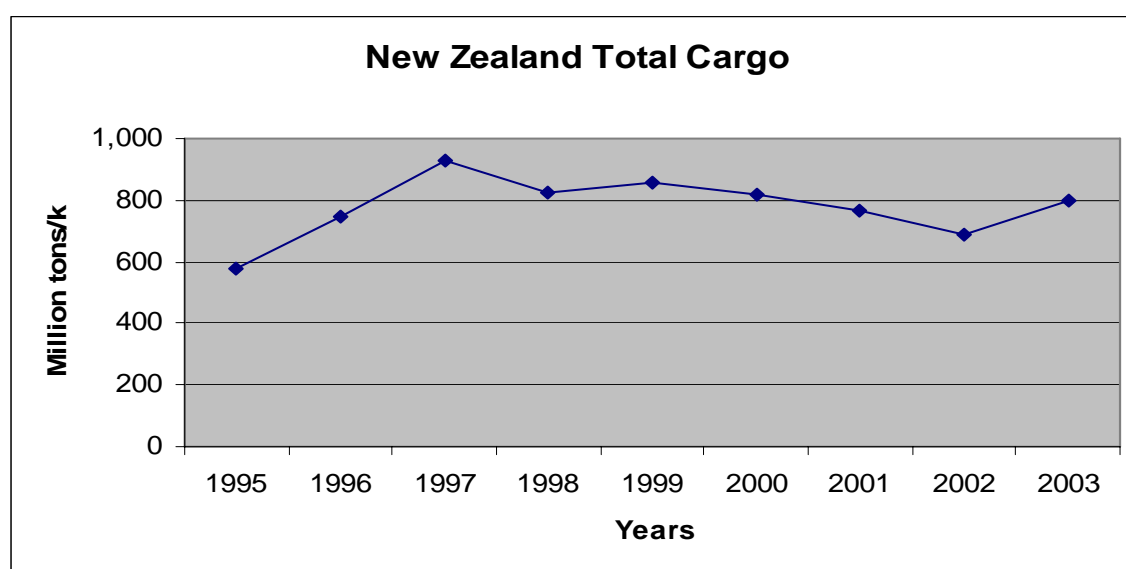
In their joint communication with Chile and Singapore, New Zealand stated its position that auxiliary services like ground-handling are of significant economic importance and therefore should be taken out of the bilaterals and covered by the GATS. The delegate noted that New Zealand believes catering (a sub-sector of ground-handling) is already covered by the GATS in other service categories such as restaurants and hotels, based on the UN CPC.

In S/C/W/165, which New Zealand submitted for the first Review session, it again raised the proposal to consider GATS coverage of ground-handling. It noted that this sub-sector has become separate from airlines and when subjected to greater competitive forces would adapt better to the expected growth in air transport under the GATS. It also noted that once separated from the airlines, ground-handlers could be likened to support services that supply hotels and restaurants, such as catering.

Airport Cargo

The national cargo figures for New Zealand highlight the difficulties facing a small economy. During the period of the study when the cargo volumes for the US and Japan were increasing, its volume of goods handled began to steadily decline. This trend was not reversed until five years later (2002). Although the same period saw a rapid increase in GDP per capita, this is not reflected by the import/export of goods. Given that New Zealand believes liberalisation will improve economic efficiencies it is not surprising that, rather than try and protect a struggling sector, it takes the position that improvements will be realised through greater reliance on market forces.

Chart 12



Airport Management Services

There are no internationally significant airport management corporations. Nevertheless, New Zealand fully supports private operators at airports and/or full privatization, based on the principles consistent with an open market oriented economy (S/C/W/165). It believes that through an open market for these services operators, especially those in small economies, there will be greater access to capital markets, which will promote vibrant and competitive service providers.

Incentives and BATNA

A small, developed and open nation, New Zealand is located geographically distant from the world markets (financial, manufacturing and tourism) and therefore lacks a geo-strategic position or a large domestic market. Despite being remote from its major trading partners it is a developed economy and a member of the OECD. It

believes that a single multilateral set of rules could strengthen its negotiating power with more strategically located markets such as the US, or Japan, particularly if air transport as a whole, but sub-sector services in particular, is removed from the bilateral negotiating process. From all the oral and written submissions plus its interventions throughout the Review sessions it is clear that New Zealand believes its interests regarding aspects of air transport liberalisation can be better served through progressive liberalisation under the GATS.

In each of the independent variables that were used in the study, New Zealand took the position to advocate GATS expansion regardless of whether it had a market position, a failing flag carrier, or no serious corporate presence in a sub-sector world market. It noted numerous times its geographic distances and small economy, arguing that only by removing barriers to trade could it hope to compete successfully. In the bilateral arena it has worked toward its stated liberalisation goals with all its negotiating partners.

New Zealand's position reflects strongly the results produced in the statistical analysis that shows a strong and increasing correlation between the degree of liberalisation in a Member's ASAs and their position regarding expansion of the Annex. Not only would it have negotiating support from other like-minded Members, but could make commitments in its schedules that would allow it to liberalise covered sub-sectors unilaterally and through negotiation encourage others to make further sector specific commitments.

Chile

Position on Expanding GATS Coverage in the Air Transport Review

Chile was a strong advocate throughout the Review for expanding coverage of the GATS. For the first Review Session it produced an extensive paper documenting the incredibly rapid growth of its air transport sector, which occurred immediately following Chile's economic reform in the mid 1970s. The thrust of Chile's written submissions and interventions was to argue from its deregulation and liberalisation experiences, highlighting national economic benefits that accrue to the sector and noting the differences between what is or isn't directly related to the exercise of traffic rights.

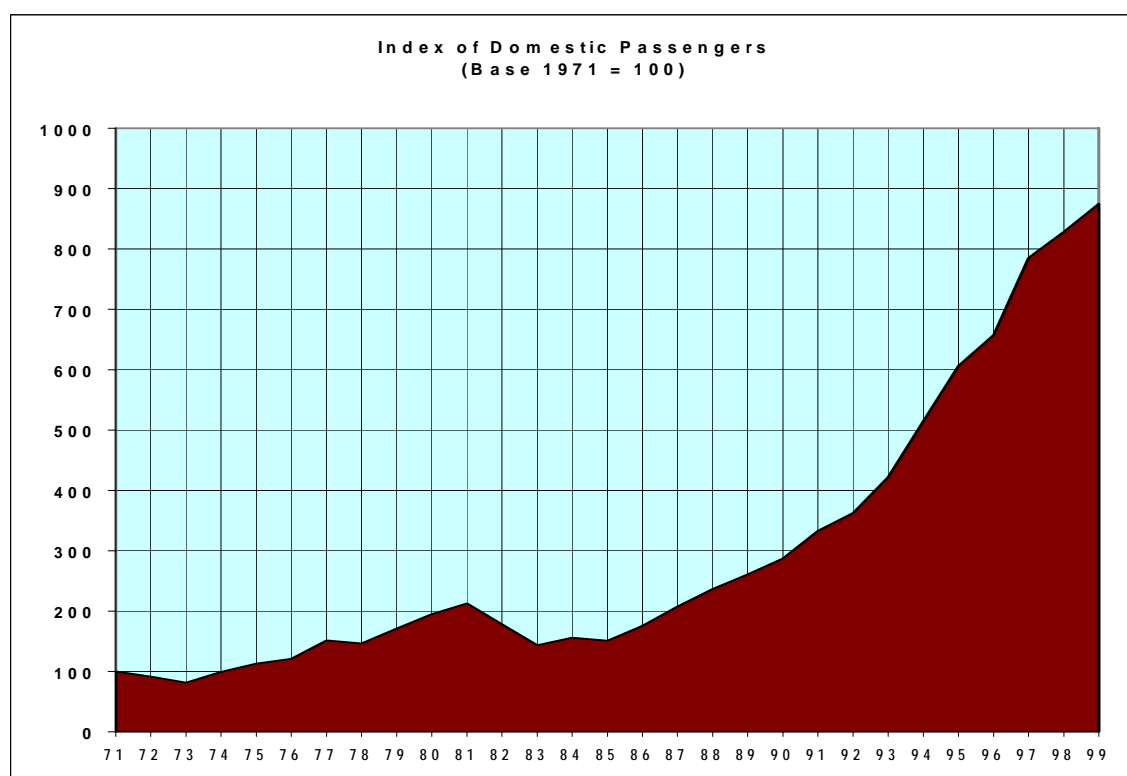
In their first submission (S/C/W/166) and an internal document sent to the Secretariat, Chile outlined the numerous economic benefits that could be directly linked to its policy of privatisation, market solutions instead of government control, and liberalisation. It also highlighted its geographic weakness *vis-à-vis* some of its major trading partners and noted that its own drive to liberalise is hampered by the

bilateral system. Although it recognised that achieving full multilateral liberalisation either within or outside the GATS framework was its objective, Chile made persuasive arguments that every opportunity should be taken to move beyond a purely bilateral system.

Economic Development

In 2000 Chile was ranked as a middle income developing country. This was a vast improvement from the early-mid 1970s when Chile “switched to a free-market economy open to the world, from which no sector, particularly air transport, was excluded” (S/C/W/166, p 1). The economic reforms radically improved the country’s GDP and economic growth. The benefits are particularly in the strong growth of the air transport sector (domestic and international), including both passenger and freight. Since there is normally a correlation between economic growth and the air transport sector it is relevant

Chart 13



to use the two Charts (13 and 14) submitted by Chile in the first Review Session; clearly the Chilean economy benefited directly from economic reform that was undertaken. The third chart (15) shows the GDP levels that, while slower than the initial years after reform, continued nonetheless to improve.

Chart 14

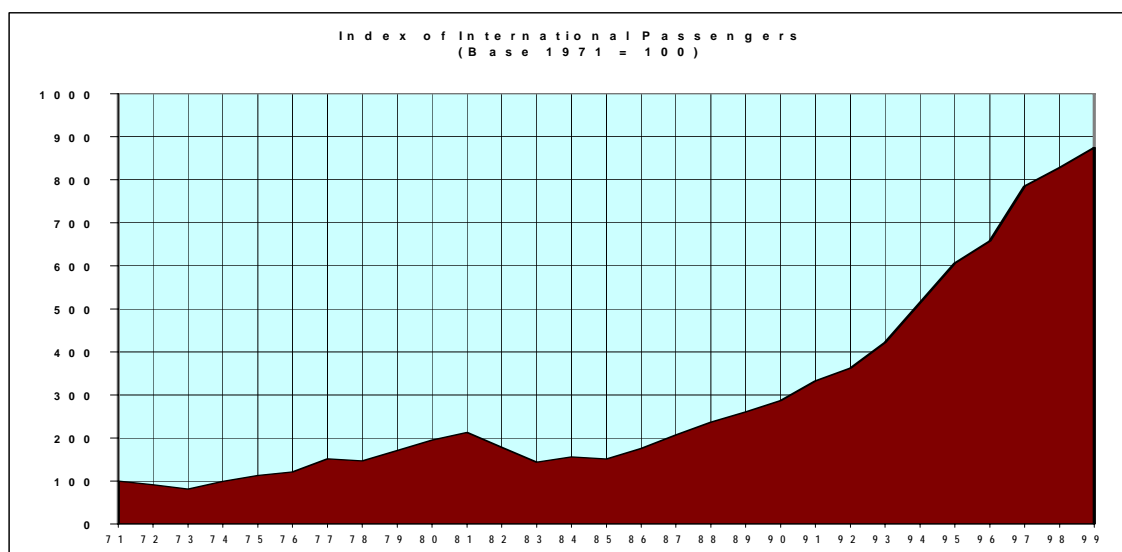
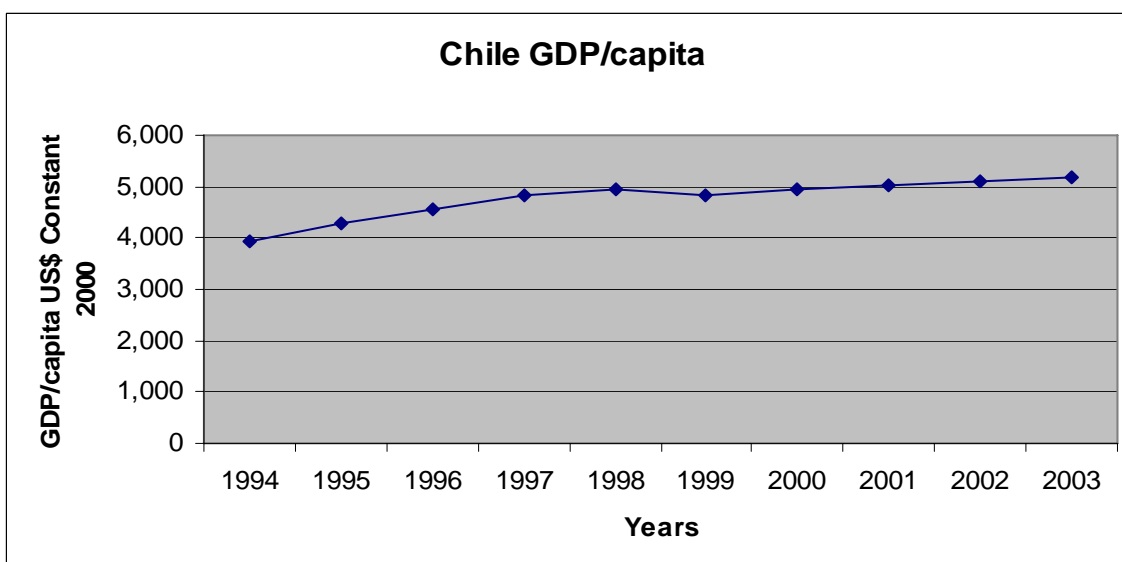


Chart 15



Geostrategic Location: Distance to Major Markets (US and EU)

Although Chile is closer to the US market than the EC, it is considered to be proximate to both (in terms of this study). In Chile's written and oral submissions, it noted a number of times the competitive disadvantage it faces because of long transportation distances (see Appendix 9 for great circle mileage). Chile's perception is that because of its geostrategic position, and the physical shape and size of the country, limitations on fifth freedom rights¹⁷¹ restricts the ability to

¹⁷¹ See Chapter 3 for an explanation of Freedoms of the Air.

compete on a level playing field with others located closer to the major markets. In its first written submission Chile noted the following disadvantages.

Limitations on "fifth freedom" rights continue to be the main impediment to airlines expanding their operations along market lines. Because of Chile's geographical position, these rights are needed in many cases to support certain routes economically, especially within the continent. However, not only are Chilean companies prevented from offering daily services, but the airlines of certain countries are able to justify daily flights to Chile on the basis of "sixth freedom" traffic which is very often not covered in the bilateral agreements. What Chilean companies are asking for is to be given the same conditions as domestic companies in those countries (S/C/W/166).

Although the statistical significance did not indicate that Members would be influenced strongly by geostrategic position, Chile is clearly convinced this is an important factor and that liberalisation of the sector would assist its development objectives.

ASAs and Foreign Ownership Limitations

Chile is one of a growing number of countries that have embraced liberalisation within the bilateral system through Open Skies agreements and is an original signatory to the five state plurilateral. It is very much in favour of concluding agreements that build upon existing liberalisation; however it notes in S/C/W/166 that it has been unable to make as much progress as desired. Although it seeks further liberalisation in air transport, it has not yet entered into a common aviation type agreement.

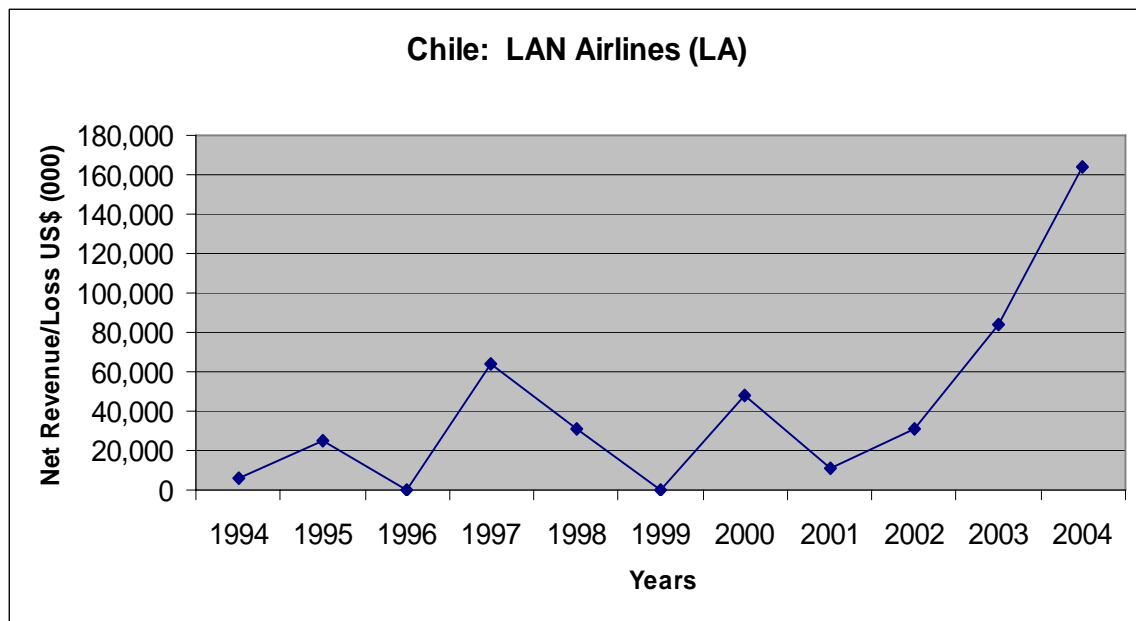
Foreign Ownership Restrictions:

There are no particular limitations on foreign ownership of airlines in Chile. It is the legal framework for general rules on foreign investment that govern this aspect of the industry. Similar to other progressive states, Chile favours the newer ownership clauses of "principal place of business" and effective control rather than the older "ownership and effective control clause".

Flag Carrier Revenue/Loss

For the period of the study, Lan Chile (re-named LAN) was able to maintain profitable operations, although in some years the profit was marginal. Unlike cargo volumes, revenues at LAN do not reflect the steady rise in GDP, but rather, highlight the cyclical nature of the passenger airline operations. Nevertheless, LAN did not have a single year of losses, including for the post 11 September 2001 period and during or after the SARS epidemic, which affected many airlines around the world.

Chart 16



According to S/C/W/166 Chile implied that benefits have accrued to the national economy from liberal open market policies, including that of its flag carrier. It is therefore natural that Chilean politicians and policy makers pursued, wherever possible, liberal bilateral and regional arrangements in air transport. It would also support any liberalisation options in the multilateral arena. Due to the consistent profitability of the flag carrier there is evidence that it is economically beneficial to pursue the liberalisation trend.

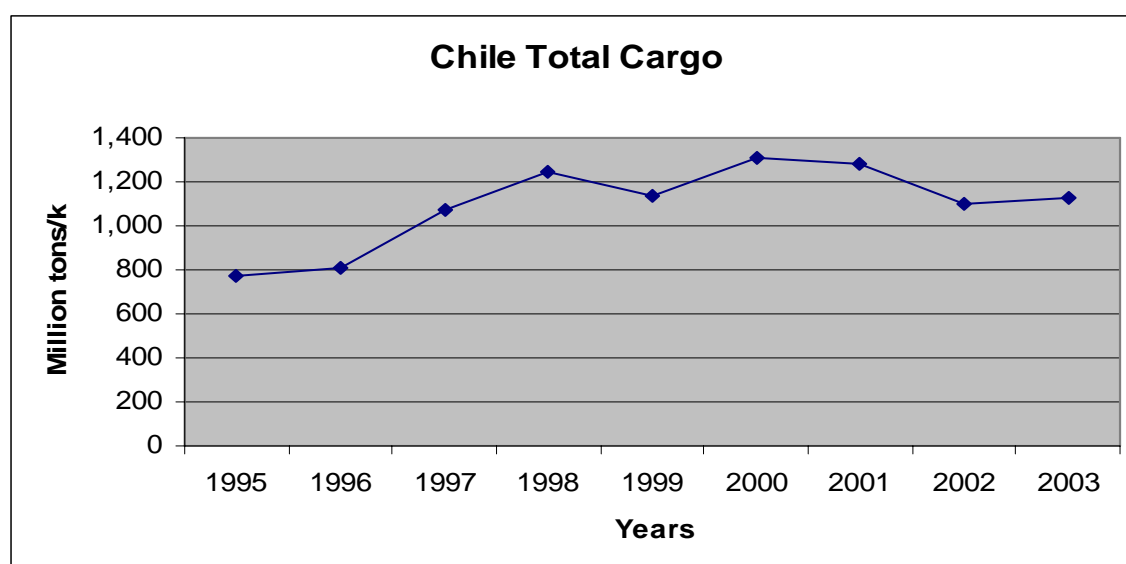
Ground-handling

There are no Chilean corporations with a presence in the growing global market for ground-handling services. At Chile's main international airport in Santiago (SCL) third-party handling is relatively competitive with a total of five foreign operators (3 US, and 2 German). The only operational area without a foreign services provider is airport surface transportation (S/C/W/163Add1, p 20). In its written submission Chile considers ground-handling to be related to air transport services, but not directly related to the exercise of traffic rights. The reason given is that "... they may be provided by countries that do not operate air services or can be provided to third countries, or even by foreign companies to airlines that operate in a domestic market" (internal document). In short, Chile believes that ground-handling has nothing to do with traffic rights and disagrees with the argument made by others that all elements of a bilateral agreement are directly related to the exercise of traffic rights.

Airport Cargo

The tonnage of cargo handled at Chile's airport reflects the steady economic growth of the country. Chile experienced a slight dip in its GDP/capita in 1999, which is mirrored by the decrease in cargo volume at the Chilean airports. In 2001, after 11 September 2001, the volume of cargo handled decreased. Due to the relationship between the amount of goods moving in and out of a country and the GDP/capita, developing countries like Chile benefit from pursuing open and liberal trade policies. This type of policy position is even more important when the country is located at great distances from the major trading centres of the world. This is both in terms of access manufacturing centres like in Asia or the Indian sub-continent and consumer markets like the US or the EC.

Chart 17



Airport Management Services

Chile does not have any airport management service providers that operate internationally. However, its seven airports permit foreign owners and operators to bid for contracts or buy into the airport system. Additionally, all new runways and terminals will be constructed with private funding from both international and domestic investment capital.

Incentives and BATNA

Although Chile only produced one written submission, it was comprehensive, covering all the areas to be addressed and discussed in the Review. Its position is perfectly clear; its economy has benefited from adopting an open free market policy. As a small and still developing nation that is located at a great distance from many trading partners outside of South America, it views multilateral

liberalisation of air transport as a vehicle that will facilitate its economic growth. Due to its perceived disadvantage in bilateral negotiations, Chile's BATNA can be located in the multilateral arena giving it a strong incentive to pursue the expansion of the Annex over sub-sectors of the industry. In the multilateral forum it believes it has a stronger voice in the negotiations than in bilateral arrangements. Additionally, it views having one set of rules set out in a negotiation as preferable to numerous bilateral negotiations. It also views the dispute settlement of the WTO as a preferred forum to the bilateral system (S/C/W/166). It noted that no air transport dispute has been settled through the articles of the bilaterals, citing "...lack of adequate dispute settlement mechanisms stands in the way of the legal certainty required by an air services regime. Indeed, history shows that no bilateral dispute has ever been submitted to the dispute settlement mechanism contained in an agreement, the preference being to exert political or economic pressure, or in many cases, simply to cancel the agreement. It would be useful to examine how to improve legal safeguards, including resorting to dispute settlement systems such as that of the WTO" (S/C/W/166, p 6). Thus, for a country like Chile it is important to have access to an independent and legally binding process for resolution of its grievances. In the bilateral system it's at a disadvantage since access to the major markets is more important than access to Chile by its large trading partners.

In lieu of being able to make commitments in the air transport sector it adopted a pro-liberal position within the bilateral system, by participating in regional agreements and through its commitment to work toward expansion of the GATS over this economically important sector. It is also (as shown in the above sub-sectors) working to liberalise its air transport sector as much as possible within the existing regulatory framework and would welcome any gains made expanding the GATS coverage in the future.

Chapter 7

States in Favour of Liberalising Air Transport within the Bilateral System

The method of selecting Members in favour of retaining the bilateral regulatory regime and not expanding GATS coverage was the same as used in the previous chapter. Each of these Members actively participated through oral and written submissions in the first Air Transport Review (the Review) and include the US, Japan, Canada, and Brazil. Again, to the extent possible, geographic representation and economic development were taken into account when selecting the cases. The analysis of the cases follows the same criteria presented in the previous chapter in order to ensure standardisation and a common platform for comparison. However, aside from the US each of the sub-sectors will be shorter due to the commonality of arguments used by each Member and the lack of written submissions.

To reiterate the pattern, each case has a brief introduction of the Review interventions (written and oral) followed by the independent variables used in the linear regression exercise and include: the economic development level, geostrategic location *vis-à-vis* the US and the EC, affinity to liberalising behaviour within the bilateral framework, and foreign ownership regulations for national airlines. Finally, the sub-sector industries will be used to show market positions as possible influencing factors. These industries include: the revenue/loss of the flag carriers, ground-handling (including catering), airport management services, and airport cargo handling. Each of these variables is considered to have some level of influence on a Member's incentives and possible BATNA. Unlike the linear regression exercise, the full data set is presented in line charts in order to examine the actual changes over time in a realistic context.

The chosen cases representing WTO Members that would like to retain the status quo of the bilateral regime are a mix of countries that either led the current bilateral liberalisation process or have maintained relatively restrictive bilateral agreements. At one end of the spectrum the US is credited with being the catalyst of bilateral liberalisation.¹⁷² At the other end Japan has not pursued liberalisation

¹⁷² In 1977 the US and the UK signed what is commonly referred to as Bermuda II. In comparison with today's world of common aviation areas like in the EU, the 2000 MALIAT agreement (US, New Zealand, Chile, Brunei and Singapore), and the bilateral Open Skies agreements (the US and the Netherlands, 1992), Bermuda II is very restrictive. However, in comparison to Bermuda I it is relatively liberal.

and does not have any Open Skies agreements although it is a member of the Asian Pacific Economic Cooperation (APEC) group of states. Canada only recently (1 November 2005¹⁷³) signed a full Open Skies agreement with the US and while it is also an APEC Member, has not signed many liberal agreements. Brazil does not have any Open Skies agreements. While two of the four cases have liberalised within the bilateral framework, none have signed any agreements that are significantly outside the bilateral boundaries.

The United States

Position on Expanding GATS Coverage in the Air Transport Review

The US position, based on written and oral submissions plus interventions at the meetings was to retain the status quo of the bilaterally negotiated Air Services Agreements (ASAs). Although never once stating it would not accept or block any expansion of the General Agreement on Trade in Services (GATS) it was unequivocal about retaining the bilateral system for the sector. Its primary argument was based on its belief that anything written into a bilateral ASA should be considered as “directly related to traffic rights”. Given that bilateral agreements were the only forum for exchanging traffic rights and determining economic regulations since the first one was signed in 1945, it is not surprising that all commercial aspects would be covered. Its secondary argument was about the speed with which liberalisation has occurred under the bilaterals compared it to the lack thereof in the GATS. Moreover, it believes that bilateral agreements have shown their flexibility to changing market realities over time and are the most appropriate forum to further liberalise the sector. It also emphasised that it fully supported further liberalisation of international air transport, just not multilaterally in the World Trade Organization (WTO). The US position regarding air transport has been consistent since the GATS was negotiated during the Uruguay Round. It considers anything in a bilateral to be directly related to traffic rights and therefore must be excluded from coverage. It also noted that the three exceptions to the exclusion were considered to be directly related to traffic rights.

At the outset of the Review, the US stated it would not have a position until after completion. It went on to say that the Council for Trade in Services (the Council, or CTS) should review developments in the sector and operation of the Annex *before* considering expanding GATS coverage to the sector, and that Open Skies

¹⁷³ Although the US and Canada have had fairly liberal relations for some years, an Open Skies agreement was only concluded 1 November 2005, <http://www.state.gov/e/eb/rls/othr/2005/22281.htm>.

agreements had become the model for air transport (S/C/M/49). It noted there were other agreements that, while not 'Open Skies' per se, have some features in common, citing the ones with Canada, Japan, and France.¹⁷⁴ It also highlighted that Open Skies agreements are an example, showing how flexible the bilateral system is and that these types of agreements could be 'extended' to become plurilateral or multilateral. The word *extended* was emphasised, noting that it "...deserved emphasis because each participant should retain progress already made in bilateral and regional agreements" (S/C/M/31, p 7). In particular, it felt the importance of this type of liberalisation was based on the assurance that those who joined in the future would embrace the high standards of liberalisation set in these agreements. It noted that the US would seriously consider "...any other proposals that might provide equal or superior prospects for liberalization and growth in air transport." The last statement is important because it implies that the GATS is not an option under consideration, nor would it meet the US test of equal or superior prospects. The intervention was concluded by citing the gains that have accrued to the industry through the existing liberalisation under Open Skies agreements and on the growth of alliances among airlines.

The US written submission, S/C/W/198, was similar to the pre-Review statements and the above intervention, but contained more detail. The paper highlighted all the changes made since the first liberalisation began, although it used only the post Open Skies era (1992) rather than the earlier post BII era (1977). This included an overview of the direct economic benefits that have resulted from liberalising the industry since 1992. It then went on to draw a comparison with the three covered sub-sectors that were exposed to liberalisation under the GATS since 1995, noting "there is no appreciable liberalization that can be attributed to the GATS" (S/C/W/198, p 5).

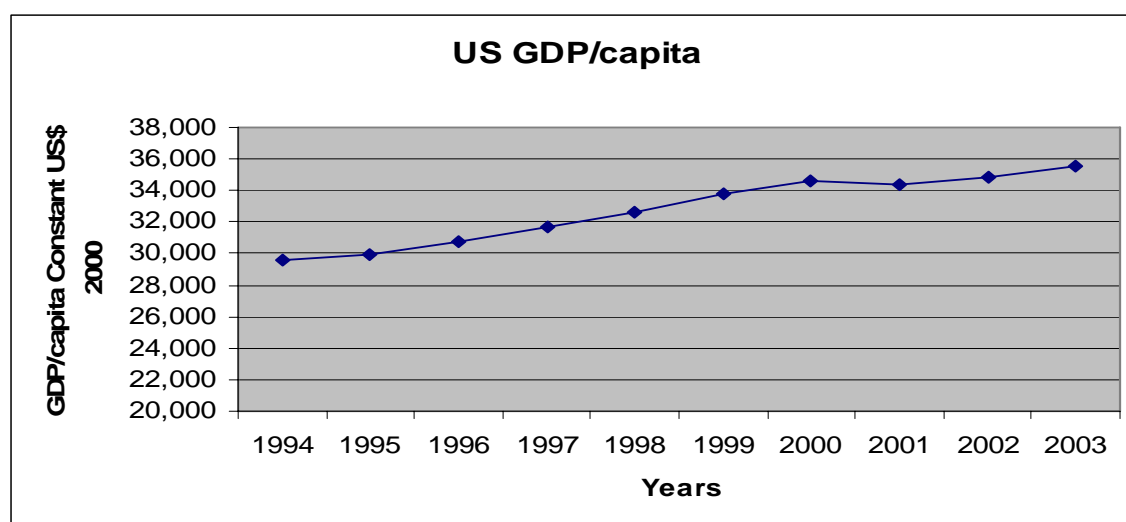
The one unique point the US made was to draw attention to the intent of the Air Transport Annex (the Annex) drafters since the person presenting also participated in the negotiations. Some of the statements are therefore questionable as to their accuracy since there was no one present to refute the claims. The particular sub-sector that it referred to was ground-handling, stating that there was a "...common understanding that ground-handling services are directly related to the exercise of traffic rights" (S/C/W/198, p 7). In the numerous Uruguay Round documents and notes that were reviewed for this study, no corroboration can be found to validate or challenge the statement.

¹⁷⁴ Noting France is of interest since it highlights the EC's authority to negotiate in the WTO and its lack of the same authority in bilateral air transport negotiations.

Economic Development

The US has long enjoyed having the largest domestic market in the world and one of the highest gross domestic product (GDP) levels. The most lucrative and competitive air transport markets are to and from the US on the North Atlantic and it is a highly sought after destination for foreign carriers. Chart 1 below highlights the steady economic growth throughout the entire period of the study. What is noteworthy is the similarity between GDP growth and cargo volumes for the US (Chart 7 below), showing a direct correlation between the two. This stands in contrast to a number of the cases where there was little or no correlation. However, other than to cite the economic benefits from the Open Skies liberalisation trend, the US did not make any specific reference to GDP levels. The insignificance of this variable in the statistical analysis adds to the expectation that a Member's position regarding GATS expansion will likely not change over time based on this variable. This holds true for the US.

Chart 1



Geostrategic Location

The US has been the leader in the air transport industry throughout the post-war period. Its market was and is one of the more sought after destination for goods and people, making it a desired location to operate into and out of for most international airlines. It is natural the US was considered (for the purposes of this study) as one of the two major markets for which entry is sought and therefore its position in the Review could influence other Members. Although in absolute distance, the US is further from many of the manufacturing centres around the world in comparison to the EC, it remains one of the most important markets for much of the world and as such its geostrategic location is an important factor to be

considered when trying to evaluate why they have a preference for bilateral agreements.

Set in the context of destination and transit, today the US remains an important destination and trading partner with many countries. In terms of origin and destination, US cargo volumes are the highest in the world for one country, which indicates the degree to which airlines seek market access for goods and passengers alike and indicates that the US understands its negotiating strength *vis-à-vis* other states in a bilateral setting. This would be particularly true for states having small or virtually no domestic markets and who are striving to maintain a competitive position against the US flag carriers on routes that do not carry large volumes of traffic.

The linear regression exercise showed the distance to the US market is statistically more significant than the EC in each of the years that were analysed. The expectation of the exercise was that the US and the EC would have similar results or the US slightly would be slightly less significant due to the greater distances. What the analysis showed was market access to the US was more important than for the EC. However, the results also revealed that over the period analysed, the significance of distance to the US showed a definitive downward trend. This indicates the geostrategic location of the US is slowly losing importance, from a statistical perspective, relative to impacting a Member's position over GATS expansion. Examining the other independent variables that were used for trying to understand how or why Members took certain positions, the one that stands out as the most significant is the degree of liberalisation that has already occurred bilaterally.

ASAs and Foreign Ownership Limitations

Together with the UK, the US signed a liberal version of the restrictive Bermuda I agreements in 1977¹⁷⁵ (Bermuda II), thereby initiating the first steps to liberalise a very restrictive economic regulatory regime. It was the first country to initiate domestic deregulation (1977-1978)¹⁷⁶, the first to begin advocating international liberalisation, and the first to initiate Open Skies agreements.¹⁷⁷ Since the first Open Skies agreement was signed, the US has actively sought out bilateral partners

¹⁷⁵ "U.S. Standard "Post 1977" Agreement, Office of International Aviation, U.S. Department of Transportation, Office of the Secretary of Transportation. This is the agreement known as Bermuda II.

¹⁷⁶ The cargo sector of the US industry was deregulated in 1977 and the passenger sector in 1978.

¹⁷⁷ The first Open Skies agreement was signed between the US and the Netherlands in 1992.

to enter into this type of agreement. To date, the US has successfully negotiated seventy-six Open Skies ASAs¹⁷⁸ when provisional agreements are also included.

Continuing on the success of these types of agreements and its drive to create new forms of liberal bilateral agreements in 2001, it was the catalyst for the first plurilateral agreement (MALIAT). However, the substance remained firmly bilateral and retained the restrictive foreign ownership articles. In the MALIAT the US made some concessions for more liberal foreign ownership rules desired by the other participants but ensured some restrictions remained for US citizens. Thus, while supporting and promoting liberalisation of the industry, the essence of the restrictive nature of bilaterals regarding foreign ownership levels have not been changed much at all.

As noted already, the data analysis showed the degree of liberalisation found for a Member was the most statistically significant independent variable. This trend appeared regardless of how the input data for the analysis was constructed. Indeed, the high level of significance increased over the three year period. Although the five-state plurilateral was coded as higher (more liberal) than the Open Skies agreements, the US has not entered into any type of common aviation area and overall is considered to be less liberal than Members which have moved beyond the traditional boundaries of the bilateral agreements. This expectation also agrees with the arguments presented by the US insofar as it strongly advocated liberalisation, but only under the types of agreements it has designed and successfully negotiated.

Foreign Ownership Restrictions

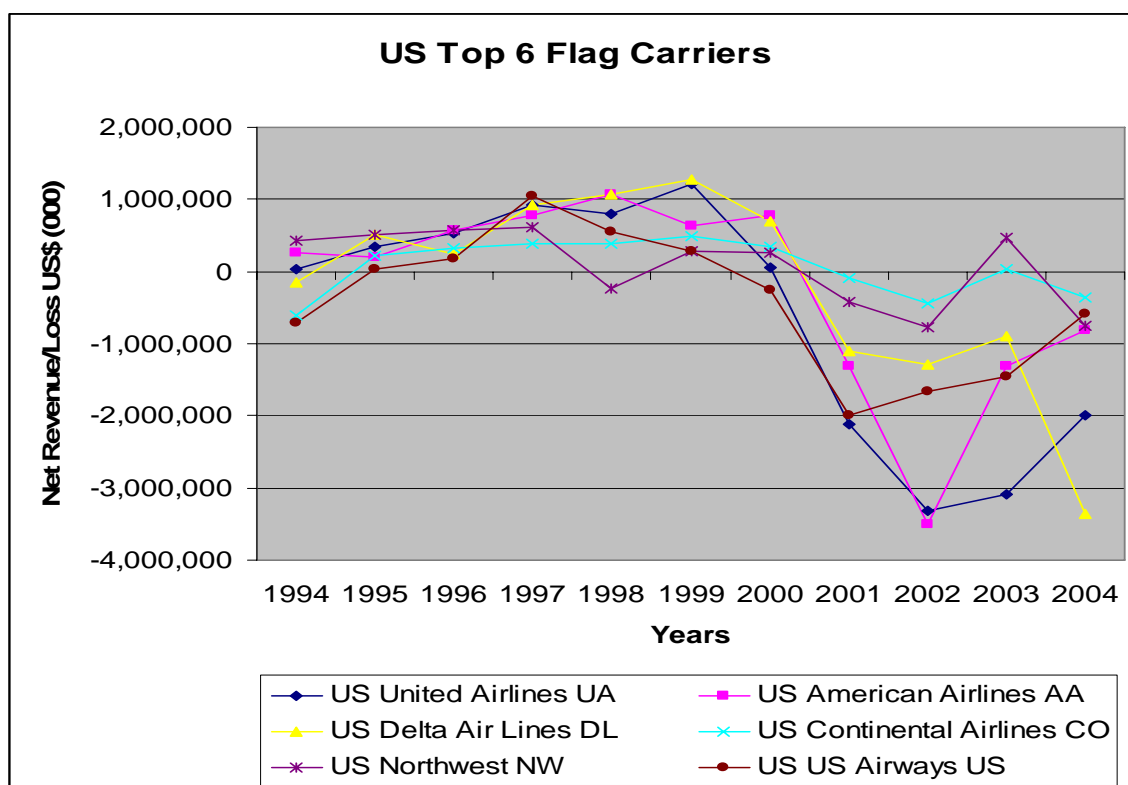
The US maintains a twenty-five per cent foreign ownership limitation and includes the traditional criteria of "effective ownership and control" in all of its bilateral agreements. The only divergence from this strict limitation appeared in the MALIAT signed in 2001. In this agreement the US accepted the newer form of 'principal place of business' as a criteria to permit airline designation, however there remains a clause pertaining to 'substantial ownership' and 'effective control' (albeit in separate paragraphs). In particular, Article 3:3 states: " ...a Party need not grant authorizations and permissions to an airline designated by another Party if the Party receiving the designation determines that substantial ownership is vested with its nationals." In short, important elements of a bilateral ASA that restrict market access and national treatment are maintained in this agreement.

¹⁷⁸ <http://www.state.gov/e/eb/rls/othr/2006/22281.htm>.

Flag Carriers' Revenue/Loss

Although US carriers have historically been some of the most financially sound airlines, the post regulatory period (1978) saw a radical change; those unable to adapt to the new competitive environment all but disappeared (e.g. TWA, and PanAm). While the US highlighted the economic benefits brought on by Open Skies agreements, by 1994 only three out of the top six largest US flag carriers were making a net profit. Subsequently these carriers enjoyed a period of financial success until 2000; when there was a sharp downturn that was accelerated with the events of 11 September 2001 from which few successfully recovered during the period of the study.

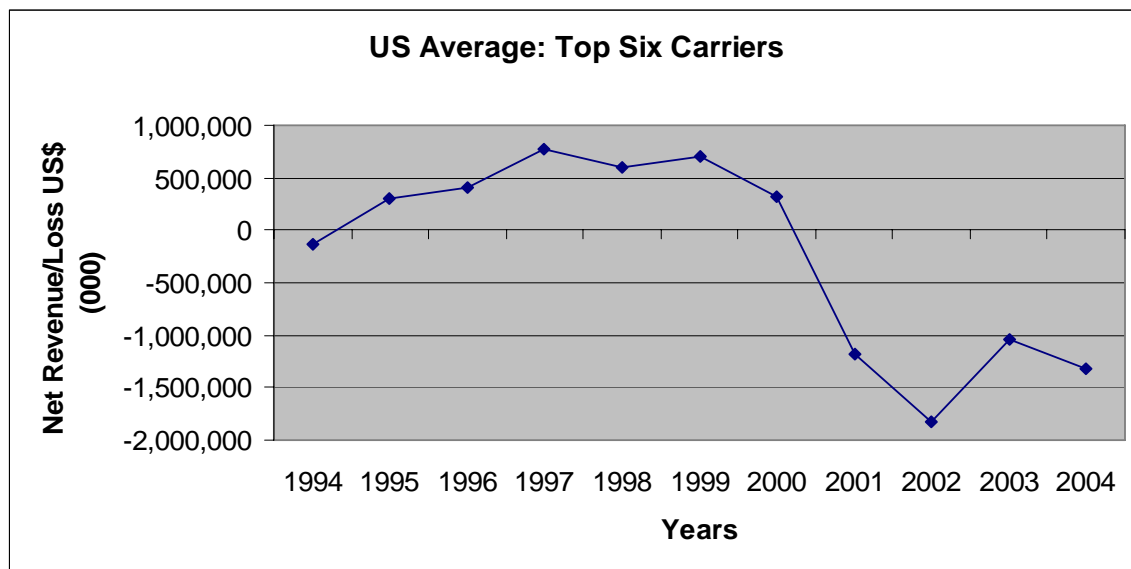
Chart 2



According to negotiating theory, a country's position will be affected by the market and market players (corporations). Where the market is growing and financially sound, the negotiators will likely support a multilateral option, and where the opposite is true economic nationalism will emerge and the negotiators will seek to retain the status quo. Although never directly citing the financial difficulties of its flag carriers, this theory would fit in the case of the US airlines. Additionally, the government not only informed the major carriers during any negotiations, it actively and directly sought input from the carriers (see Chapter 3 for details). Given the financial difficulties most were having in the post 2001 period, it is not surprising that little if any support existed for multilateral liberalisation, regardless

that such a movement would not touch upon airline operations. Thus, the expectation was that the statistical analysis would return significant results for the revenue/loss variable. Instead the results strongly indicated that there was no significance regarding the financial health of the flag carriers.

Chart 3



Ground-handling

The US argued in its formal submission (S/C/W/198) that it considered ground-handling to be directly related to the exercise of traffic rights and therefore beyond the scope of the GATS. It reiterated this stance through interventions when other Members proposed including this sub-sector. Its position is based on the belief that the issue is about "scope" and "definition", whereby confusion is created by mixing a given service with identification of the service provider. In a draft version of S/C/W/198 that was sent out to nine major US carriers for comments, it noted that during the Uruguay Round "...the addition of ground handling services ... was avidly debated..." suggesting that other Members, like in the Review, strongly advocated the inclusion of this sub-sector.¹⁷⁹ Why would this sub-sector be so controversial especially given that ground-handling became an industry in its own right as airlines (particularly in the US) began to outsource this work to non-airline operators?

According to the results of the statistical analysis the condition of a Member's ground-handling corporations should have virtually no bearing on its position in the

¹⁷⁹ "Draft Communication from the United States: The Review of the GATS Annex on Air Transport Services, Industry Review", 8 February 2001, p 9.

Review since they were insignificant across the sample years. However, the results do not begin to answer why some would be adamantly against coverage and others equally adamant about the need for coverage. Under negotiations theory the answer would be found in the marketplace. Members with corporations attaining global status and expanding are likely to support multilateral rules whereas those without a presence or one that is declining will support the status quo. This matches with the market changes prior to and during the Review. During the early 1990s the independent operators were beginning to expand into the international arena. As noted in Chapter 6 the largest six in the field included one Swiss, two US, three EC based corporations and within this group only two were considered worldwide operators with neither being from the US.¹⁸⁰ By the end of the 1990s the industry had consolidated leaving only one US operator participating in the world market for these services while the EC had three and the Swiss, one. Thus, at the start of the Review it was already becoming clear that the Europeans were beginning to dominate the global industry. During the Review period consolidation rapidly accelerated and by the end, all the top global players (four in total) were from the EC and none from the US.

Airport Cargo

The cargo at airports is oftentimes (but not always) a direct reflection of the economic well-being of a nation. As noted above the amount of cargo being handled at US airports is very similar the increasing GDP levels. Noticeable is the downturn in 2001, which came as a direct result of the 11 September attacks. However, this slump was short-lived and recovery was realised the following year. These results differ radically from the revenue/loss of the US flag carriers that are highlighted above in Charts 2 and 3, which are interesting insofar as it is the major passenger airlines that carry over fifty per cent of international cargo in the belly of the passenger aircraft.¹⁸¹

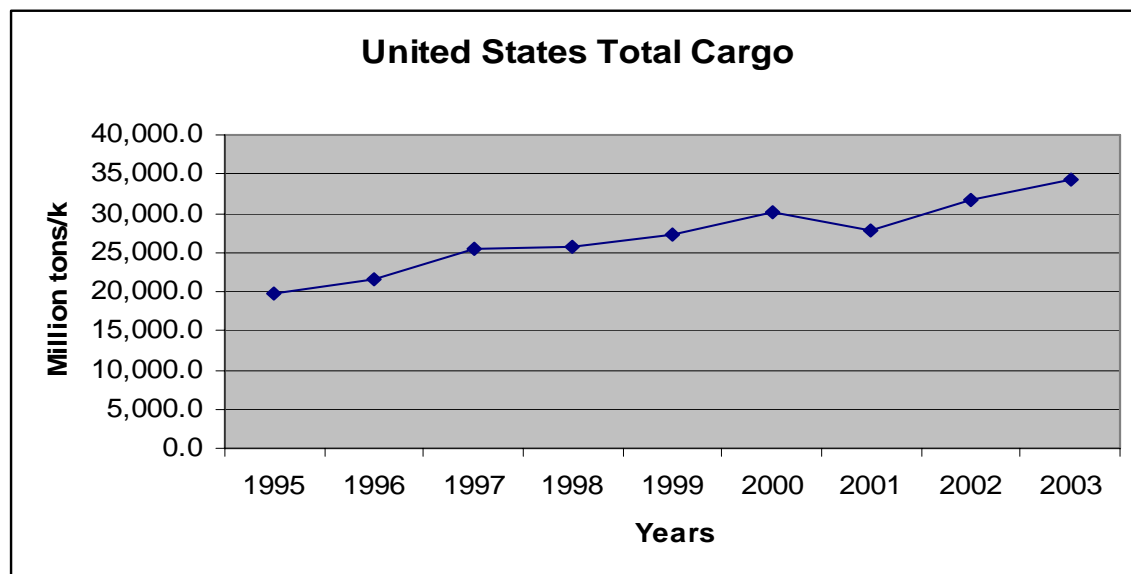
Based on this theory it would be expected that with a steadily growing cargo sector the US might tacitly support airport cargo even if this support manifested in the ground-handling sub-sector rather than directly for the cargo sub-sector. However, as noted above, this was not the case at all. In terms of the statistical analysis similar outcomes would be expected if the data output showed some degree of significance. In this case the results were significant in each of the three years,

¹⁸⁰ See Tables 1 to 3 in Chapter 6 for the market data.

¹⁸¹ This excludes overnight express airlines but not full cargo carriers.

although there was an emerging pattern indicating a negative trend. Again, the US response did not correlate to the data results.

Chart 4



Airport Management Services

The US was not an international participant in this sub-sector prior to, during, or after the Review. Houston Airport Systems, the only US corporation included in any international ranking, is based on revenue rather than scope since it operates only within the US domestic market. The lack of US participants may be the reason why the US did not include this sub-sector in its written submission or respond with any strong interventions when other proposed GATS coverage. In contrast, the EC advocated inclusion of this sector and unlike the US its corporations dominate the international arena. Like ground-handling the statistical analysis showed little if any significance for this variable.

Incentives and BATNA

It is quite clear that the US conforms to both the data analysis and the negotiations theory and knows its strongest forum for gaining what it wants out of an air transport negotiation is firmly located in the bilateral arena. In this sector it does not have globally competitive sub-sector corporations looking to expand, nor does it have financially sound flag carriers. According to the linear regression we would also expect the US to support the status quo of the Annex since it has not yet signed any ASAs that are beyond the bilateral framework. Additionally, it knows that it still remains one of the most sought after market and access rights, which remains a strong negotiating tool.

The answer to the question about why the US supported any sub-sector inclusion of the Annex (Chapter 4) can also be found in its domestic arena. The US supported including MRO under GATS coverage based on previous legislative change. In this instance domestic legislation and the active participation of industry lobbyists permitted the US trade representatives and their aviation experts to support coverage and to make national commitments rather than taking an MFN exemption on this sub-sector. The US representative put it in plain words. The US had to be seen to be giving something during the Uruguay Round and domestic legislation for MRO had already occurred so it was simple and easy to allow that sub-sector to be covered.¹⁸²

Japan

Position on Expanding GATS Coverage in the Air Transport Review

Japan took the same position as the US and fully supported retaining the bilateral system of agreements. It noted in its written submission prior to the commencement of the Review (S/C/W/134) that there are classification problems and that it is important to seek a clearer understanding about the scope of the GATS, and which services are possibly already covered. However, it did not submit any further papers (formal or informal). Instead it responded to other presentations and interventions. Japan made it clear that it supported discussions about expansion only at the end of the Review. It did note however, that the bilaterals had proven their adaptability to changing economic environments and thus could accommodate further liberalisation, and that the Review must be kept separate from the Services negotiations that were also underway. The last comment was in response to other Members raising aspects of air transport in the Services negotiations, which was not welcomed by any of the pro-bilateral Members.

Japan entered a relatively specific written submission that outlined their Review objectives. This included: the information it believed was required for the Review; the secretariat work that should be undertaken; the time-frame of the Review; the request for expert contributions regarding ICAO and other Members; and the difficulties they saw regarding incompatible elements of MFN, Market Access, National Treatment and the bilateral system of reciprocity (S/C/W/134). As would be expected, the paper does not outright reject the possibility of expanding the

¹⁸² This comment is from discussions with the US expert(s) from Washington during the Review.

GATS beyond the three covered sub-sectors, however it implied that Japan prefers to face any form of liberalisation through the bilateral system.

During the first session, Japan supported a comment made by Egypt to the effect that the Review should be kept separate from the services negotiations and agreed with the US that any consideration of a possible further application of the GATS to other sub-sectors should only commence once the Review was completed. They also responded negatively to New Zealand and the EC's suggestion that cargo be considered separately from passenger airlines due to the large number of combi-operations (passenger and cargo).

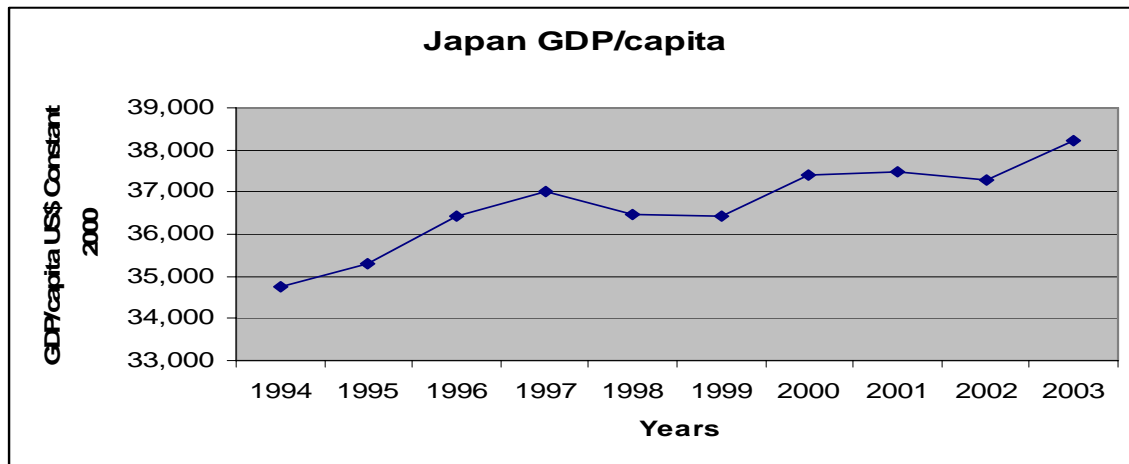
Although their participation was not as active as some of the others, Japan did participate and worked together with the US and Canada by formulating intervention strategies prior to the meetings. In some instances where the US might be seen as over-bearing, Japan would speak first, followed by the US and/or Canada. The coordination was not the same level that can be found in other like-minded negotiating groups at the WTO, but they did consult with each other throughout the Review.

Economic Development

Japan enjoys one of the highest GDP per capita income levels in the OECD. It is a market economy and has high levels of import and export trade. Although it experienced a long recession period during the late 1990s its GDP figures began to recover in 1999 (see Chart 5 below). Like the US the GDP growth rate is similar to that of the cargo sector shown in Chart 7.

Given that in the period leading up to the Review Japan was still in a recession, it is not surprising that its position remained in the pro-bilateral group. This would allow it to retain any and all limitations on liberalisation in order to protect air transport industries or to liberalise by letters of understandings attached to BI or BII type agreements. Its position does not appear to be affected by the lack of statistical significance but does fit into the negotiating theory that argues a state will be less willing to liberalise under the multilateral umbrella when its markets are not rapidly growing or expanding beyond national borders.

Chart 5



Geostrategic Location: Distance to Major Market (US and EU)

The vast distance between North America and Asia puts Japan in a very strong geostrategic location *vis-à-vis* wanting to retain as much bilateral control over liberalisation as possible. Not only is Japan a major exporter of goods by air, but it is also one of the top global financial centres making it an important destination point for people and goods. More importantly, it is strategically located as a transit point between North America and Asia, being located on the Northern Pacific great circle route. From this geographically advantageous position, Japan's bilateral negotiating position is relatively strong. It would be expected that in Japan's case, access to either the US or the EU would be less relevant than for others in less advantageous locations. Unfortunately it was beyond the scope of the statistical analysis to be designed in a manner that would capture the importance of access into Japan.

Nevertheless, the analysis does tell us that Japan's distance to the US is statistically significant with a downward trend while the EC is currently not but shows increasing importance. Since bilaterals are negotiated on a reciprocal basis, the increasing number of designated US carriers would indicate that Japan recognises the importance of its location as a transit point. It would therefore be in its interest to retain the bilateral negotiations with the US. It would be less important for Japan to retain their bilateral relationship with the EC given that all the bilaterals were signed with individual Member States rather than as one block, although this will change. From the EU Member State side of the equation the distances from some countries are such that Japan is not highly significant in terms of transit into Asia but rather as a destination point. Were this situation to exist *vis-à-vis* the US, Japan might be more willing to accept some small level of multilateral liberalisation.

ASAs and Foreign Ownership Limitations

In comparison with other states in this study Japan is rated as one of the least liberal in terms of their air services agreements. According to the government website, the bulk of Japanese agreements fit into the BI (pre-1977) or BII (post-1977) type with a few modified BII agreements, whereupon letters of understanding have been signed with specific countries to increase the number of foreign flag carriers permitted to operate into and out of Japan (see Appendix 10 for types of agreements between case study Members). They have not joined any specific regional agreements beyond APEC, nor have they concluded any Open Skies type agreements.

The statistical analysis showed that there was a strong correlation between a Member's position in the Review and the most liberal agreement signed. In this instance it is not surprising that Japan seeks to retain the status quo. This also correlates to the importance of its geostrategic location and the long running recession. Each of these would, according to the theory, explain the reticence to liberalise in any forum. The lack of liberal bilaterals signed with Japan bears out the argument.

Foreign Ownership Restrictions

Japanese law stipulates that an airline with more than thirty-three per cent foreign ownership cannot be registered as a Japanese carrier. However it appears that up to fifty per cent (ownership and control) could be allowed.¹⁸³ Foreign carriers operating into Japan must be in accordance with the criteria laid out in each bilateral.

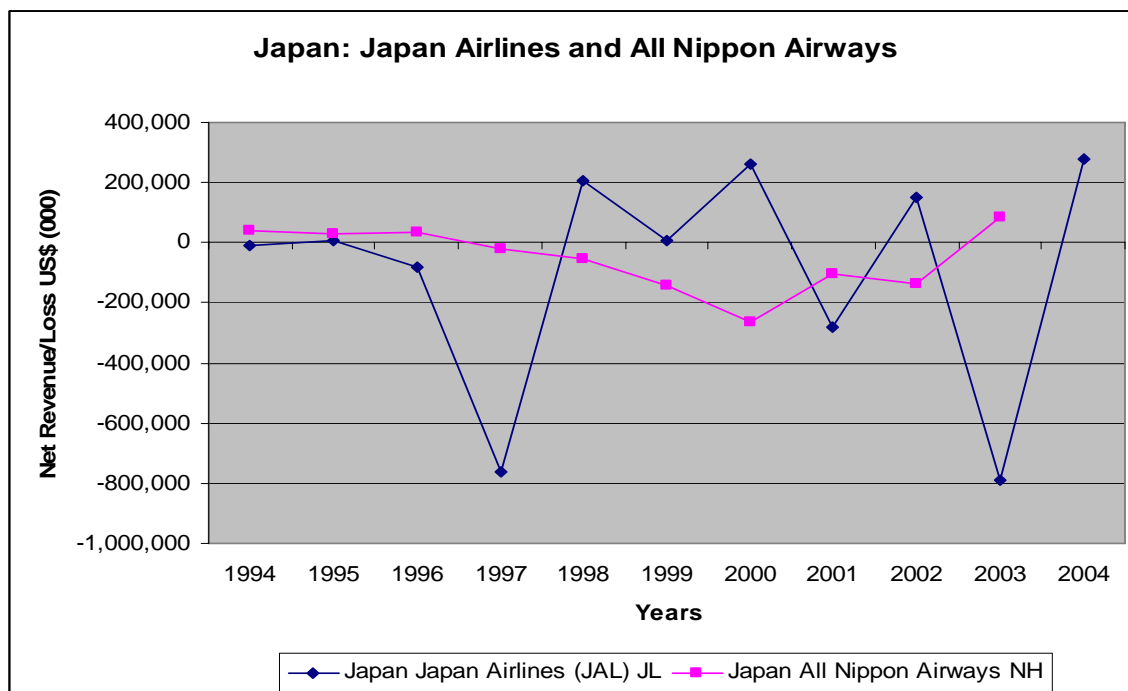
Flag Carriers' Revenue/Loss

The two Japanese flag carriers have experienced radical shifts in revenues and losses over the nine year period of the study. Due to these dramatic swings it is difficult to ascertain with certainty the impact on Japanese negotiators. According to Chart 6 below in the period just prior to the Review Japan Airlines was enjoying a rapid and significant recovery from deep losses. However, at the outset of the Review the flag carrier's revenues evaporated to zero before rebounding again prior to the events of 11 September 2001. Losses at this point in time dropped to their lowest levels before again rapidly changing at the very end of the Review. In short, the Japanese flag carriers were struggling financially throughout the entire period.

¹⁸³ *Ownership and Control*, "Report of the Think Tank World Aviation Regulatory Monitor 2000", Peter van Fenema, Government and Industry Affairs Department, IATA, 2000, p 46.

Although the statistical analysis does not give any guidance, negotiating theory captures the Japanese position in the Review. Due to the instability of both flag carriers it is highly unlikely that the Japanese would risk exposing these carriers to further competitive forces through any type of liberalisation be it bilateral or multilateral.

Chart 6



Ground-handling

Japan does not have a presence in the international ground-handling market and therefore it is not possible to provide an analysis of how this variable would affect its position in the Review. Although Japan does not compete in the international marketplace, ground-handling is important, particularly from the cargo handling aspect, which will be discussed below.

At its main international airport, Narita, there are a total of four ground-handlers of which only two are foreign operators (both from the US). While it is not possible to discern whether these are airline or non-airline operators, in all likelihood they are the former.¹⁸⁴ The US normally insists on self-handling for its flag carriers at foreign locations, which is written into the bilaterals.

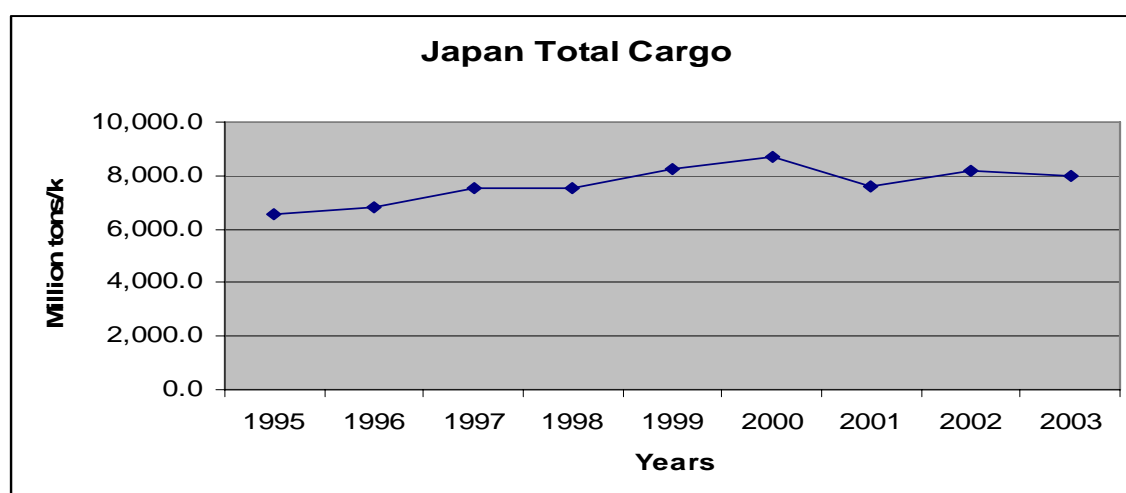
¹⁸⁴ "Developments in the Air Transport Sector since the Conclusion of the Uruguay Round: Part Two", Background not by the Secretariat, S/C/W/163Add1, p 63.

Airport Cargo

Airport cargo volume and its handling is an important service for Japanese corporations and government. Whether it is considered part of ground-handling or not, it is an important area at Japanese airports. Noted in the geostrategic section above, the import and export of goods (origin and destination) in addition to goods transiting through Japan into parts of Asia from North America make it a key location for foreign airlines, particularly those from the US.

Although the net revenues of the Japanese flag carriers were erratic prior to and during the Review, the economic indicators (GDP) compare with the growth in cargo volumes (Chart 7). This indicates that there is a relationship between national cargo volumes and the general well-being of Japan's economy, despite the lack of correlation between the statistical significance of the former and the marginal significance of the latter.

Chart 7



From its submissions and interventions Japan made it clear that anything related to this sub-sector would not be considered due to the amount of cargo that is flown by passenger airlines. Referring to the OECD proposal for liberalising air cargo separately from passenger services, it noted that separating the two areas would make it very difficult for passenger carriers to compete with the more liberalised all-cargo carriers.¹⁸⁵

¹⁸⁵ "Liberalisation of Air Cargo Transport", Directorate for Science, Technology and Industry Division of Transport. Organisation for Economic Co-operation and Development, DSTI/DOT(2002)1, 30 November 2001.

Airport Management Services

This is another sub-sector where Japanese interests are virtually non-existent in the international arena. Airports are owned and operated by Japanese nationals and there appears to be no indication that this situation would be altered to allow foreign interests into the market. Even though this variable appeared to be statistically insignificant there seems to be no incentive for Japan to change its existing market structure. There is also little evidence that the airports are either struggling financially or intending to expand their services to give Japan any market incentives to open up this sub-sector to foreign interests. Thus it is not surprising that Japan gave no indication throughout the Review that it might begin to consider discussions pertaining to GATS coverage.

Incentives and BATNA

Using the data analysis and oral interventions, it appears that Japan's incentives are driven primarily by its favourable geostrategic position and the lack of existing liberal bilateral agreements with other states. The statistical analysis revealed the following: that distance to the US is significant, albeit slightly waning, and the amount of liberalisation that has occurred under the bilaterals suggests that Japan would not have much incentive to support multilateral liberalisation. To do so would likely be viewed as a loss of negotiating power, particularly *vis-à-vis* the US. Thus its perceived BATNA would be firmly located in the bilateral arena.

Canada

Position on Expanding GATS Coverage in the Air Transport Review

Canada's position is classified as pro-bilateral, despite its expressed interest in classifying airport management services as not directly related to the exercise of traffic rights and thus potentially covered by the GATS. The reasons for including it in this group are that it supported each instance another Member advocated retaining the bilateral agreements in full and considered everything included in a bilateral not to be covered by the GATS. Upon being questioned by the EC regarding what Canada considered to be directly related to traffic rights, it answered by using the same terms as the US, although less adamantly. Canada stated their "rule of thumb" was based on what was traditionally included and that this would be consistent with their support of airport management services, but not aspects of ground-handling services. Unlike the other pro-bilateral Members however, Canada intervened to support extending the Review in order to ensure all debate had been exhausted and would not agree to end the meetings prematurely.

Canada did not submit any formal or informal papers and therefore also did not make any presentations in meetings prior to, or during the Review. However, Canada did actively participate through interventions and supported statements made by other Members that reflected their general position on a given topic. It is from these interventions that Canada has been placed in the group of Members that would prefer to see further liberalisation in the bilateral arena rather than in the multilateral forum of the WTO although it is the least adamant of the four cases. It was the only one that advocated extending the Review beyond three dedicated sessions when the debate arose and it was the only one that would consider any expansion at all. However, it was also one of the most adamant about rejecting any proposals pertaining to Freedoms of the Air.

It emphasised that it had withdrawn from the International Air Services Transit Agreement (IASTA) due to what it considered an issue of territorial sovereignty, a primary concern for Canada. In response to the proposal by Norway (S/CSS/W/59) during an earlier meeting in the CTS Special Session to include first and second freedoms Canada gave its strongest response: an emphatic no. It was explained that Canada viewed even the suggestion of including these freedoms with great concern. It was their belief that any freedoms of the air were an issue of territorial sovereignty and noted that Canada had even withdrawn from IASTA despite being an original signatory and the host country for ICAO.¹⁸⁶ It went on to say that it considers ICAO to have the constitutional responsibility for international air transport, and it would be very cautious with regard to expanding the Annex. This is noteworthy due to the Secretariat Background paper S/C/W/163Add.3 (p 188), which stated that first and second freedoms "...may not be covered by the definition of traffic rights in the relevant GATS Annex which states that the right has to be exerted for "remuneration or for hire" (see Chapter 3, Chart 2).

It was therefore in Canada's interest to take a strong position and support others that did not want any expansion of the Annex. It was also not surprising that it agreed with the US *et al* that any decision to expand GATS coverage should only occur after the Review is completed and must be kept separate from the services negotiations.

¹⁸⁶ "Canada signed the Agreement on 10 February 1945 and deposited an instrument of acceptance thereto on the same date with the Government of the United States of America. On 12 November 1986, a notice of denunciation of the Agreement by the Government of Canada was received by the Government of the United States of America which was to have taken effect on 12 November 1987. However, this notice was revoked by a note dated 10 November 1987. By a second note dated 10 November 1987, the Government of Canada gave a new notice of withdrawal from the Agreement, which took effect on 19 November 1988. *The International Air Services Transit Agreement*, signed at Chicago on 7 December 1944. <http://www.icao.int/icao/en/leb/transit.pdf>.

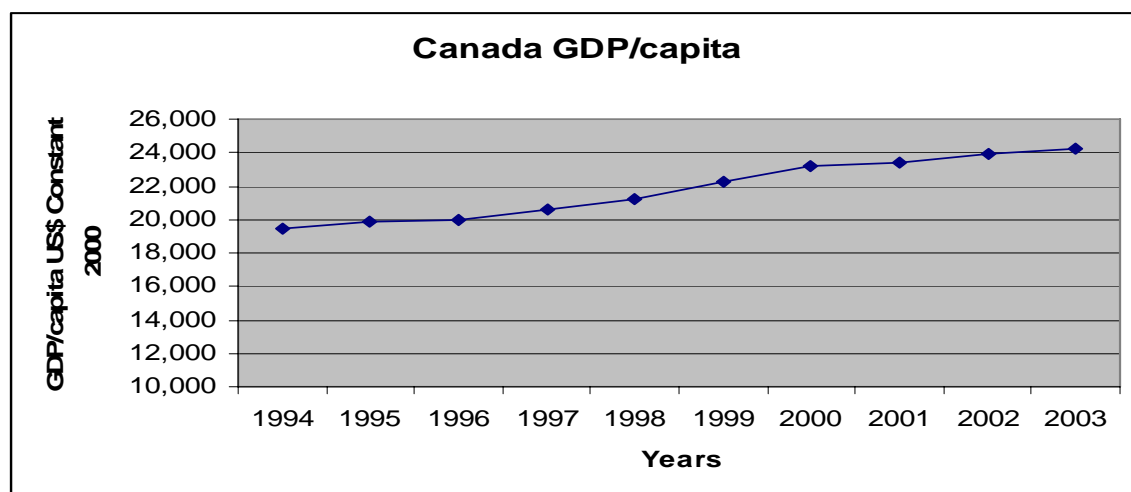
In specific comments regarding the sub-sectors listed in Job No. 2451 it believed that air navigation is considered to be services supplied in the exercise of government authority and therefore would not be covered by the GATS. However, it had not reached a conclusion as to whether these services were directly related to traffic rights. Like Japan, Canada found it difficult to envision the possibility of cargo liberalisation because of the high level of combi-operations. This refers to cargo carried in the belly of passenger airlines. It made no specific comments on ground-handling other than to note that some of the ancillary services in this sub-sector might already be covered by the GATS. This referred to activities such as aircraft cleaning and disinfection and firefighting services.

Economic Development

Canada is an OECD high income country with a similar per capita as the average found in the EU (the first 15 Members). Unlike the EU, which has a dense population and a highly developed public rail system in addition to a relatively small landmass, Canada's geographic size and small population makes air transport an important aspect of the Canadian economy. Although it deregulated the sector in 1988, provisions were included to ensure the remote northern communities would not be cut off from air transport services.

Despite the importance of air transport for Canada, its economic prosperity does not have the same degree of correlation between the movement of air cargo and the GDP level of the country. Chart 8 below notes that Canada has enjoyed a steadily increasing economic pattern, whereas the cargo sector (Chart 10) indicates more volatility. Neither appears to have any correlation to the radical financial changes in the national airline (Chart 9).

Chart 8



Geostrategic Location: Distance to Major Markets (US and EU)

Canada's geostrategic location is an important factor that feeds into virtually all of its international air transport policies. It controls one of the largest airspace areas in the world, it is located on both the northern Pacific and northern Atlantic great circle routes; the latter being one of the busiest corridors in the world for aviation (civilian and military), it is directly adjacent to the US market and would be an over-flight territory to Russia if the routes over the Arctic were ever to be opened up for regular commercial routes. The importance Canada attaches to its independent sovereignty and control over territorial boundaries was noted above with its intervention on discontinuing its IASTA membership. At the same time, access into the US market is extremely important for Canada, which makes it noteworthy that its most liberal bilateral agreement exists with the US.

ASAs and Foreign Ownership Limitations

The statistical analysis revealed that a Member's position in the Review was mostly influenced by the most liberal ASA a country had signed. During the period of this study Canada's most liberal ASAs were MBIIs. The full Open Skies Agreement did not come into force between Canada and the US until after the data analysis had been completed. However, even if it had, Canada is not a participant in any plurilateral or common aviation agreements, which were ranked as more liberal than MBIIs. Thus it would be expected that Canada would support retaining the status quo. Adding the importance Canada places on territorial sovereignty it could also be expected to maintain this position even if were to conclude numerous Open Skies agreements. Drawing from the analysis it is also expected one is not likely to see Canada entering into a common aviation area type of agreement in the near future.

Foreign Ownership Restrictions

When Air Canada was privatised in the late 1980s, the Government (Federal Cabinet) retained authority to change foreign ownership levels of Canadian carriers. Canadians believe strongly in the need to protect what they see as a clear national interest that is highlighted in the following note submitted as a corrigendum to the Secretariat Background papers.

Control of a Canadian carrier must reside with "national interests". For a Canadian domestic service, the Minister may exempt the non-Canadian carrier from the licence condition requiring it to be Canadian where the Minister considers it necessary or advisable in the public interest that a domestic licence be issued to a non-Canadian carrier. The Minister does not have the power to make a similar exemption for carriers operating international services" (S/C/W/163Add.4Corr.1).

Canadian policy on the issue of foreign ownership levels is similar to the US and remains at twenty-five per cent, although there can be a larger number of non-voting shares held by foreign interests.¹⁸⁷ Measuring ownership and control in this manner allows Canadian carriers greater access to foreign capital. Carriers such as Air Canada responded to this structure by developing a variable share structure.

[Its] holding company created two classes of publicly listed securities: class A variable voting shares, held by foreign investors, and class B voting share, owned by Canadian residents. The class A shares, in aggregate, are limited to only 25% of all shareholder votes. If the number of class A shares exceeds 25% of all shares outstanding, the vote attached to each class A share drops proportionately, but the combined voting power of all class A shares stays at 25%. If a foreigner buys a class B share from a Canadian it instantly converts into a class A share, and vice versa when a foreign investor sells a class A share to a Canadian resident. The two classes of shares trade at the same price (*Airline Business*, March 2007, p 29).

This highlights the creative measures that must be taken in order to gain access to the international capital markets due to restrictive ownership requirements of the current system. It also shows that despite being an open trading country and an advocate of multilateral liberalisation in other areas of trade in goods and services, air transport services remain an anomaly.

Flag Carrier Revenue/Loss

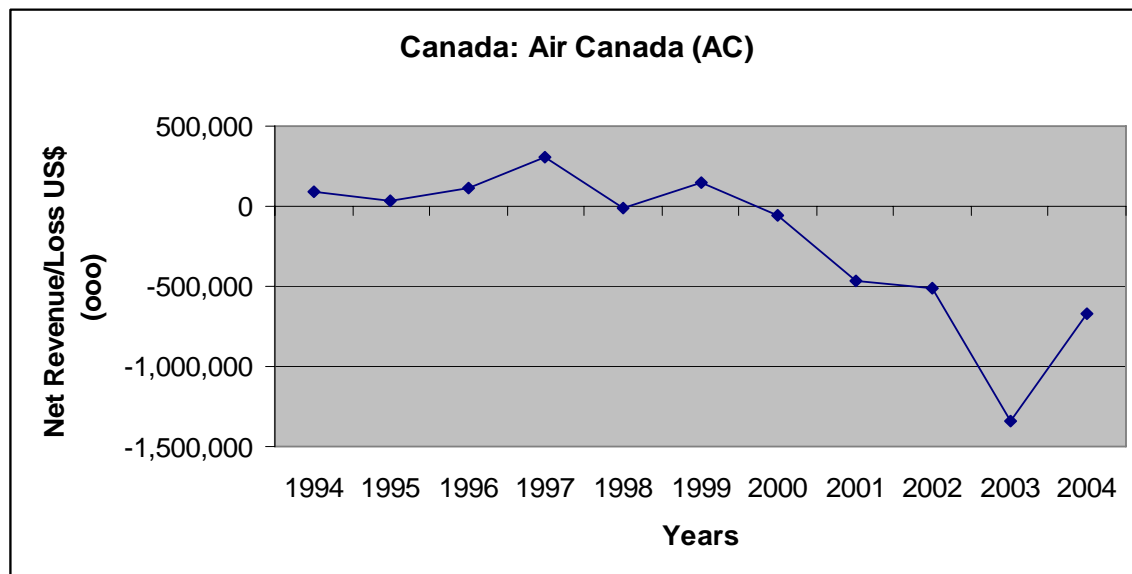
Although the net revenue/loss pattern for Canada's flag carrier seems to indicate only minor financial difficulties leading up to the Review, it does not capture the financial distress of the domestic industry and the resulting political turmoil that occurred during this period. The end result was the loss of one flag carrier, Canadian Airlines International¹⁸⁸, through its absorption by Air Canada. The two carriers had always been bitter rivals and represented one of the political east-west tensions in the country. After the industry was deregulated in 1988 the competition increased and resulted in Canadian Airlines facing bankruptcy in 1992. A bitter battle that lasted approximately two years ensued over saving the airline and involved issues of foreign ownership, organised labour and eventually became a political battle between Central Canada and the West. During this period Air Canada expended capital resources in the courts to acquire Canadian. The conclusion came about in early 2000 when the Government tabled legislation

¹⁸⁷ The twenty-five per cent foreign ownership limit for Canadian airlines was included in the National Transportation Act, 1987.

¹⁸⁸ Canadian Airlines was created out the merging of PWA, CPAir, and Wardair. CPAir was the rival flag carrier to Air Canada until it was bought-out by PWA in 1988.

allowing Air Canada to take-over Canadian. Notably this is the same point in time that the losses at Air Canada took a steep downward turn.

Chart 9



The timing of this acquisition corresponds to the beginning of huge losses for Air Canada that resulted in the corporation seeking bankruptcy protection three years later (2003). Also impacting the industry during this time was the closure of Canadian airspace for almost four days subsequent to the 11 September 2001 terrorist attacks in the US. In addition, the SARS crisis impacted Canada directly due to Air Canada's high frequency of flights to and from Asia. These routes have always been a revenue area for the airline. Thus it is difficult to attribute the revenue/loss analysis in the case of Canada from a statistical perspective but strongly supports the theory that a failing industry will likely be protected by the state. Given the domestic turmoil throughout the industry in Canada during this period it can be expected that the negotiators would support any proposition that advocates retaining the bilaterals.

Ground-handling

Canadian ground-handlers do not have a significant presence in the global market and it has no corporations ranked in the top ten international ground-handling corporations. Within Canada, this sub-sector is competitive and Canada permits third-party handling. All the international airports have foreign operators. As of 2000, at the two largest Canadian airports, Toronto (YYZ) and Vancouver (YVR), there were a total of fifteen foreign operators; eight and six respectively from two countries (US, Germany) and one from the Netherlands. However, despite the existing openness of the market place Canada did not support the EC *et al* in their

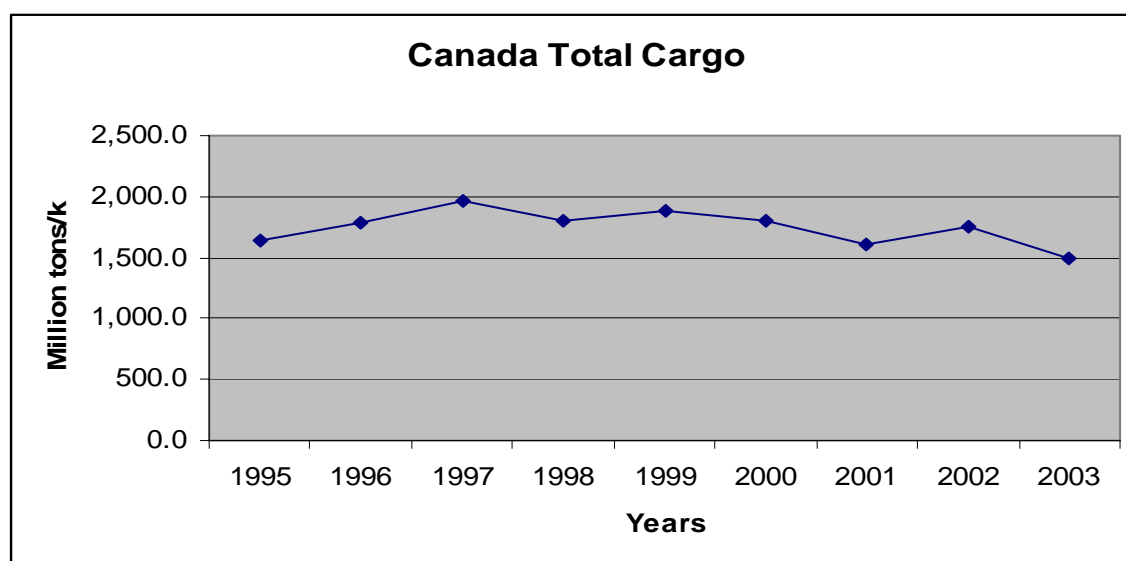
proposal to have this sub-sector covered by the GATS other than a few minor ancillary services. In fact it considers ground-handling in the traffic rights classification.

Canada noted "...ground handling services, in general, need to be considered services directly related to traffic rights" (transcripts Session one). It went on to explain that despite this position, it does not believe this would include all the services listed under ground-handling. Cited were catering, cleaning and disinfecting aircraft as part of other supporting services. It also included airport management services despite the fact that these services have never been considered part of ground-handling, either operationally throughout the industry or in the secretariat sub-sector list Job No. 2451. At the end of this particular intervention it stated its position was given without prejudice to any further negotiations or discussions.

Airport Cargo

Unlike the other Members in the pro-bilateral group Canada's cargo sector does not follow the same pattern as the growth in GDP levels. This is most likely because it exports a huge volume of natural resources that are transported by ship rather than by air. As a stand-alone sector Chart 10 shows that air cargo shipments began to decline slightly in the period leading up to the Review and by the end there were lower volumes than in 1995. Since cargo volumes are considered to be statistically significant we would expect Canada to block any suggestions proposing GATS coverage. The same expectation would be present within the theory due to the relatively steady decline in absolute volumes during the period of the study.

Chart 10



Airport Management Services

Airports are privatised in Canada, but are nevertheless considered to be a “service provided in the exercise of government authority” under GATS Art. I 3(b) and 3(c) (transcripts, Session one). However, Canada does consider airport management services as an independent and competitive service not directly related to traffic rights, and therefore not excluded by the Annex. It is the only Member in the pro-bilateral view that supported even one of the listed air transport sub-sectors (Job No. 2451).

Canada has a growing presence in airport management services that is dynamic and expanding in the world market. For the period of time of the data collected for this sub-sector (1993-2004), Vancouver International Airport Authority has had an international presence that has seen considerable expansion in a number of geographic regions either through management contracts or equity stakes in the airports where they operate. Although the statistical analysis showed this sub-sector to be insignificant, Canada’s position in the Review supported its inclusion under the GATS accords with the negotiating theory as it pertains to operators seeking to expand internationally. In such an instance the competition is international and having a single set of rules for market access and national treatment simplifies market entry and presence and helps to facilitate regulatory efficiencies.

Incentives and BATNA

Territorial sovereignty is an important public issue in Canada and any encroachment on the country’s ability to have a flag carrier would instantly become a national political cause. The stated belief that only through sovereign control over its airspace can Canada ensure its negotiating strength and this can only be achieved in the bilateral rather than the multilateral arena. Its geostrategic location and vast size provides Canada with a strong negotiating position in the bilateral arena. Nevertheless, its position on airport management services supports the theory that markets can and will influence negotiating positions in the multilateral forum. Canada supports the inclusion of airport management services; a sub-sector where Canadian corporations have a strong and growing international presence. In accordance with expectations found in the statistical analysis Canada, a country with relatively traditional bilateral agreements, does not support expansion of the GATS to any sub-sector other than airport management services and three minor sub-areas of ground-handling.

Brazil

Position on Expanding GATS Coverage in the Air Transport Review

Brazil positioned itself solidly in the pro-bilateral group of Members. This was evident in both its oral interventions and written submission (S/C/W/198). At the outset of the Review it echoed the US position regarding expanding the scope of the Annex as something that should be undertaken after developments in the sector and operation of the Annex were reviewed. It noted that any direct discussion over expanding the GATS was a negotiation and therefore should not be mixed up with the Review. It also emphasised that the bilateral system was under the “aegis” of the ICAO, strongly implying the WTO was an inappropriate forum for air transport negotiations and the Review was not considered to be a negotiation (Review transcripts, Session one).

Brazil’s written submission S/C/W/201 is designed, as would be expected, to highlight the positive developments of the overall industry to emphasise the strength and flexibility of the bilateral system. The paper presents eleven charts showing the numerical change in the number of aircraft (including specialised services) movements (including international). Whilst these charts show a general increase in aircraft movement, suggesting dynamic growth in the industry, there is no reference to financial stability or increased revenue in any of the presented data. In contrast, this study found that the national flag carrier is in financial distress and cargo volumes show a slightly downward trend for the same period.

Beyond the discrepancies found in airline revenues, the paper outlines the steps taken by the Government to encourage the air transport sector. Upon close examination however, it is apparent that there has been little substantive undertaking in this area. The paper notes that the Government has “encouraged” greater utilisation of code-sharing arrangements and made reference to Brazil’s participation in regional initiatives on the continent. However there are no specifics regarding liberalisation in the sense that it has been used throughout this study.

The paper concludes with a call to other Members in the Review to “strengthen” the role of ICAO and emphasised the special treatment given to developing countries. What makes this stance odd is the acknowledgement by ICAO that does not have the constitutional authority to create or enforces rules on its Member States.

[T]he Convention is silent on progressive liberalization as an objective. This does not preclude Contracting States from pursuing the liberalization objective individually or in their bilateral relations with other States. A bilateral air-services agreement can be as restrictive or protectionist on market entry, capacity and pricing or as open or

liberal on these matters as the partners wish. Bilateralism can be a vehicle for progressive liberalization among pairs of like-minded States or a means for protecting national air-transport interests, or it can take an approach falling between these two (ICAO, MTN.GNS/W/36, 16 May 1988, p 9).

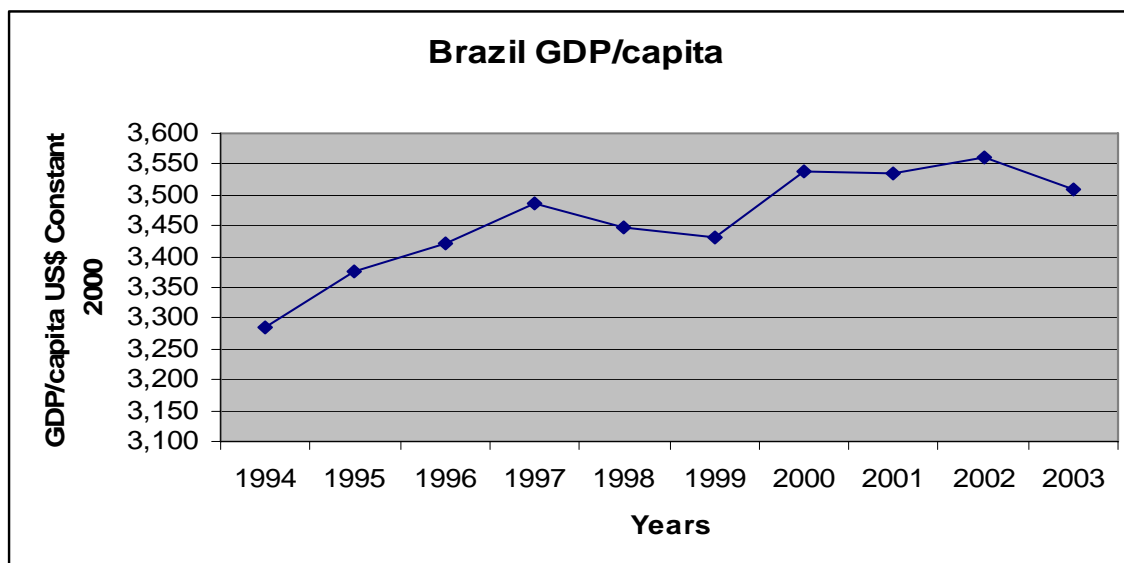
Which position (protectionist or not) would apply to Brazil is open to debate and its paper does not provide clarification. For example, its position on the evolution of Brazilian air transport over the previous ten years suggests that the Government has taken steps to deregulate, but there is no evidence that it has undertaken any liberalisation.

Economic Development

Brazil is a developing nation that has experienced relatively strong economic growth in terms of GDP per capita and is poised to become one of the more dynamic South American economies. However, the economic growth does not appear to be affecting the air transport sector to any great degree. Comparing the per capita figures in Chart 11 with the subsequent charts (12 and 13 below), neither the airlines nor the cargo sector reflect to overall positive economic growth in the country.

It is interesting to note that in Brazil's written submission (S/C/W/201, 3 October 2001) it highlights that "civil aviation [is] an essential tool for social and economic development". It thus links the economic expansion to air transport in contrast to the findings of this study that shows there appears to be a lack of economic success in this sector. Despite these findings, Brazil noted that the supposed success of the sector and the economy in general could be directly attributed to the "significant reduction of State intervention" and the "greater participation of private capital" in the economy (S/C/W/201, p 1).

Chart 11



Geostrategic Location: Distance to Major Markets (US and EU)

Unlike Chile, Brazil made no reference to its geographic location and the cost of transportation over long distances despite similarity of distances facing both countries. According to the data analysis the importance of access to the US market is high, yet unlike Chile, Brazil does not appear to be pursuing more liberal arrangements with the US. Chile's air transport sector, however, is benefiting from participating in a more liberal arrangement with the US than Brazil.

ASAs and Foreign Ownership Limitations

The most liberal ASA that Brazil has signed with another country is of the BII and MBII type agreements. This was established after Chile questioned Brazil about its intention to negotiate an Open Skies agreement with other states in the region. In response it gave the following answer short answer: "[t]he Brazilian government currently has no plans to negotiate bilateral "open skies" agreements [and] Brazil has not signed a bilateral "open skies" agreement with Peru" (Job(02)/27, 12 March 2002).

Brazil's position in the Review is in accordance with expectations derived from the data analysis that show a Member's position regarding multilateral liberalisation is strongly linked to the most liberal bilateral type of agreement already signed. Since Brazil has not yet signed any Open Skies type of agreement it would be expected that it would support fully the status quo of the Air Transport Annex.

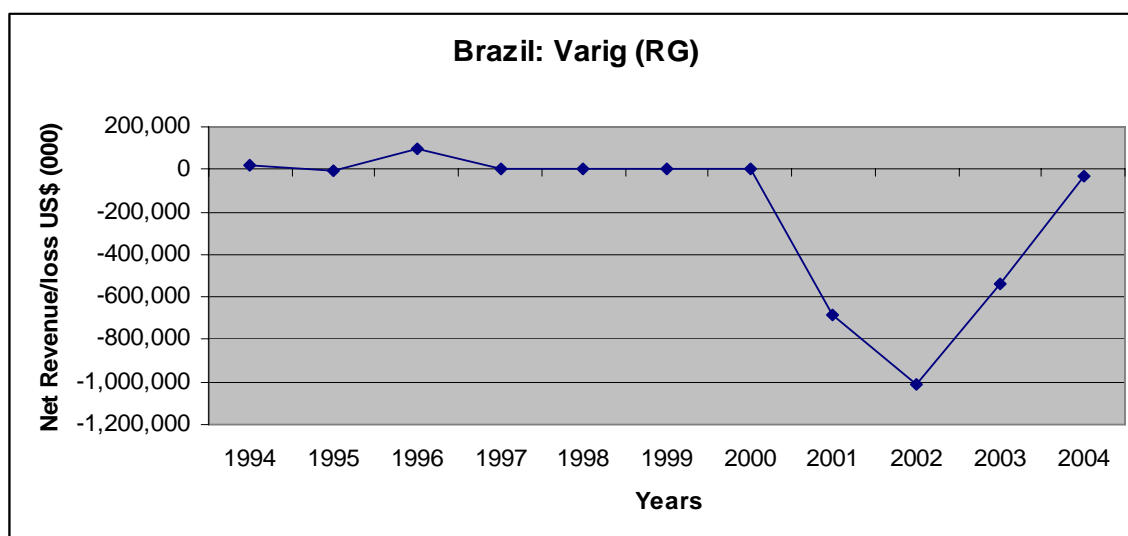
Foreign Ownership Restrictions

The foreign ownership level in Brazil during the period of the Review was set at a maximum of twenty per cent. However, due to the national flag carrier's financial crisis and lack of access to sufficient capital that could potentially rescue the airline, the Government was prompted to examine lifting the limits. Brazil's National Civil Aviation Council (CONAC) started discussions in 2001 to construct an emergency plan to help the country's major airlines through the current crisis. "It approved, in principle, an increase in the foreign ownership of national carriers, now limited to 20%, to new ceilings ranging from 25% to 50%."¹⁸⁹

Flag Carrier Revenue/Loss

The revenues of Brazil's flag carrier were almost zero in the years leading up to 2000 and the Review (Chart 12), whereupon they dropped massively over the following two years. For both the statistical analysis and the theoretical framework, the lack of financial success or growth of the country's flag carrier it can be expected that Brazil would block any attempts to expand GATS coverage.

Chart 12



Ground-handling

Brazil has no presence in the international trade of ground-handling services. However, ground-handling at Brazil's largest airport in Sao Paulo (GRU) is open and competitive with a total of seven companies. Included in this number (as of 2000) were three US and one Swiss company. Looking at the ground-handling sub areas

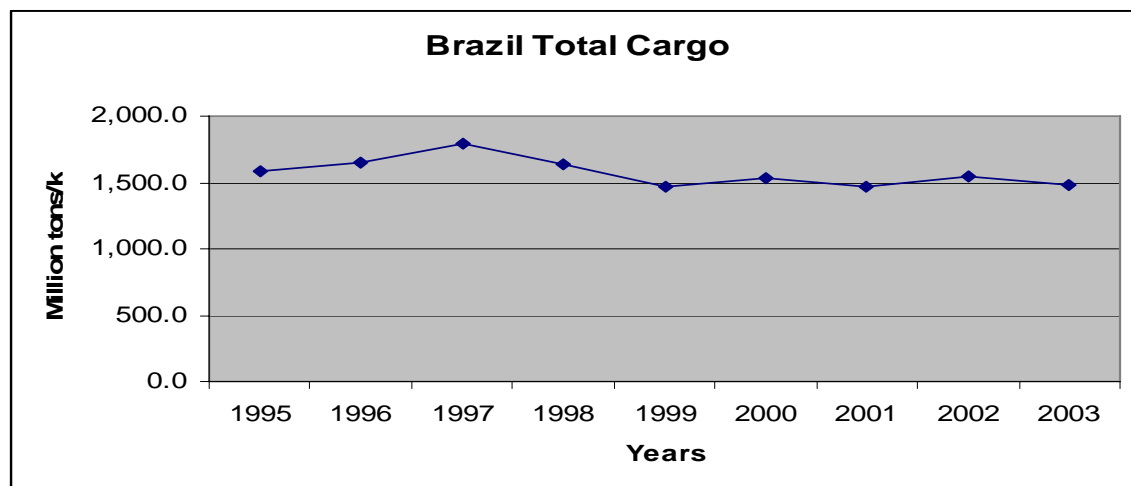
¹⁸⁹ *Aviation Daily*, "Brazil Designs Emergency Plan For Its Troubled Airlines", Aviation Daily Staff, 28 Aug 2001.

(12, not including fuelling and catering), all but three (Cargo/mail, surface transport, and security) have an international presence. Brazil confirmed that it is open to foreign suppliers in its response to Chile during the Review (Job(02)/27, 12 March 2002).

Airport Cargo

Like Canada, there appears to be little correlation between GDP and total cargo movements. Between 1995 and 2004 Brazil experienced solid economic growth whereas air cargo volumes increased slightly between 1995 and 1997 but declined below the 1995 levels and remained roughly flat for the next five years. There also appears to be no link to the revenue/loss of the flag carrier during the same period that the flag carrier experienced massive losses and the cargo sector.

Chart 13



Airport Management Services

Brazil has no presence in the international trade for airport services and it has not been possible to ascertain with certainty whether international operators are permitted in Brazil.

Incentives and BATNA

From both the theoretical perspective and the data analysis, Brazil conforms to the expectations of each. It does not have corporations participating in the global market in any of the sub-sectors, nor does it have a financially sound flag carrier, thus it is unlikely that it would seek any type of multilateral liberalisation. Additionally, the data results linking the existing degree of openness in the bilateral ASA realm confirm that Brazil would support the status quo of the bilateral regime.

Chapter 8

Conclusions

The Air Transport Review (the Review) was chosen as the topic of study, despite the stalemate that resulted, because it provides a wealth of information that informs us about the incentives that contribute toward national policy choices and what lies behind a negotiator's position, particularly in a politically sensitive industry. It is through analysing international air transport and the WTO that we uncover the paradox that simultaneously highlights regime strength, importance of state sovereignty and likelihood of moving from the bilateral world to a single set of multilateral rules. Studying this sector also increases our understanding about the institutional setting within the WTO and how decisions are achieved in multilateral negotiations and it shows the degree to which it is a Member driven organisation. The interest in this sector also stems from the oddity of air transport in the GATS as the only sector that was excluded from coverage during the Uruguay Round negotiations that created the GATS. Air transport is not only a global services industry but it is also an important factor in economic growth and development.

The exclusion of air transport in the GATS is puzzling because of the industry's importance to both international trade in services and goods and it is one of the service industries that is known to trade internationally. This raised a number of questions regarding the potential reasons for the exclusion. Was it the particular time-frame when the negotiations took place; or was it, as many claimed, an issue of national security or territorial sovereignty? Reading the Annex on Air Transport Services of the GATS did not provide any satisfactory answers. Paragraph 2 is clear that "traffic rights" and "services directly related to the exercise of traffic rights" are excluded, however, it also mandates that a review of the sector must be carried out "at least every five years ... with a view to considering the possible further application of the Agreement in this sector" (GATS, p 27). The text defines "traffic rights" (paragraph 6.(d)) but it does not define what is directly related to the exercise of these rights. In short the text does not provide clear answers about whether coverage of the GATS will extend to sub-sectors of the industry or whether the mandated reviews will be a waste of time and effort on the part of the participants.

After studying the historical development of air transport and the multilateral trading system it became clear that while both existed for approximately the same time they evolved in two vastly different frameworks until the GATS came into existence. Air transport was strictly bilateral and agreements were negotiated on

the basis of reciprocity while the fundamental principle of the GATS rests *inter alia* on MFN treatment and transparency. Despite the exclusion of air transport and because of the mandated reviews, the question arose about whether this would eventually impact or influence how international air transport would liberalise in the future. Using the questions that arose when examining the two frameworks led to the hypothesis, which claims that in time GATS coverage will be expanded to include sub-sectors of air transport. To argue this position the study was situated within Odell's theoretical framework on negotiations that argues market forces have an important role to play in how states define and approach their negotiations regardless of the forum (i.e. bilateral, plurilateral or multilateral) and have a strong influencing factor over whether a State would see its Best Alternative to a Negotiated Agreement (BATNA) in the multilateral or bilateral setting.

The approach was comparative, whereby four cases were selected that represented Members supporting multilateral liberalisation of the industry and four that supported the bilateral system and did not want to see any expansion of the GATS in this sector. The selection was also based on the Members that actively participated in the Review (oral and written) and that represented as much of a geographic spread as possible. Using the sub-sector (market) data compiled for the Review background papers that covered 1994-1999 and updated to include 2004 the study sought to show factors that are relevant to Members in the formulation of their position for or against GATS expansion.

The methodology chosen to accomplish this task was four-fold. First, an examination of the Member State written submissions and interventions was used to gain an understanding of what important, if not critical, elements were used to argue either for or against expanding coverage of the GATS over this sector. Second, all the compiled data was entered into a statistical analysis programme using linear regression to see if the observations could be validated empirically. Third the actual data, set in line charts, was presented and discussed in relation to the results of the linear regression and the Member's submissions throughout the Review. Fourth, the results for each of the independent variables were set in the context of the theoretical framework in order to help identify why each might be important factors to a Member's overall position.

A WTO Member's incentive to negotiate, in the context of the WTO is useful for understanding the incentives that motivate policy choices and to identify where a negotiator's perceived BATNA is located. Here one will find that given the mandate to negotiate within the WTO, a Member may have more incentive outside the multilateral arena in a given industry and will work to ensure the status quo is

maintained. Since it is known that bilateral negotiations tend to favour the more powerful of the two parties, it is likely that a stronger state will prefer the bilateral forum, particularly if their industry is in turmoil. The incentive to protect the industry would be driven by domestic political concerns rather than economically rational choices. It would be the perception or belief that more could be gained bilaterally and any liberalisation would occur at the timing of the more powerful State. Economically weaker states that are competing with neighbours in a similar economic position may favour the bilateral to gain a better agreement than their neighbours.

States preferring the multilateral option are oftentimes small open economies that have already benefited from this form of liberalisation and are likely to perceive that they will have a stronger voice through the consensus driven decision-making process. The one anomaly that stands out is the EC. For this Member multilateral liberalisation is attractive from the negotiating authority perspective. Internal to the EU there is a single market, however third-party bilaterals in air transport are still the norm and in this arena the Commission has only recently acquired limited authority to negotiate anything. In the WTO however, it is the EC that speaks on behalf of its Member States. Any sub-sector that would be covered by the GATS would automatically fall under the negotiating authority of the EC. Regardless of the other important factors, this is a strong incentive to have the GATS expanded.

In order to validate what in essence is a descriptive analysis, an empirical approach was also used. Data for the eight cases was collected for a nine-year period and analysed using linear regression to see if there was any correlation between a Member's position in the Review and written and oral submissions. From the full data set a sample of three years was chosen to avoid the immediate after effects of 11 September 2001 and the SARS crisis in 2003 and provide for a larger timeframe. This was done in order to empirically test whether market conditions will heavily influence a negotiators position. Through using this analysis we have been able to underscore our observations of the negotiations, indicating market elements or sub-sectors can and do influence negotiating positions in the multilateral arena, albeit to a lesser degree than expected.

The dependent variable was a Member's position for or against expanding the GATS coverage and the independent variables included some of the sub-sectors that were proposed as potential areas that could be covered, and other variables that were considered to have possible relevance to a given position. These included: geostrategic location (distance to the US and EU markets), GDP, types of ASAs,

Revenue/Losses of flag carriers, airport management services, ground-handling and airport cargo volumes.

The outcome of the empirical analysis had both expected and unexpected results. It was expected that because of the strong support by some on including sub-sectors like ground-handling and airport management services the analysis would show this to be true, however in both of these sub-sectors there was no statistical significance. It was expected that GDP levels would show some positive results or that cargo volumes, which contribute to a national economy, would either be consistently correlated and/or statistically significant. Both gave poor results.

It was also expected that distance to the US and the EC market would be significant, especially since this was cited as an obstacle to competing effectively in the market. The results were both surprising and interesting. While the distance to the US market was far greater than the EC, both showed a trend that was moving in the opposite direction; the US is becoming less significant while the EC is becoming more significant. The revenue/loss category was expected to be far more important than it showed, however it was not completely insignificant. The most significant variable, regardless how the data analysis was run, were the ASAs. It is this variable that appears to be the primary factor determining a Member's position about whether to expand the GATS. Nevertheless is it not the only factor and it is very likely that states supporting the bilateral system would vehemently disagree, particularly those which advocate further liberalisation of the sector.

For some states the size of the domestic economy and the distance to its major trading partners are important factors that are taken into consideration in advance of any negotiations. For other states, their geostrategic position is considered to be an important bargaining chip and its strength can only be utilised in the bilateral forum. In the case of the EC, it appears that the negotiating theory holds true insofar as the sub-sectors it strongly advocated for coverage were the ones which European corporations are dominant in the world market. Although Canada was classified in the pro-bilateral group of cases, it supported coverage for the one sub-sector where it had corporations that were becoming global participants (airport management services).

Although the US has been an industry leader throughout the history of modern commercial aviation, over the past decade it has been losing its dominant position. It does not have many global players in the sub-sectors, its flag carriers are in financial distress and its Open Skies agreements have been superseded by the EC common aviation area. In combination it is not surprising that the US would rather

ensure the bilaterals remain intact, particularly because market access is still being sought after by other nations.

Nevertheless, because the Review is mandated to occur at regular intervals into the future, it is likely that one or two sub-sectors will eventually be included under the GATS. Given that it is the degree of liberalisation that has occurred outside of the WTO and occurs between states, expansion of the GATS will occur after more states move away from the restrictive bilaterals; possibly by joining or creating a common aviation area. Thus, it can be concluded that further liberalisation must first occur in the bilateral realm through an increasing number of common aviation type agreements. Currently it is the EC that is the driving force of change as it re-negotiates all of its third-country bilaterals as mandated by the ECJ. Key to any radical change will have to include the US and its willingness to liberalise beyond the bilateral framework.

It can be expected that future bilateral negotiations will no longer be conducted on the basis of power and zero sum outcomes. Any game that exists will remain in constant play; in reality the game to shift elements of the bilateral regime to the multilateral level has really only begun. From the outset it is multi-faceted due to the range and number of sub-sector industries that are undergoing change. This change is expressed through corporate restructuring by the airlines, which is being done primarily through outsourcing. The result is an increasing number of non-aviation corporations buying companies that were originally internal departments of the airlines. Moreover, once sub-sector companies are formed and sold off by the airlines, the foreign ownership restrictions (a key element of the bilateral ASAs) no longer apply. Indeed, it is possible today to observe a growing dichotomy between the restrictive conditions of the bilateral agreements and the increasing economic freedom of the sub-sectors.

This study has argued that those in favour of retaining the current economic regulatory world of bilateral ASAs do so for a number of reasons that represent protectionism regardless of how often we are told that only through the bilaterals is there any hope of further and orderly liberalisation. Although beyond the scope of this study, further research is needed regarding the potential economic benefits of expanding the GATS to cover some of the sub-sector industries and more importantly, how this can be achieved.

To accomplish this task, it would be critical to begin identifying which of the sub-sectors can realistically be determined as not directly related to traffic rights. Is it merely foreign ownership restrictions, or is it the ability to operate the business without possessing traffic rights? For the sectors that might be covered under the

GATS, MFN exemptions should be prohibited and a time frame established to observe and analyse the effects of the GATS coverage. Not only would this go a great distance to liberalise parts of the sector, but it would also change the dynamic of the bilateral negotiations over traffic rights. The bilateral package to be negotiated would be smaller while at the same time the essence of the ASAs would remain intact for those wishing to retain levels of protectionism in politically sensitive areas of foreign ownership.

It is through the multilateral negotiating forum that some clarity can be given to what is or is not directly related to the exercise of traffic rights. This is important to keep in mind due to the political sensitivities surrounding the first and future Reviews, particularly because a number of delegates went on record to state that their governments did not consider the Review to be a negotiation and others argued that the CTS did not have the authority to expand coverage.

Analysing this particular industry set in the context of the 2000 Review we can ascertain that sovereignty is not under imminent threat, despite the increasing economic interdependence that is institutionalised within the WTO. Developing a solid body of rules in a widely accepted international legal regime that seeks to reduce and eventually remove mercantilist policies from the international economy of trade in goods and services will eventually incorporate much, if not all, of international air transport. Whether this can or will benefit all participating states over the long term remains to be seen, although history and experience tells us that economic gains are produced through multilateral trade liberalisation.

Appendixes

Appendix 1

Job No. 2451

Council for Trade in Services

19 April 2000

ISSUES FOR POSSIBLE CONSIDERATION

IN THE REVIEW OF AIR TRANSPORT

Informal Note by the Secretariat

On 14 April 2000, the Council for Trade in Services agreed that the Secretariat should circulate to Members a draft list of issues for consideration in the context of the review of air transport. The list is attached. 19 April 2000

This informal note lists the matters which Members may wish to take up in their work on the review of the Air Transport Annex.

The list is largely based on the structure of document S/C/W/59, which the Secretariat is updating. For each of the items mentioned it indicates as a reference the relevant paragraphs of documents S/C/W/59 and S/C/W/129. It also tries to take into account the various suggestions made to date.

I. DEVELOPMENTS IN THE SECTOR

Members could examine, on the basis of the documentation submitted by the Secretariat and by Members, the economic and regulatory developments (national, bilateral, regional or multilateral) that have affected trade in air transport services¹⁹⁰ since the entry into force of the WTO. The following list of services may be useful in organizing such discussions, even if they are not all examined individually.

- (a) Aircraft repair and maintenance - S/C/W/59, paragraphs 9 to 16;
- (b) Selling and marketing, including the new forms of selling and marketing such as electronic ticketing or more generally electronic commerce - S/C/W/59 paragraphs 31 to 36, and annex 2 on page 54; S/C/W/129 paragraphs 19(a) and 20(b);
- (c) Computer reservation services - S/C/W/59, paragraphs 17 to 30; S/C/W/129, paragraph 5, 19C(a), 19D(a), 20(a) and annex 1 on page 11;
- (d) Franchising S/C/W/59, paragraph 66;
- (e) Services auxiliary to all modes of transport when delivered in an air transport context- S/C/W/59, paragraphs 62 - 63;
- (f) Rental and leasing services - S/C/W/59, paragraph 65; S/C/W/129, paragraphs 6 - 7, 15(a), 19C(b), annex 2 on pages 12 - 13, and annex 6 on pages 25 - 27;
- (g) Catering services S/C/W/59, paragraph 67;

¹⁹⁰ This may include the trade effects or trade related aspects of major public policies affecting the sector such as competition, environmental and safety policies (S/C/W/59 paragraphs 85, 104 to 106; 14 and 136).

- (h) Refuelling services S/C/W/59, paragraph 68;
- (i) Ground handling services - S/C/W/59, paragraphs 134 to 136, annex 2 on pages 53 - 54, and annex 4 on pages 56 - 57; S/C/W/129, paragraphs 10, 15(b) and 20(e);
- (j) Airport management services including charging systems - S/C/W/59, paragraphs 64, 126 to 134 and annex 4 on pages 56 - 57; S/C/W/129, paragraph 5;
- (k) Air traffic control services including charging systems - S/C/W/59, paragraphs 64 and 129;
- (l) General aviation services S/C/W/59, paragraph 61 and 69 - 70; and
- (m) Any other supporting services, notably in the sense of CPC 7469 (cleaning and disinfecting services, fire fighting and fire protection services, hangar services) - S/C/W/59, paragraph 64.
- (n) Commercial air transport services:
 - (i) routes (freedom by freedom) S/C/W/59, paragraph 74 to 82;
 - (ii) capacity - S/C/W/59, paragraph 83 to 85;
 - (iii) tariffs - S/C/W/59, paragraphs 86 to 91; S/C/W/129, paragraph 19(c);
 - (iv) designation S/C/W/59, paragraph 73 to 82; S/C/W/129, paragraph 19(c);
 - (v) other standard elements of bilateral agreements in the ICAO sense¹⁹¹ - S/C/W/59, paragraphs 92 to 95 and annex 2 on pages 51 - 54;
 - (vi) ownership and cooperation among airlines (including alliances and codeshare) S/C/W/59, paragraphs 102 to 106, annex 2 on page 53; S/C/W/129, paragraphs 13, 15(a), 19(b), 19(c), 19C(c) and 20(c);
 - (vii) aspects specific to scheduled passenger services - S/C/W/59, paragraphs 96 to 107;
 - (viii) aspects specific to non-scheduled passenger services - S/C/W/59, paragraphs 108 to 114; S/C/W/129, paragraphs 19(e), 19C(d);
 - (ix) aspects specific to cargo services - S/C/W/59, paragraphs 115 to 119; S/C/W/129, paragraphs 15 -18, 19(d) and (annex 4 on pages 18 - 21;
 - (x) slot allocation - S/C/W/59, paragraphs 120 to 125; S/C/W/129, paragraphs 8; and
 - (xi) multimodal operations – S/C/W/129, paragraph 15(a).

¹⁹¹ Dispute settlement procedures, exemptions from taxes and customs duties, right to establish offices or personnel in the territory of the other party; right of a designated company to sell transport services in the currency of the other party or a freely convertible currency; right of a designated company to provide its own ground services in the territory of the other party, or to choose an agent to do so; existence and conditions applicable to CRS services; right to convert or transfer funds; other elements.

II. OPERATION OF THE ANNEX

Members might then review the operation of the annex according to the sequence described below.

A. OPERATION OF THE ANNEX FOR CRS, REPAIR AND MAINTENANCE AND SELLING AND MARKETING:

For each of those three explicitly covered services Members could examine the following questions:

(a) Commercial and regulatory effects of GATS coverage for services providers in terms of commitments, MFN, and other disciplines of the Agreement:

- repair and maintenance: S/C/W/59, paragraph 41 to 45, table 1 on pages 37 - 40, table 3 on page 44, table 7 on page 50;
- selling and marketing: S/C/W/59, paragraphs 46 to 50, table 4 on page 45 and table 7 on page 50, annex 2 on page 54;
- CRS: S/C/W/59, paragraphs 51 to 55, table 2 on pages 41 - 43, table 5 on page 46 and table 7 on page 50;

(b) Definitional issues (possible need for revision, classification, possible overlaps):

- repair and maintenance: S/C/W/59, paragraph 38;
- selling and marketing: S/C/W/59, paragraphs 32 to 35, 40 and annex 2 on page 54;
- CRS: S/C/W/59, paragraphs 17 to 23 and 39;

B. OPERATION OF THE ANNEX FOR SERVICES NOT DIRECTLY RELATED TO TRAFFIC RIGHTS

(a) Identification and classification of services not directly related to traffic rights among the list above from (I.(d) to (m)) either on a case by case basis or through the establishment of general criteria S/C/W/59, paragraphs 60 to 70 and annex 4 on pages 56 - 57; S/C/W/129, paragraph 12.

(b) Commercial and regulatory effects of the ambiguity of the coverage by the annex for services providers in terms of commitments, MFN, and other disciplines of the agreement S/C/W/59, paragraph 56 to 59, 60 to 70, 134 to 136, table 6 on page 48 - 49 and table 7 on page 50, annex 2 on page 53 - 54.

C. IDENTIFICATION OF THE POSSIBLE NEED FOR CLARIFIED AND/OR ADDITIONAL DISCIPLINES UNDER THE AGREEMENT FOR SERVICES COVERED UNDER A AND B ABOVE:

D. COMMERCIAL AND REGULATORY EFFECTS OF THE EXCLUSION FROM THE AGREEMENT OF TRAFFIC RIGHTS AND SERVICES DIRECTLY RELATED TO TRAFFIC RIGHTS

S/C/W/129, paragraphs 13, 19(c), 19D(b), 20(d).

Appendix 2

ANNEX ON AIR TRANSPORT SERVICES¹⁹²

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 or obligation assumed under this Agreement shall not reduce or affect a Member's obligations under bilateral or multilateral agreements that are in effect on the date of entry into force of the WTO Agreement.
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 specific commitments have been assumed by the concerned Members and where dispute settlement procedures in bilateral and other multilateral agreements or 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 from service 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 computerised 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 to 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.

¹⁹² GATS: *The General Agreement on Trade in Services and Related Instruments*, April 1994, p 27.

Appendix 3

The Air Transport Review: Written and Oral Submissions, Interventions, and Secretariat Background Papers¹⁹³

Council for Trade in Services: Pre-Review Meetings

23-23 November 1998
14 April 2000
26 May 2000

Secretariat Papers

S/C/W/129	(5 November 1998)	
Job No. 2451	(19 April 2000)	Classification List

Written Submissions (formal and informal)

Job No. 1059	(23 November 1998)	New Zealand
Job No. 6512	(23 November 1998)	Australia
S/C/W/113	(15 July 1999)	Chile/New Zealand/Singapore
Job No. 753	(10 February 2000)	New Zealand
Job No. 6786	(23 November 1998)	Poland (all transport)
S/C/W/71	(24 November 1998)	US
S/C/W/134	(10 February 2000)	Japan
Job No. 1430	(8 March 2000)	Poland
Job No. 3203	(19 May 2000)	Australia

ICAO

S/C/W/63	(23 October 1998)
Job No. 6541	(24 November 1998)
Job No. 679	(8 February 2000)

Oral Interventions

Brazil	Ecuador	Australia
Norway	New Zealand	Japan
Korea	EC	Hong Kong, China
Mexico	Turkey	Hungary
Chile	Switzerland	US
India	Canada	Morocco
Columbia	Dominican Republic	Poland

Scheduled Topic Discussion

Setting out the work programme and schedule for the Air Transport Review

Minutes of Pre-Review Sessions

S/C/M/31 (9 December 1998) "Report of the meeting held on 23 and 24 November 1998".

S/C/M/38 (13 September 1999) "Report of the meeting held on 19 and 20 July 1999".

¹⁹³ For a complete and official listing of all the documents used prior to and throughout the Air Transport Review see: "Air Transport and the GATS: Documentation for the First Air Transport Review under the General Agreement on Trade in Services (GATS), 1995-2000 in Review". WTO Secretariat, 2006.

Dedicated First Session: 28-29 September, 2000

Job No. 2451 (19 April 2000) Sub-sector Classification List

Secretariat Background Papers

S/C/W163 (3 August 2000)
S/C/W129 (15 October 1999)
S/C/W59 (5 November 1998)

Written Submissions by Members

Job 1430	(8 March 2000)	Poland
Informal Note	(1 August 2000)	Chile
S/C/W/165	(15 September 2000)	New Zealand
S/C/W/166	(15 September 2000)	Chile
S/C/W/166/Corr.1	(6 November 2000)	Chile
S/C/W/167	(18 September 2000)	Australia
S/C/W/167/Corr.1	(28 November 2000)	Australia
S/C/W/168	(26 September 2000)	EC
Job No. 3203	(19 May 2000)	Australia (background for S/C/W/167)

ICAO

Oral presentation

Oral Interventions (over both days)

Poland	Canada	Indonesia
New Zealand	Senegal	Tunisia
Chile	Jordan	Thailand
Australia	Guatemala	Singapore
EC	Brazil	Norway
Egypt	Korea	ICAO
Switzerland	Uruguay	Argentina
US	Cuba	Mexico
Japan	Hong Kong, China	ICAO

Scheduled Topic Discussions

MRO	Freight forwarding
CRS	Rental and leasing
Selling and Marketing	Catering
Franchising	

Minutes of the First Session

S/C/M/49, (1 December 2000), "Report of the first session of the review mandated under paragraph 5 of the air transport annex held on 28-29 September 2000".

S/C/M/49/Corr.1 (17 January 2001) "Report of the first session of the review mandated under paragraph 5 of the air transport annex held on 28-29 September 2000", Corrigendum.¹⁹⁴

¹⁹⁴ This was a text correction requested by Mexico. Their intervention (paragraph 65) was falsely attributed to the United States.

Dedicated Second Session 4-5 December 2000

Secretariat Papers

S/C/W/163Add.1 (25 October 2000)
S/C/W/163Add.2 (10 November 2000)

ICAO/OECD Papers

S/C/W/181 (27 November 2000) OECD
S/C/W/182 (30 November 2000) ICAO

Written Submissions

S/C/W/179 (14 November 2000) Australia
S/C/W/185 (1 December 2000) New Zealand
S/C/W/186 (4 December 2000) EC
"Review of Air Transport Services under Paragraph 5 of the Annex on Air Transport Services (Date and number unknown) New Zealand
Informal paper (13 November 2000) Australia

Oral Interventions (over both days)

Australia	US	El Salvador
ICAO	Brazil	Cuba
Switzerland	Hong Kong, China	Japan
EC	Dominican Republic	Uruguay
New Zealand	Morocco	Columbia
Turkey	Mexico	Egypt
Canada	Chile	

Scheduled Topic Discussions

Fuelling
Ground handling
Air Navigation
General Aviation
General Aspects of Commercial Aviation

Minutes of the Second Session

S/C/M/50 (5 March 2001) "Report of the second session of the review mandated under paragraph 5 of the air transport annex held on 4 December 2000".

Dedicated Third Session: 9 October 2001

Secretariat Papers

S/C/W/163Add.3	(13 August 2001)
S/C/W/163Add.4	(15 August 2001)
S/C/W/163Add.5	(13 August 2001)
S/C/W/163Add.6	(16 August 2001)
S/C/W/200	(3 October 2001)
S/C/W/200Add.1	(28 February 2002)

ICAO Papers

S/C/W/188	(11 January 2001)
S/C/W/199	(2 October 2001)

Written Submissions

S/C/W/201	(4 October 2001)	Brazil
S/C/W/201/Corr.1	(18 March 2002)	Brazil
S/C/W/168	(26 September 2000)	EC
S/C/W/41	(22 December 2000)	EC
S/CSS/W/92	(26 June 2001)	New Zealand ¹⁹⁵
S/C/W/198	(3 October 2001)	US
S/C/W/198/Corr	(18 March 2002)	US
S/CSS/W/59	(21 March 2001)	Norway ¹⁹⁶

Oral Interventions (over both days)

Brazil	New Zealand	Australia
Brunei	Japan	Chile
Venezuela	US	Canada
EC	Cuba	Jordan
Turkey	Argentina	Uruguay
Dominican Republic	ICAO	

Scheduled Topic Discussions

Freedoms of the air
Agreements: bilateral, plurilateral, and multilateral
Ownership and control
Alliances and code-sharing
Slot allocation
Non-scheduled services
Cargo
Multimodal

Minutes of the Third Session and the Special Session

S/CSS/M/12 (28 November 2001), "Report of the Meeting Held on 5, 8, 12 October 2001".

S/C/M/57 (13 February 2002), "Report of the third session of the review mandated under paragraph 5 of the air transport annex held on 9 October 2001".

¹⁹⁵ This paper was actually submitted in a Council for Trade in Services meeting and not an Air Transport Review meeting, although it was raised and discussed in the Review meetings.

¹⁹⁶ This paper was actually submitted in a Council for Trade in Services meeting and not an Air Transport Review meeting, although it was raised and discussed in the Review meetings.

Dedicated Fourth Session: 18 March 2002

Secretariat Papers

S/C/W/200/Add.1

Written Submissions

S/C/W/198/Corr.1	(12 March 2002)	Brazil (de-restricting S/C/W/198)
Job(02)/ 27	(12 March 2002	
Job(01)/153	(17 October 2001)	Chile
S/C/W/206	(18 March 2002)	Australia, Chile, & New Zealand

Scheduled Topic Discussions

S/C/W/200/Add.1	(28 February 2002)	Part Two of Secretariat Executive Summary
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Oral Interventions (over both days)

Australia	European Communities	United States
New Zealand	Switzerland	Cuba
Chile	Canada	Mexico
Dominican Republic	Brazil	India
Morocco	Japan	Uruguay

Minutes of the Fourth Session

S/C/M/62 (17 October 2002), "Report of the fourth session of the review mandated under paragraph 5 of the air transport annex held on 18 October 2002".

Non-dedicated Fifth Session: 2 October 2003

Written Submissions

S/C/W/206	(18 March 2002)	Australia, Chile, New Zealand
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Oral Interventions

ICAO	Canada	Indonesia
Cuba	EC	New Zealand
Australia	Dominican Republic	Switzerland
Japan	Brazil	Turkey
US	Mexico	Argentina
Chile	Korea	
Norway	India	

Minutes of the Fifth Session

S/W/M/68 (2, 9, 24 October 2003), "Report of the Meeting Held on 2, 9 and 24 October 2003".

Non-dedicated Sixth Session: 9 October 2003

Written Submissions

Job(03)/117	(June 2003)	ICAO
Job(03)/193	(2 October 2003)	Australia/New Zealand

Oral Presentations

ICAO
Australia
New Zealand

Oral Interventions

ICAO	Chile	Brazil
Cuba	Norway	Mexico68
Australia	Canada	Korea
Japan	EC	India
New Zealand	Dominican Republic	Indonesia
US	Switzerland	

Minutes of the Sixth Session

S/C/M/68 (28 November 2003) "Report of the Meeting Held on 2, 9, and 24 October 2003".

Non-dedicated Seventh Session: 23 October 2003

Minutes of the Seventh Session

S/C/M/68 (28 November 2003) "Report of the Meeting Held on 2, 9, and 24 October 2003"

Council for Trade in Services Special Session

Meetings when air transport services excluded from the GATS are raised by Members in written and/or oral submissions during the period the Air Transport Review was open.

S/CSS/W/59	(21 March 2001)	Norway
TN/S/M/1	(5 June 2002)	Minutes (pp 32-36)
S/CSS/M/12	(28 November 2001)	Minutes (pp 47-48)

Appendix 4

First Air Transport Review Session 28-29 September 2000

Member States	Should GATS Coverage be expanded? ¹⁹⁷			Who has authority to amend the Annex			Delegates noting Member's authority ¹⁹⁸			Is the Review a negotiation?			Should expansion be discussed after the Review?			Desire for clarification of the Annex ¹⁹⁹		
	Yes	No	N-O ²⁰⁰	CTS	GC	Min	MS	Sec	N-C ²⁰¹	Yes	No	N-C	Yes	No	N-C	Yes	No	N-C
Poland		✓														✓		
New Zealand	✓															✓		
Chile	✓															✓		
Australia	✓			✓												✓		
EC	✓			✓						✓						✓		
Egypt		✓									✓					✓		
Switzerland	✓			✓												✓		
US		✓											✓					
Japan		✓					✓				✓		✓ ²⁰²				✓	
Canada	✓												✓ ²⁰³					
Senegal		✓									✓							
Jordan		✓																
Guatemala			✓															
Cuba		✓														✓		
Brazil		✓									✓		✓			✓		

¹⁹⁷ In the category of Member States saying that coverage should not be expanded include those who explicitly stated or implied that ICAO should be the primary multilateral forum for economic regulations for international air transport.

¹⁹⁸ There were requests for the Secretariat to provide points of clarification on the GATS and the Air Transport Annex, and requests for the secretariat to undertake more work. Other members responded to remind others that it is a member driven body and therefore the secretariat should not undertake any work that might have interpretive elements.

¹⁹⁹ This is in the context of members asking the Secretariat for interpretations of the Annex wording of what is directly related to traffic rights.

²⁰⁰ N-O represents No Objection.

²⁰¹ N-C represents No Comment.

²⁰² Although Japan said they supported the US position on this issue, the US did not make the statement in the actual Session, indicating the position was agreed to in another location and time.

²⁰³ Ibid.

Member States	Should GATS Coverage be expanded?			Who has authority to amend the Annex			Delegates noting Members States' authority			Is the Review a negotiation?			Should expansion be discussed after the Review concludes?			Desire for clarification of the Annex		
	Yes	No	N-O	CTS	GC	Min	MS	Sec	N-C	Yes	No	N-C	Yes	No	N-C	Yes	No	N-C
Korea		✓										✓	✓ ²⁰⁴					
Columbia	✓			✓														
Uruguay		✓				✓					✓						✓	
Hong Kong China	✓															✓		
Indonesia		✓																
Tunisia		✓																
Thailand	✓		✓													✓		
Singapore	✓			✓														
Norway	✓																	
Argentina		✓					✓										✓	
Mexico		✓																
El Salvador																✓		
ICAO		✓																

²⁰⁴ This is implied in their intervention where they agreed with the position of the US and Japan. Again it is noted that the US do not make this statement in the actual Review Session.

Appendix 5

Second Air Transport Review Session 4-5 December 2000

Member States	Does the CTS have the authority to make recommendations to other WTO bodies? ²⁰⁵				Conclude the Review in this Session?		Retain the status quo of the bilateral?	
	Ministerial Council		General Council					
	Yes	No	Yes	No	Yes	No	Yes	No
Australia						✓		
Switzerland								
EC	✓		✓			✓		
New Zealand	✓		✓			✓		
Turkey								
Canada								
US		✓		✓		✓		
Brazil		✓		✓		✓		
Hong Kong China	✓		✓					
Dominican Republic								
Morocco		✓		✓			✓	
Mexico		✓		✓		✓		
Chile	✓		✓					
El Salvador	✓		✓			✓		
Cuba								
Japan								
Uruguay		✓		✓			✓	
Egypt								
Switzerland								

Note: All the countries listed gave either oral or written submissions to the Session, however some only commented on specific sub-sectors.

²⁰⁵ In addition to Members stating their opinions during the session, the secretariat was asked to give a legal opinion regarding the authority of the Council for Trade in Service (CTS) to make a recommendation to the General Council and/or the Ministerial Council.

Appendix 6

Positions on whether sub-sectors are directly related to the exercise of traffic rights

Member States	Franchising		Freight Forwarding		Warehousing		Rental and Leasing		Catering	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Poland										
New Zealand										✓
Chile		✓		✓		✓				✓
Australia										
EC		✓		✓		✓		✓		✓
Egypt										
Switzerland				✓						✓
US	✓						✓ ²⁰⁶			
Japan										
Canada										✓ ²⁰⁷
Senegal										
Jordan	✓									
Guatemala										
Cuba										
Korea	✓									
Uruguay										
Hong Kong, China										
Indonesia										
Tunisia	✓						✓ ²⁰⁸			
Thailand										
Singapore										
Norway										
Argentina										
Mexico										
Columbia		✓		✓		✓		✓		✓
ICAO										

²⁰⁶ The US and Tunisia both referred specifically to 'wet leasing'. "A widespread method used by air carriers to obtain equipment or increase their fleet capacity is through leasing: a **leased aircraft** is an aircraft used under a contractual leasing arrangement; a **wet-leased aircraft** includes a crew; a **dry-leased aircraft** does not include crew; a **damp-leased aircraft** is a term used in some cases to refer to a wet-leased aircraft that includes a cockpit crew but not cabin attendants. In this connection, the term **lessor** means the party from which the aircraft is leased and the term **lessee** is the party to which the aircraft is leased." (bold and italics are in the original) *Manual on the Regulation of International Air Transport*. ICAO Doc 9626 1st ed. 1996. p. 5.2.2.

²⁰⁷ Although recorded as a comment by Canada in this first Session, it was submitted again in a later Session.

²⁰⁸ Ibid.

Appendix 7

Positions on whether sub-sectors are directly related to the exercise of traffic rights

Member States	Fuelling		Ground handling		Airport Services		Air Navigation		General Aviation	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Australia						✓		✓		
Switzerland		✓ ²⁰⁹		✓						
EC		✓ ²¹⁰		✓		✓	- ²¹¹	-	-	✓ ²¹²
New Zealand		✓		✓		✓				✓
Turkey				✓						
Canada ²¹³		✓	✓			✓	✓			
US									✓ ²¹⁴	
Brazil			✓							
Hong Kong, China			-	- ²¹⁵						
Dominican Republic			-	- ²¹⁶						
Morocco			✓							
Mexico	✓		✓		✓		✓		✓	
Chile		✓		✓						
El Salvador										
Cuba										
Japan										
Uruguay										
Columbia		✓		✓		✓		✓		✓
Egypt										
ICAO										
Secretariat		✓								

²⁰⁹ Switzerland considers that ground-handling is not directly related to traffic rights and considers fuelling to be a part of ground-handling, therefore both are recorded in separate columns.

²¹⁰ Ibid.

²¹¹ Dashes have been entered to represent a neutral position when comments were made on this sub-sector that was so non-definitive that the actual position could not be determined.

²¹² In this case, the EC suggested that only taxi services and fractional ownership, which are both considered elements of general aviation might be directly related to traffic rights.

²¹³ Canada specifically listed: catering, airport management services, cleaning and disinfecting aircraft as being not directly related to traffic rights.

²¹⁴ The US spoke specifically about air taxi services and that they are included in the US/Canada bilateral.

²¹⁵ Hong Kong, China was not against expanding coverage to ground-handling per se and stated their neutrality. However, they also tended to side with the EC's position.

²¹⁶ The Dominican Republic spoke on behalf of El Salvador and Honduras, taking the same position as Hong Kong, China. See footnote 7.

Appendix 8

Cases: GDP per Capita Constant 2000 US\$²¹⁷

Country Name	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Austria	20,649.80	20,953.31	21,343.16	21,658.81	22,482.70	23,037.23	23,765.65	23,884.44	24,108.51	24,217.02
Belgium	19,264.13	19,679.56	19,872.09	20,509.74	20,878.72	21,498.83	22,268.39	22,333.60	22,389.76	22,544.44
Denmark	25,914.22	26,510.44	27,002.53	27,687.49	28,281.00	28,928.02	29,630.32	29,985.07	30,203.86	30,261.90
Finland	18,083.86	18,637.42	19,298.81	20,446.40	21,413.84	22,084.37	23,183.51	23,358.32	23,838.76	24,225.47
France	19,555.90	19,819.67	19,975.42	20,292.20	20,914.12	21,504.37	22,216.57	22,568.11	22,722.52	22,722.93
Germany	20,627.77	20,951.86	21,042.79	21,294.76	21,717.66	22,151.30	22,750.01	22,908.64	22,900.33	22,868.17
Greece	8,783.53	8,899.65	9,045.73	9,315.63	9,577.44	9,861.24	10,267.94	10,637.02	11,006.49	11,448.74
Ireland	15,116.27	16,463.05	17,645.37	19,408.41	20,835.69	22,877.49	24,848.36	26,035.26	27,374.06	27,932.03
Italy	16,624.01	17,084.95	17,218.73	17,523.96	17,818.20	18,096.42	18,629.98	18,953.82	19,026.80	19,090.25
Luxembourg	34,023.56	34,031.89	34,654.95	37,005.34	39,081.56	41,616.34	44,756.77	45,205.65	45,564.90	46,067.20
Netherlands	19,467.86	19,956.00	20,487.00	21,150.73	21,942.73	22,665.01	23,282.77	23,389.44	23,293.78	22,973.43
Portugal	8,452.17	8,788.67	9,074.88	9,402.46	9,794.31	10,121.62	10,405.31	10,516.02	10,485.03	10,283.82
Spain	11,564.45	11,863.04	12,112.16	12,471.28	12,977.95	13,408.69	13,870.68	14,183.02	14,407.88	14,691.25
Sweden	22,347.26	23,120.60	23,387.32	23,940.00	24,806.11	25,925.42	27,011.80	27,184.82	27,662.01	27,998.08
United Kingdom	20,624.63	21,176.33	21,706.90	22,377.15	23,025.60	23,614.87	24,445.45	24,895.21	25,226.26	25,742.44
EC 15 Ave	18,739.96	19,195.76	19,591.19	20,298.96	21,036.50	21,826.08	22,755.57	23,069.23	23,347.40	23,537.81
New Zealand	16,132.78	16,556.05	16,870.97	16,892.72	16,815.36	17,541.62	17,902.25	18,380.67	18,905.21	19,243.35
Brazil	3,285.25	3,376.20	3,420.80	3,487.32	3,446.09	3,430.24	3,537.52	3,535.99	3,559.82	3,510.23
Canada	19,460.13	19,836.74	19,940.18	20,568.03	21,222.90	22,228.83	23,198.01	23,402.02	23,950.22	24,222.24
Chile	3,942.41	4,295.10	4,546.84	4,814.95	4,936.62	4,816.44	4,964.40	5,040.21	5,089.31	5,195.58
United States	29,550.48	29,941.64	30,703.73	31,716.04	32,671.27	33,748.21	34,599.47	34,401.26	34,788.76	35,566.15
Australia	17,306.61	17,826.56	18,243.69	18,830.88	19,599.18	20,103.65	20,284.65	20,818.91	21,126.33	21,688.46
Japan	34,767.20	35,304.23	36,417.24	36,995.37	36,485.64	36,437.28	37,408.91	37,491.37	37,282.96	38,222.07

²¹⁷ World Development Indicators, World Bank.

Appendix 9

Great Circle Distances²¹⁸

Member State	Code	AKL	AMS	CDG	FRA	GRU	JFK	LAX	LHR	MAD	MIA	NRT	ORD	YUL	YVR	YYZ	SCL	SYD
New Zealand	AKL	0	11,269	11,516	11,304	7,485	8,828	6,504	11,404	12,175	8,050	5,472	8,184	8,931	7,043	8,616	6,011	1,345
EC	AMS	11,269	0	I	I	6,059	3,643	5,578	I	I	4,633	5,805	4,120	3,430	4,804	3,732	7,445	10,348
EC	CDG	11,516	I	0	I	5,829	3,635	5,670	I	I	4,589	6,048	4,152	3,442	4,939	3,751	7,240	10,527
EC	FRA	11,304	I	I	0	6,073	3,855	5,806	I	I	4,832	5,836	4,343	3,648	5,025	3,952	7,506	10,249
Brazil	GRU	7,485	6,059	5,829	6,073	0	4,745	6,156	5,863	5,192	4,072	11,489	5,222	5,042	6,858	5,075	1,626	8,318
US	JFK	8,828	3,643	3,635	3,855	4,745	0	I	3,451	3,589	I	6,745	I	333	2,449	366	5,097	9,950
US	LAX	6,504	5,578	5,670	5,806	6,156	I	0	5,456	5,845	I	5,451	I	2,474	1,081	2,175	5,569	7,488
EC	LHR	11,404	I	I	I	5,863	3,451	5,456	0	I	4,425	5,974	3,953	3,249	4,723	3,556	7,227	10,573
EC	MAD	12,175	I	I	I	5,192	3,589	5,845	I	0	4,424	6,707	4,201	3,459	5,249	3,774	6,648	10,983
US	MIA	8,050	4,633	4,589	4,832	4,072	I	I	4,425	4,424	0	7,436	I	1,404	2,801	1,233	4,118	9,336
Japan	NRT	5,472	5,805	6,048	5,836	11,489	6,745	5,451	5,974	6,707	7,436	0	6,274	6,449	4,674	6,415	10,666	4,486
US	ORD	8,184	4,120	4,152	4,343	5,222	I	I	3,953	4,201	I	6,274	I	748	1,764	436	5,299	9,232
Canada	YUL	8,931	3,430	3,442	3,648	5,042	333	2,474	3,249	3,459	1,404	6,449	748	0	I	I	5,430	9,954
Canada	YVR	7,043	4,804	4,939	5,025	6,858	2,449	1,081	4,723	5,249	2,801	4,674	1,764	I	0	I	6,533	7,757
Canada	YYZ	8,616	3,732	3,751	3,952	5,075	366	2,175	3,556	3,774	1,233	6,415	436	I	I	0	5,332	9,663
Chile	SCL	6,011	7,445	7,240	7,506	1,626	5,097	5,569	7,227	6,648	4,118	10,666	5,299	5,430	6,533	5,332	0	7,060
Australia	SYD	1,345	10,348	10,527	10,249	8,318	9,950	7,488	10,573	10,983	9,336	4,486	9,232	9,954	7,757	9,663	7,060	0

²¹⁸ The distances used for this data table are absolute mileage (shortest distance) and not what is used for actual flight planning or flights. *Great Circle Mapper*, <http://gc.kis2.com>.

Appendix 10

Member State Air Services Agreement Types

Bilateral and Plurilateral Agreements												
Country		AUS	BRA	CAN	CHL	NZL	USA	JPN	GBR	IRE	FRA	DEU
Australia	AUS	0		MBI	None	CAA	MBI/CR7PR	MBII	MBII	BII	MBI	MBII
Brazil	BRA		0	MBI		MBII		MBI				
Canada	CAN	MBI	MBII	0	MBII	MBI	OS-N/A*	MBI	MBII	MBII	MBII	MBII
Chile	CHL	None		MBII	0	PL*	PL*					
New Zealand	NZL	CAA	MBII	MBI	PL*	0	PL*	MBI	MBII	MBII	MBI	MBII
United States	USA	MBI/CR7PR		OS-N/A*	PL*	PL*	0	MBII			OS*	OS-PR*
Japan	JPN	MBII	MBI	MBI	None	MBI	MBII	0	MBI			MBI
UK	GBR	MBII		MBII		MBII		MBI	0	CAA	CAA	CAA
Ireland	IRE	BI		MBII		MBII			CAA	0	CAA	CAA
France	FRA	MBI		MBII		MBI	OS*		CAA	CAA	0	CAA
Germany	DEU	MBII		MBII		MBII	OS-PR*	MBI	CAA	CAA	CAA	0
Spain	ESP			MBII		MBII		MBI	CAA	CAA	CAA	CAA
Luxembourg	LUX					MBII	OS*		CAA	CAA	CAA	CAA
Portugal	PRT			MBII			OS*		CAA	CAA	CAA	CAA
Greece	GRC	MBI		MBII				MBI	CAA	CAA	CAA	CAA
Italy	ITA	MBI		MBI		MBII	OS-C&R	MBI	CAA	CAA	CAA	CAA
Belgium	BEL			MBII			OS-PR	MBI	CAA	CAA	CAA	CAA
Austria	AUT	MBI		MBII		MBII	OS	MBI	CAA	CAA	CAA	CAA
Sweden	SWE			MBII		MBII	OS	MBI	CAA	CAA	CAA	CAA
Netherlands	NLD	MBI		MBII			OS	MBI	CAA	CAA	CAA	CAA
Denmark	DNK			MBI		MBII	OS	MBI	CAA	CAA	CAA	CAA
Finland	FIN			MBII			OS	MBI	CAA	CAA	CAA	CAA

It is assumed that most bilateral agreements have undergone some degree of change through exchanging diplomatic notes to accommodate technical and commercial changes over time.

Classification: Bermuda I, BI, Modified Bermuda I, MBI, Bermuda II, BII, Modified Bermuda II, MBII, Open Skies, OS; Plurilateral, PL; and Common Aviation Area, CAA

Member State Air Services Agreement Types cont'd

Bilateral and Plurilateral Agreements												
Country		ESP	LUX	PRT	GRC	ITA	BEL	AUT	SWE	NLD	DNK	FIN
Australia	AUS				MBI	MBI		MBI		MBI		
Brazil	BRA											
Canada	CAN	MBII		MBII	MBII	MBI	MBII	MBII	MBII	MBII	MBI	MBII
Chile	CHL											
New Zealand	NZL	MBII	MBII			MBII		MBII	MBII		MBII	
United States	USA		OS*	OS*		OS-C&R	OS-PR	OS	OS	OS	OS	OS
Japan	JPN	MBI			MBI		MBI	MBI	MBII	MBI	MBI	MBI
UK	GBR	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA
Ireland	IRE	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA
France	FRA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA
Germany	DEU	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA
Spain	ESP	0	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA
Luxembourg	LUX	CAA	0	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA
Portugal	PRT	CAA	CAA	0	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA
Greece	GRC	CAA	CAA	CAA	0	CAA	CAA	CAA	CAA	CAA	CAA	CAA
Italy	ITA	CAA	CAA	CAA	CAA	0	CAA	CAA	CAA	CAA	CAA	CAA
Belgium	BEL	CAA	CAA	CAA	CAA	CAA	0	CAA	CAA	CAA	CAA	CAA
Austria	AUT	CAA	CAA	CAA	CAA	CAA	CAA	0	CAA	CAA	CAA	CAA
Sweden	SWE	CAA	CAA	CAA	CAA	CAA	CAA	CAA	0	CAA	CAA	CAA
Netherlands	NLD	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	0	CAA	CAA
Denmark	DNK	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	0	CAA
Finland	FIN	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	CAA	0

In the cases where descriptions of the bilateral could not be located, the original signing date was used to classify it as MBI or MBII; OS*: Open Skies, Cargo 7th Freedom

Australian Treaties Library, Civil Aviation. http://austlii.edu.au/au/other/dat/subjects/Civil_Aviation.html.

U.S. Department of State, Open Skies Partners, 22 November 2005. <http://www.state.gov/e/eb/rls/othr/2005/22281.htm>.

Japan, Ministry of Land, Infrastructure and Transport, Civil Aviation Bureau, "Bilateral Agreements", January 2005, http://www.milt.go.jp/koku/english/09_data/03_bilateral.html.

Canadian Transportation Agency, "Report of Bilateral Air Relations Between Canada and Other Countries", 2000, http://www.cta-otc.gc.ca/air-aerien/agreements/main_e.html#1.

Ministry of Transport, New Zealand, "New Zealand's Air Services Agreements", <http://www.transport.govt.nz/publications/211201-07.php>.

Appendix 11

Cases: Flag Carrier Revenue/Loss

Country	Airline	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Australia	Qantas		133,800	187,200	197,800	206,900	263,800	324,300	223,200	224,800	201,200	461,600
Brazil	Varig	16,148	-7,432	96,396	-60	-22	-53	-98	-687,155	-1,014,127	-536,480	-29,831
Canada	Air Canada	93,138	38,372	109,196	307,536	-10,449	143,584	-55,406	-470,622	-509,448	-1,338,698	-674,292
Chile	LAN Airlines	6,336	25,368	38	64,115	30,990	48	48,386	10,842	30,808	83,555	163,552
Japan	Japan Airlines	-12,162	5,092	-81,514	-763,690	204,243	6,384	259,832	-279,471	152,890	-788,600	280,400
	All Nippon Airways	42,633	31,940	34,542	-21,689	-51,195	-142,041	-261,893	-103,198	-139,205	84,906	
US	United Airlines	40,136	340,794	533,744	931,911	802,635	1,203,761	51,624	-2,110,209	-3,325,781	-3,086,226	-
	American Airlines	268,493	207,766	573,819	780,242	1,062,900	625,814	778,003	-1,317,176	-3,495,660	-1,318,491	-820,981
	Delta Air Lines	-	510,036	249,024	934,043	1,077,552	1,285,559	686,463	-1,107,053	-1,294,969	-895,593	-
		159,627										3,362,180
	Continental	-	223,545	319,551	384,948	382,938	498,470	340,906	-95,142	-451,002	38,156	-362,965
		613,342										
	Northwest	429,845	506,325	578,817	603,522	-241,269	287,839	269,943	-418,102	-766,429	478,109	-757,299
	US Airways	-	32,990	183,232	1,052,159	559,073	273,469	-254,804	-1,989,407	-1,658,803	-1,452,056	-577,855
		716,183										
US Ave.		-	303,576	406,365	781,138	607,305	695,819	312,023	-1,172,848	-1,832,107	-1,039,350	-
		125,113										1,313,895
D	Lufthansa	175,424	134,238	369,992	480,559	812,779	666,424	633,601	-568,026	679,526	-1,113,002	502,730
NL	KLM	270,490	342,088	135,164	1,099,896	268,789	344,979	69,684	-138,594	-409,627	27,988	
F	Air France	-	-	40,402	312,907	259,420	236,193	428,874	116,295	93,756	86,983	82,158
		229,136	580,963									
UK	British Airways	389,906	740,135	874,871	737,227	126,408	365,025	347,667	-160,853	-44,564	217,972	466,728
UK	Virgin Atlantic	-13,282	40,408	54,676	103,589	141,813	57,550	49,729	-114,242	55,282	3,766	39,609
	British Midland	5,037	4,362	5,105	19,612	11,992	19,890	11,726	10,772	-19,013	-8,541	-3,580
EU Ave.		99,740	113,378	246,702	458,965	270,200	281,677	256,880	-142,441	59,227	-130,806	181,274
New Zealand	Air New Zealand		165,00	150,300	104	86,000	113,200	93,500	-758,000	-240,300	86,400	104,300

Appendix 12

National Airport Cargo Volumes Freight Million Tons per Kilometre (FTKs)

Country		1995	1996	1997	1998	1999	2000	2001	2002	2003
New Zealand	Country Total	580.3	745.0	928.4	826.2	855.6	817.1	763.0	687.5	800.5
Australia	Country Total	1,737.5	1,833.7	1,953.8	1,904.4	1,693.0	1,730.7	1,678.1	1,544.7	1,355.4
Chile	Country Total	775.4	806.2	1,071.2	1,246.2	1,139.4	1,312.0	1,277.3	1,098.0	1,130.2
US	Country Total	19,622.9	21,676.4	25,478.8	25,757.9	27,292.2	30,166.0	27,920.0	31,761.9	34,205.6
Japan	Country Total	6,538.0	6,801.3	7,504.6	7,514.1	8,225.6	8,672.0	7,614.1	8,183.4	7,985.4
Brazil	Country Total	1,581.9	1,644.8	1,789.9	1,642.8	1,462.9	1,534.5	1,467.4	1,539.7	1,478.4
Canada	Country Total	1,637.4	1,781.0	1,956.5	1,805.7	1,881.6	1,800.0	1,604.5	1,757.0	1,496.3
EC Total	Total	27,730.1	29,277.4	28,307.1	25,992.3	27,578.6	30,748.3	28,978.8	29,839.6	30,633.9
EC Top 6 Ave.	Average	4,219.6	4,444.1	4,227.2	3,871	4,113	4,525.3	4,300.8	4,486.9	4,608.8
Germany	Country Total	5,835.9	6,036.3	6,183.9	6,233.8	6,610.7	7,127.7	7,026.2	7,195.8	7,297.6
NL	Country Total	3,742.2	3,902.4	3,893.1	3,833.4	4,053.0	4,367.3	4,115.9	4,203.6	4,330.7
Italy	Country Total	1,469.6	1,459.1	1,443.3	1,475.9	1,614.6	1,748.4	1,521.0	1,393.8	1,358.8
Belgium	Country Total	594.6	590.9	677.6	473.0	535.4	1,017.5	852.8	655.4	604.6
Denmark	Country Total	133.5	172.2	202.6	201.1	199.0	198.9	184.2	185.1	171.0
Austria	Country Total	173.3	192.1	236.3	265.5	340.8	407.8	358.0	396.0	430.7
France	Country Total	4,577.7	4,842.6	5,132.0	4,773.6	4,968.4	5,224.3	4,825.2	5,030.2	5,067.3
Sweden	Country Total	192.0	249.6	293.6	294.2	291.0	289.3	263.8	266.8	252.9
Ireland	Country Total	107.0	102.1	122.1	129.6	138.0	167.6	158.8	116.1	121.8
Spain	Country Total	689.6	739.6	740.2	767.1	816.0	879.5	878.9	807.4	876.1
Portugal	Country Total	194.0	210.9	248.5	247.5	225.1	225.5	209.4	194.9	205.7
Finland	Country Total	211.5	236.8	294.0	276.0	251.9	280.7	171.1	215.6	255.7
Greece	Country Total	117.0	118.7	129.1	112.6	103.4	129.8	96.9	80.9	62.7
UK	Country Total	6,830.6	7,618.1	6,450.6	4,663.5	4,925.2	5,160.9	4,548.5	4,940.5	5,250.5
Luxembourg	Country Total	2,861.6	2,806.0	2,260.2	2,245.5	2,506.1	3,523.1	3,768.2	4,157.5	4,347.8

Appendix 13

Cargo FTKS International and Domestic Loaded and Unloaded (1995-1999)

Country	Airport	Code	1995	1996	1997	1998	1999
EC							
Germany	Country Total		5835.9	6036.3	6183.9	6233.8	6610.7
	Frankfurt/Main	FRA	1,297,165	1,338,149	1,373,203	1,333,481	1,404,355
	Munich	MUC	64,551	75,911	95,560	95,172	114,259
Luxembourg	Country Total		2,862		2260.2	2245.5	2506.1
	Luxembourg	LUX	286,159	280,529	339,448	381,617	447,422
Netherlands	Country Total		3742.2	3902.4	3893.1	3833.4	4053
	Amsterdam Schiphol	AMS	977,531	1,082,846	1,161,234	1,171,256	1,180,717
Italy	Country Total		1469.6	1459.1	1443.3	1475.9	1614.6
	Rome Fiumicino	FCO	256,982	259,285	243,130	209,735	144,479
	Milan Malpensa	MLP	126,225	97,997	123,007	169,064	244,975
Belgium	Country Total		594.6	590.9	677.6	473	535.4
	Brussels National	BRU	426,564	450,711	518,440	585,592	661,985
Denmark	Country Total		133.5	172.2	202.6	201.1	199
	Copenhagen	CPH	n/a	n/a	387,669	374,141	389,318
Austria	Country Total		173.3	192.1	236.3	265.5	340.8
	Vienna Intl	VIE	92,570	94,558	106,982	108,214	118,581
France	Country Total		4577.7	4842.6	5132	4773.6	4968.4
	Paris Charles D.G.	CDG	824,269	866,112	950,669	940,273	1,228,123
	Paris Orly	ORY	276,163	246,369	222,495	202,283	131,080
Sweden	Country Total		192	249.6	293.6	294.2	291
	Stockholm Arlanda	ARN	104,312	112,853	113,472	108,554	112,692
Ireland	Country Total		107	102.1	122.1	129.6	138
	Dublin	DUB	60,152	67,302	84,700	93,758	103,089
Spain	Country Total		689.6	739.6	740.2	767.1	816
	Madrid Barajas	MAD	230,122	242,555	265,801	266,350	294,398
Portugal	Country Total		194	210.9	248.5	247.5	225.1
	Lisbon	LIS	89,306	89,991	99,679	99,896	96,992
Finland	Country Total		211.5	236.8	294	276	251.9
	Helsinki Vantaa	HEL	77,971	83,526	84,749	83,308	77,376

Country	Airport	Code	1995	1996	1997	1998	1999
Greece	Country Total		117	118.7	129.1	112.6	103.4
	Athens Athinai	ATH	n/a	n/a	n/a	n/a	n/a
UK	Country Total		6830.6	7618.1	6450.6	4663.5	4925.2
	London Heathrow	LHR	1,042,762	1,052,543	1,169,474	1,209,187	1,265,845
	London Gatwick	LGW	232,069	277,184	269,921	275,084	294,628
	London Stansted	STN	93,032	107,186	130,503	180,725	179,708
	Manchester	MAN	51,303	80,913	94,558	101,698	107,679
	East Midlands	EMA	82,800	104,663	126,824	123,586	128,864
Australia	Country Total		1737.5	1833.7	1953.8	1904.4	1693
	Sydney Kingsford Smith	SYD	n/a	n/a	530,601	523,829	463,027
	Melbourne Tullamarine	MEL	n/a	n/a	n/a	376,595	363,565
	Cairns Int'l	CNS	26,852	33,748	11,309	17,908	11,184
	Brisbane Int'l	BNE	93,072	93,300	n/a	n/a	n/a
New Zealand	Country Total		580.3	745	928.4	826.2	855.6
	Auckland Int'l	AKL	180,363	175,873	174,199	169,085	170,245
	Christchurch Int'l	CHC	29,704	30,790	n/a	35,598	38,538
	Wellington Int'l	WLG	n/a	n/a	n/a	40	30
Chile	Country Total		775.4	806.2	1071.2	1246.2	1139.4
	Santiago	SCL	168,544	195,141	n/a	259,593	257,507
US	Country Total		19,622.90	21,676.40	25,478.80	25,757.90	27,292.20
	Memphis	MEM	1,669,334	1,889,636	2,183,095	2,330,863	2,379,104
	Los Angeles	LAX	1,421,494	1,538,873	1,681,303	1,624,391	1,709,256
	Miami	MIA	1,513,155	1,632,157	1,683,320	1,709,902	1,566,708
	New York JFK	JFK	1,485,373	1,512,468	1,543,678	1,472,883	1,589,809
	Louisville	SDF	1,335,584	1,353,412	1,331,101	1,382,461	1,431,001
	Chicago	ORD	996,133	996,134	1,165,321	1,205,128	1,316,666
	Newark	EWR	869,286	885,147	969,215	974,701	983,786
	Atlanta	ATL	544,956	572,264	628,230	677,468	653,596
	Dallas/Fort Worth	DFW	594,440	594,516	628,565	593,492	608,923
	Dayton Int'l	DAY	665,924	761,400	806,925	711,501	702,404
	San Francisco Int'l	SFO	558,274	564,288	619,637	598,580	655,410
	Oakland Int'l	OAK	513,267	583,719	641,277	660,632	631,069
	Indianapolis Int'l	IND	292,204	393,528	443,260	508,149	633,117

Country	Airport	Code	1995	1996	1997	1998	1999
	Philadelphia Int'l	PHL	417,850	430,952	415,374	443,142	482,513
	Honolulu	HNL	328,729	348,967	413,497	351,834	390,872
	Boston Logan Int'l	BOS	330,829	337,281	369,446	364,554	373,773
	Ontario Int'l	ONT	336,148	377,347	396,275	394,365	427,250
	Denver Int'l	DEN	256,280	261,299	294,224	293,318	306,259
	Seattle Tacoma Int'l	SEA	309,679	285,977	281,147	294,141	300,501
	Minneapolis/St Paul	MSP	241,741	239,533	251,534	239,887	248,857
	Detroit Int'l	DTW	221,463	226,433	217,620	206,591	229,851
	Houston Intercont'l	IAH	228,511	236,443	250,130	271,989	273,706
Japan	Country Total		6,538	6,801.30	7504.6	7514.1	8225.6
	Fukuoka Int'l	FUK	225,300	229,125	242,802	237,315	259,964
	Nagoya	NGO	151,930	144,943	n/a	131,893	158,030
	Osaka Kansai Int'l	KIX	464,060	558,329	711,328	735,235	831,526
	Osaka Osaka Int'l	ITM	127,758	136,335	141,848	133,513	135,577
	Tokyo Narita Int'l	NRT	1,619,091	1,574,381	1,688,688	1,598,531	1,797,544
	Tokyo Int'l Haneda	HND	536,583	554,048	583,913	586,144	615,108
Brazil	Country Total		1581.9	1644.8	1789.9	1642.8	1462.9
	Sao Paulo	GRU	371,231	380,932	360,247	313,901	356,910
	Rio De Janeiro	GIG	131,390	136,062	142,907	128,569	103,975
Canada	Country Total		1637.4	1781	1956.5	1805.7	1881.6
	Toronto L.B. Pearson Int'l	YYZ	n/a	n/a	368,302	358,712	375,094
	Vancouver Int'l	YVR	173,631	199,197	242,436	235,437	244,986
	Montreal Mirabel Int'l	YMX	n/a	n/a	n/a	n/a	n/a

Appendix 14

Cargo FTKS International and Domestic Loaded and Unloaded (2000-2004)

Country	Airport	Code	2000	2001	2002	2003	2004
EC							
Germany	Country Total		7127.7	7026.2	7195.8	7297.6	n/a
	Frankfurt/Main	FRA	1,573,242	1,476,263	1,494,876	1,527,048	1,723,601
	Munich	MUC	124,859	123,385	144,398	140,585	170,828
Luxembourg	Country Total		3523.1	3768.2	4157.5	4347.8	n/a
	Luxembourg	LUX	499,907	509,034	549,491	656,638	712,503
Netherlands	Country Total		4367.3	4115.9	4203.6	4330.7	n/a
	Amsterdam Schiphol	AMS	1,222,595	1,183,208	1,239,900	1,306,155	1,421,023
Italy	Country Total		1748.4	1521	1393.8	1358.8	n/a
	Rome Fiumicino	FCO	153,314	134,097	130,755	127,685	132,019
	Milan Malpensa	MLP	290,979	277,591	280,420	306,625	347,065
Belgium	Country Total		1017.5	852.8	655.4	604.6	n/a
	Brussels National	BRU	676,364	559,998	509,673	581,338	622,671
Denmark	Country Total		198.9	184.2	185.1	171	n/a
	Copenhagen	CPH	n/a	379,037	373,694	335,731	335,649
Austria	Country Total		407.8	358	396	430.7	n/a
	Vienna Intl	VIE	126,836	111,001	113,612	115,651	145,602
France	Country Total		5224.3	4825.2	5030.2	5067.3	n/a
	Paris Charles D.G.	CDG	1,410,484	1,361,000	1,399,000	1,496,800	1,637,600
	Paris Orly	ORY	107,347	100,000	111,000	92,500	102,609
Sweden	Country Total		289.3	263.8	266.8	252.9	n/a
	Stockholm Arlanda	ARN	120,535	112,775	123,200	104,978	75,610
Ireland	Country Total		167.6	158.8	116.1	121.8	n/a
	Dublin	DUB	109,391	130,317	108,385	n/a	n/a
Spain	Country Total		879.5	878.9	807.4	876.1	n/a
	Madrid Barajas	MAD	311,021	295,944	295,711	307,026	341,177
Portugal	Country Total		225.5	209.4	194.9	205.7	n/a
	Lisbon	LIS	104,254	82,903	81,028	83,486	88,212

Country	Airport	Code	2000	2001	2002	2003	2004
Finland	Country Total		280.7	171.1	215.6	255.7	n/a
	Helsinki Vantaa	HEL	80,571	14,338	13,983	101,635	109,006
Greece	Country Total		129.8	96.9	80.9	62.7	n/a
	Athens Athinai	ATH	n/a	n/a	106,813	101,124	109,210
UK	Country Total		5160.9	4548.5	4940.5	5250.5	n/a
	London Heathrow	LHR	1,307,075	1,180,290	1,234,973	1,233,464	1,325,185
	London Gatwick	LGW	319,636	280,070	242,633	222,964	218,267
	London Stansted	STN	168,692	167,493	186,262	200,105	227,451
	Manchester	MAN	117,886	108,677	116,527	123,540	149,876
	East Midlands	EMA	179,135	195,348	219,871	n/a	n/a
Australia	Country Total		1730.7	1678.1	1544.7	1355.4	n/a
	Sydney Kingsford Smith	SYD	533,658	509,760	n/a	n/a	n/a
	Melbourne Tullamarine	MEL	n/a	n/a	n/a	n/a	n/a
	Cairns Int'l	CNS	11,717	n/a	n/a	n/a	n/a
	Brisbane Int'l	BNE	n/a	n/a	n/a	n/a	n/a
New Zealand	Country Total		817.1	763	687.5	800.5	n/a
	Auckland Int'l	AKL	163,070	163,762	168,969	177,254	197,462
	Christchurch Int'l	CHC	35,988	32,635	30,941	29,886	30,347
	Wellington Int'l	WLG	n/a	n/a	n/a	n/a	n/a
Chile	Country Total		1312	1277.3	1098	1130.2	n/a
	Santiago	SCL	292,774	318,034	285,415	255,703	269,660
US	Country Total		30,166	27,920	31,761.90	34,205.60	n/a
	Memphis	MEM	2,452,649	2,601,028	3,375,625	3,378,423	3,548,983
	Los Angeles	LAX	1,815,174	1,612,890	1,696,028	1,745,869	1,829,911
	Miami	MIA	1,557,782	1,568,250	1,584,891	1,593,688	1,734,381
	New York JFK	JFK	1,690,005	1,379,999	1,513,055	1,578,219	1,625,575
	Louisville	SDF	1,510,029	1,462,220	1,520,845	1,615,236	1,736,847
	Chicago	ORD	1,293,357	1,144,453	1,085,142	1,360,093	1,367,003
	Newark	EWR	970,833	828,205	754,879	884,865	902,697
	Atlanta	ATL	655,983	589,712	640,697	687,159	766,733
	Dallas/Fort Worth	DFW	670,895	570,649	571,934	555,921	609,319
	Dayton Int'l	DAY	667,888	479,799	359,355	326,081	333,536
	San Francisco Int'l	SFO	692,745	516,184	501,201	483,413	489,759

Country	Airport	Code	2000	2001	2002	2003	2004
US cont'd	Oakland Int'l	OAK	653,746	572,293	629,358	592,733	639,352
	Indianapolis Int'l	IND	761,139	791,448	868,434	871,403	924,029
	Philadelphia Int'l	PHL	493,621	472,946	517,855	502,579	548,448
	Honolulu	HNL	343,432	250,554	334,749	338,140	345,777
	Boston Logan Int'l	BOS	386,552	337,777	358,099	337,795	344,342
	Ontario Int'l	ONT	444,110	399,681	472,001	509,033	538,012
	Denver Int'l	DEN	306,694	255,593	289,572	276,677	281,629
	Seattle Tacoma Int'l	SEA	309,822	294,286	286,594	279,502	284,611
	Minneapolis/St Paul	MSP	255,785	232,739	262,965	278,830	288,904
	Detroit Int'l	DTW	218,627	180,229	199,838	196,155	211,923
	Houston Intercont'l	IAH	274,093	261,221	273,022	330,076	349,205
	Country Total		8672	7614.1	8183.4	7985.4	n/a
Japan	Fukuoka Int'l	FUK	271,430	247,828	246,221	240,114	260,550
	Nagoya	NGO	180,583	162,177	178,762	n/a	n/a
	Osaka Kansai Int'l	KIX	966,764	837,918	776,292	765,634	860,194
	Osaka Osaka Int'l	ITM	147,783	137,273	131,349	146,600	159,658
	Tokyo Narita Int'l	NRT	1,885,692	1,630,918	1,950,081	2,102,453	2,322,170
	Tokyo Int'l Haneda	HND	656,708	609,460	592,834	613,589	651,419
	Country Total		1534.5	1467.4	1539.7	1478.4	n/a
Brazil	Sao Paulo	GRU	348,245	351,961	374,595	395,892	411,927
	Rio De Janeiro	GIG	117,859	109,095	95,477	81,463	84,699
	Country Total		1800	1604.5	1757	1496.3	n/a
Canada	Toronto L.B. Pearson Int'l	YYZ	392,000	303,988	n/a	n/a	n/a
	Vancouver Int'l	YVR	229,235	208,293	214,479	196,007	215,768
	Montreal Mirabel Int'l	YMX	n/a	n/a	n/a	n/a	n/a

Tokyo International (Haneda) is primarily a domestic freight airport. The amount of international freight is significantly less than the domestic freight.

Sources: ACI Worldwide Airport Traffic Report 1996-2004; World Bank Development Report for the consolidated annual freight figures; and World Bank Development Indicators.

Appendix 15

Net Revenue (US\$mil) Airport Management Services Corporations

Country	Company	1995	1998	1999	2001	2002	2003	2004
US	Houston Airport Systems				465.8	not incl'd		270
Canada	Vancouver Int'l Airport Authority					n/a		213
Australia/UK	Macquarie Airports							1,212
New Zealand	Infratil					not incl'd		116
Switzerland	Unique	11.6	31.1	30		not incl'd		514
EC:								
France	Aéroports de Paris	69.3	89	71.1	1,201	1,215	1.5b	2,265
France	VINCI					160		582
Italy	Aeroporti di Roma	34.4	63.2	52.6		467		693
Italy	SEA Aeroporti di Milano	31.4	35.1	39.8		475		769
Spain	Abertis							269.1
Spain	Aena	144.7	119.1	n/a		1,417		2,616
Spain	Ferrovial							764
UK	BAA	489.9	658.2	454.6	3.15b	2,716	3.0b	3,903
UK	Alterra Partners					n/a		
UK	Wiggins					9.6		
UK	Manchester Airports Group	28	70.1	35		372		689
UK	Peel Airports							65.5
UK	TBI					267		
Denmark	Copenhagen Airports	44.1	58	48.9		240		416
Ireland	Dublin Airport Authority*							580
Ireland	Aer Rianta		68.9	63.8		392		
Austria	Flughafen Wien	25	57.4	n/a		287		521
Germany	Fraport**	30.9	59.1	51.6	1.5b	1,536	2b	2,542
Germany	Hochtief					n/a		N/A
Netherlands	Schiphol	90.9	150	126.6		633		1,131

Sources: WTO (S/C/W/163Add.1); Airline Business (2002), (2004); Air Transport Data Intelligence (2005).

Reference List

Books

- Behrman, Bradley. "Civil Aeronautics Board" in *The Politics of Regulation*. James Q Wilson ed. New York: Basic Books Publishers. 1980.
- Button, Kenneth, Kingsley Haynes, and Roger Stough. *Flying into the Future: Air Transport Policy in the European Union*. Cheltenham: Edward Elgar. 1998.
- Croome, John. *Reshaping the World Trade System: A History of the Uruguay Round*. 2nd ed. The Hague: World Trade Organization. 1999.
- Dempsey, Paul Stephen, and Andrew Goetz. *Airline Deregulation and Laissez-Faire Mythology*. Westport: Quorum Books. 1992.
- Dienel, Hans-Liudger and Peter Lyth eds. *Flying the Flag: European Commercial Air Transport Since 1945*. London: Macmillan Press Ltd. 1998.
- Dobson, Alan P. *Flying in the Face of Competition: The Policies and Diplomacy of Airline Regulatory Reform in Britain, the USA and the European Community 1968-94*. Avebury Aviation. Brookfield: Ashgate Publishers. 1995.
- Doganis, Rigas. *The Airline Business in the 21st Century*. London: Routledge. 2001.
- Du Jonchay, Yvan. *The Handbook of World Transport*. Translator, Loren Goldner. New York: Facts on File Inc. 1978.
- Eno Transportation Foundation. *National Transportation Organizations: Their Roles in the Policy Development and Implementation Process*. 1998.
- Gill, Stephen. *American Hegemony and the Trilateral Commission*. Cambridge: Cambridge University Press. 1990.
- Gilpin, Robert. *Global Political Economy: Understanding the International Economic Order*. Oxford: Princeton University Press. 2001.
- Gamsci, Antonio. *Selections from the Prison Notebooks of Antonio Gramsci*. Quintin Hoare ed. and Geoffrey Nowell Smith, Translator. New York: International Publishers. 1971.
- Golich, Vicki. "Liberalizing International Air Transport Services" in *Privatization and Deregulation in Global Perspective*. Dennis J. Gayle and Johnathon N. Goodrich eds. New York: Quorum Books. 1990.
- Graham, Brian. *Geography and Air Transport*. Chichester: John Wiley & Sons. 1995.
- Grieco, Joseph M. *Cooperation Among Nations: Europe, America, and Non-Tariff Barriers to Trade*. Cornell University Press. 1990.
- Havel, Brian F. *In Search of Open Skies: Law and Policy for a New Era in International Aviation*. London: Kluwer Law International. 1997.
- Hettne, Björn, ed. *International Political Economy: Understanding Global Disorder*. Halifax: Fernwood Publishing. 1995.
- Hoekman, Bernard and Kostecki, Michel. *The Political Economy of the World Trading System: From GATT to WTO*. Oxford: Oxford University Press. 1995.
- Jackson, Robert. "Is there a Classical International Theory?" in *International Theory: Positivism & Beyond*. Steve Smith, Ken Booth, and Marysia Zalewski eds. Cambridge: Cambridge University Press. 1996. pp 11-46.

- Kasper, Daniel M. *Deregulation and Globalization: Liberalising International Trade in Air Services*. Cambridge, Massachusetts: Ballinger Publishing. 1998.
- Keohane, Robert O. *After Hegemony: Cooperation and Discord in the World Economy*. New Jersey: Princeton University Press. 1984.
- Krasner, Stephen. "The accomplishments of International Political Economy" in *International Theory: Positivism & Beyond*. Steve Smith, Ken Booth, and Marysia Zalewski eds. Cambridge: Cambridge University Press. 1996. pp 108-127.
- Milner Helen. "The Interaction of Domestic and International Politics: the Anglo-American Oil Negotiations and the International Civil Aviation Negotiation, 1943-1947 in *Double-Edged Diplomacy: International Bargaining and Domestic Politics*. Peter B Evans, Harold K. Jacobson, and Robert D. Putnam, eds. Berkley: University of California Press. 1993.
- Odell, John S. *Negotiating the World Economy*. Ithaca, New York: Cornell University Press. 2000.
- 2006. *Negotiating Trade: Developing Countries in the WTO and NAFTA*. New York: Cambridge University Press.
- Ott, James and Raymond E. Neidl. *Airline Odyssey: The Airline Industry's Turbulent Flight into the Future*. New York: McGraw Hill. 1995.
- Pillai, K.G.J. *The Air Net: The Case Against the World Aviation Cartel*. New York: Grossman Publishers. 1969.
- Polyani, Karl. *The Great Transformation*. Rinehart & Company Inc. 1944.
- Rupert, Mark. *Producing Hegemony: The Politics of Mass Production and American Global Power*. Cambridge: Cambridge University Press. 1995.
- Rosenau, James. "Toward an Ontology for Global Governance" in *Approaches to Global Governance Theory*. Martin Hewson and Timothy J. Sinclair, eds. Albany: State University of New York Press. 1999. pp 287-301.
- Smith, Steve, Ken Booth and Marysia Zalewski eds. *International Theory: Positivism and Beyond*. Cambridge: Cambridge University Press. 1996.
- Staniland Martin. *Government Birds: Air Transport and the State in Western Europe*. Oxford: Rowman & Littlefield Publishers, Inc. 2003.
- Strange, Susan. *States and Markets*. 2nd ed. London: Pinter Publishers. 1994.
- Wendt, Alexander. *Social Theory of International Politics*. Cambridge: Cambridge University Press. 1999.
- Williams George. *The Airline Industry and the Impact of Deregulation*. Cambridge: Cambridge University Press. 1993.
- World Trade Organization Secretariat. *Guide to the Uruguay Round Agreements*. The Hague, the Netherlands: Kluwer law International. 1999.
- 2006. *Air Transport and the GATS: Documentation for the First Air Transport Review under the General Agreement on Trade in Services (GATS): 1995-2000 in Review*. Geneva: WTO Publications.
- Wheatcroft, Stephen. *Aviation and Tourism Policies: A World Tourism Organization Publication*. New York: Routledge. 1994.
- Zacher, Mark with Brent A Sutton. *Governing Global Networks: International Regimes for Transport and Communications*. Cambridge: Cambridge University Press. 1995.

Journals/Articles/Internet Sources

- Aircraft Service International Group. <http://www.asig.com>.
- Airline Business*. London: Reed Business Information. Monthly Series: 1994-2007.
- Air Transport Data Intelligence*. <http://www.rati.com/>. 2005.
- Asian Economic News*. "Wellington Announces Bailout for Air New Zealand". 3 December 2001.
- Balfour, John. "European Aviation Safety Regulation – the Legal Background and some Issues of EC Law". Royal Aeronautical Society. JB/AB/25.01.01. 2001.
- Blackhurst, Richard. "General Agreement on Tariffs and Trade (GATT): Origins of the GATT" in *Princeton Encyclopedia of the World Economy*. Princeton University Press. 2007.
- Brattle Group: Robyn B., B. Moselle, J. Reitzes, J. Horn, et al. "The Economic Impact of an EU – US Open Aviation Area". Prepared for the European Commission, Directorate-General Energy and Transport. London: Brattle Group. December 2002.
- Button, Kenneth J. "Opening U.S. Skies to Global Airline Competition". Center for Trade Policy Studies, CATO Institute. 24 November 1998.
- Crystal, Jonathan. "Bargaining in the Negotiations over Liberalizing Trade in Services: Power, reciprocity and Learning" in *Review of International Political Economy*. London: Routledge. 10:3 August 2003. pp 552-578.
- Datamonitor*. "Global Air Freight & Logistics: Industry Profile". Reference code: 0199-2001. <http://www.datamonitor.com>. May 2003.
- May 2003. "Global Airport Services: Industry Profile". Reference code: 0199-2002. <http://www.datamonitor.com>.
- May 2004. "Global Air Freight & Logistics: Industry Profile". Reference code: 0199-2001. <http://www.datamonitor.com>.
- May 2004. "Global Air Freight & Logistics: Industry Profile". Reference code: 0199-2002. <http://www.datamonitor.com>.
- May 2005. "Global Air Freight & Logistics: Industry Profile". Reference code: 0199-2001. <http://www.datamonitor.com>.
- May 2005. "Global Airport Services: Industry Profile". Reference code: 0199-2002. <http://www.datamonitor.com>.
- Dempsey, Paul Stephen. "Turbulence in the "Open Skies": the Deregulation of International Air Transport" in *Transportation Law Journal*. Vol. 15 1987. pp 305-388.
- Ferovial. "Acquisitions of Swissport and Webber". <http://www.ferovial.com>. 21 September 2005. p 5.
- Findlay, Christopher. "Plurilateral Agreements on Trade in Air Transport Services: the US Model". Asia Pacific School of Economics and Management: The Australian National University. November 2002.
- Furlan, Christopher. "Foreign Ownership and Control Restrictions in United States Airlines: Barrier to Mergers and Restructurings". University of Miami School of Law – 3L. 2005.
- Flight International*. Surrey, United Kingdom: Reed Business Information. Weekly series, 1998-1999.

- Frankfurt Airport. <http://www.frankfurt-airport.com>.
- Globeground. <http://www.globeground.com>.
- Great Circle Mapper. <http://gc.kis2.com>.
- Haanappel, P.P.C. with a contribution by Mendes de Leon, P.M.J. "International Aviation Framework and Implications for Canadian Policy". Research conducted for the Canada Transportation Act Review. March 2001.
- Haas, M. Peter. "Introduction: Epistemic Communities and International Policy Coordination" in *International Organization*. Vol. 46, Issue 1, Winter 1992. pp 1-35.
- "Handling Focus" in *Airport Support*. September 1993.
- Hoekman, Bernard. "Market Access: Through Multilateral Agreement", in the *World Economy*. Vol. 15 No. 6. 1992. pp 707-727.
- Japan Airlines Corporation and Consolidated Subsidiaries. "Annual Report: 2002 – 2004".
http://www.jal.com/en/ir/finance/annual/2004/financial_highlight.html. 2005.
- Kievits, Bob, Managing Director, Ogden Aviation. "A New Age of Global Ground Handling? Going it Alone in Vastly Different Markets".
<http://ogdenaviation.com>. 30 November 1999.
- Krommenacker, Raymond J. "Services Negotiations: From Interest-Lateralism to Multilateralism in the Context of the Servicization of the Economy". Paper for the Symposium on the New GATT Round of Multilateral Trade Negotiations: Legal and Economic Problems. Centre for Interdisciplinary Research (ZIF), University of Bielefeld, Germany. 12 June 1987.
- Loughlin, Richard. United States Office of the Secretary, Department of Transportation. "Air Transport Relations with Third Countries: Communication to the Council." 1993.
- My Business: the Resource for Small Business. "Access to US air cargo market hangs on BA/KLM merger". www.mybusiness.co.uk/YTaZQdw.html. 1 January 2000.
- Nayal, Deepak. "Some Reflections on the Uruguay Round and Trade in Services" in *Journal of World Trade*. Vol. 22. November 1988. pp 35-48.
- Nayar, Baldev Raj. "Regimes, Power, and International Aviation" in *International Organization*. Volume 49, Number 1. Winter 1995. pp 139-170.
- Penauille Servisair. <http://www.servisair.com>. 2000.
- Picciotto, Sol. "Private Rights vs. Public Standards in the WTO" in *Review of International Political Economy*. London: Routledge. 10:3. August 2003. pp 377-405.
- Richardson, John B. "What Really Happened at Punta del Este: Understanding the Framework of the Uruguay Round" in *International Economy and Development*. Rittle. 1988.
- Ruggie, John Gerard. "International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order" in *International Organization*. Volume 36, Issue 2, International Regimes (Spring 1982). pp 379-415.
- 2003. "Taking Embedded Liberalism Global: The Corporate Connection" in *Taming Globalization: Frontiers of Governance*. David Held, and Mathias Koenig-Archibugi eds. Cambridge: Polity Press.

- Ruwantissa, Abeyratne. "Trade in Air Transport Services: Emerging Trends" in *Journal of World Trade*. The Netherlands: Kluwer Law International. 35(6) 2001. pp 1133-1168.
- Sinclair, Scott. "GATS: How the World Trade Organization's New "Services" Negotiations Threaten Democracy". Georgetown, PEI: Canadian Centre for Policy Alternatives. 2000.
- Staniland, Martin. "University of Pittsburgh Conference on the Future of E.U.-U.S. Aviation Relations" in *Journal of Air Transport Management*. 6, 2000. pp 245-247.
- Swinnen, Benoit M.J. "An Opportunity for Trans-Atlantic Civil Aviation: From Open Skies to Open Markets?" in *Journal of Air Law and Commerce*. Vol. 63. August-September 1997. pp 249-285.
- Swissport. <http://www.swissport.com>. 2000.
- Swissport. "The Swissport Profile". <http://www.swissport.com>. May 2000.
- Van Waarden, Frans and Micheala Drahos. "Courts and (Epistemic) Communities in the convergence of Competition Policies" in *Journal of European Public Policy*. 9:6. www.tandf.co.uk/journals. December 2002. pp 913-934.
- World Bank.
<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/CHILEEXTN>.

Government Documents

- Australia Air Services Agreements. Australian Government, Department of Foreign Affairs and Trade. <http://www.dfat.gov.au/treaties/index.html>.
- 1946. "Air Transport Agreement between the Government of the Commonwealth of Australia and the Government of the United States of America [1946] ATS 8".
http://www.austlii.edu.au/au/other/dfat/subjects/Civil_Aviation.html.
- 1951. "Agreement between the Government of Australia and the Government of Canada for Air Services between Australia and Canada [1951] ATS 17".
http://www.austlii.edu.au/au/other/dfat/subjects/Civil_Aviation.html.
- 1956. "Agreement between the Commonwealth of Australia and Japan for Air Services, and Exchange of Notes [1956] ATS 6".
http://www.austlii.edu.au/au/other/dfat/subjects/Civil_Aviation.html.
- 1974. "Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Canada amending the Air Services Agreement of 11 June 1946 and cancelling Amending Agreement of 16 March 1951 [1974] ATS 8".
http://www.austlii.edu.au/au/other/dfat/subjects/Civil_Aviation.html.
- 1980. "Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America constituting an Agreement amending the Air Transport Agreement of 3 December 1946, as amended [1980] ATS 2".
http://www.austlii.edu.au/au/other/dfat/subjects/Civil_Aviation.html.
- 1987. "Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Japan to further amend the Schedule to the Agreement for Air Services of 19 January 1956 [1987] ATS 17".
http://www.austlii.edu.au/au/other/dfat/subjects/Civil_Aviation.html.

- 1988. "Agreement between the Government of Australia and the Government of Canada relating to Air Services [1988] ATS 12".
http://www.austlii.edu.au/au/other/dfat/subjects/Civil_Aviation.html.
 - 1989. "Exchange of Notes constituting an Agreement to amend the Schedule to the Agreement between Australia and Japan for Air Services of 19 January 1956 [1989] ATS 17".
http://www.austlii.edu.au/au/other/dfat/subjects/Civil_Aviation.html.
 - 1989. "Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America to amend the Air Transport Agreement of 3 December 1946, as amended [1989] ATS 6". http://www.austlii.edu.au/au/other/dfat/subjects/Civil_Aviation.html.
 - 1989. "Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America concerning [airline] capacity [1989] ATS 7".
http://www.austlii.edu.au/au/other/dfat/subjects/Civil_Aviation.html.
 - 1993. "Exchange of Notes constituting an Agreement to further amend the Schedule to the Agreement between Australia and Japan for Air Services of 19 January 1956 [1993] ATS 22".
http://www.austlii.edu.au/au/other/dfat/subjects/Civil_Aviation.html.
 - 1994. "Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America to amend the Air Transport Agreement of 3 December 1946 and the Agreement concerning Capacity of 23 March 1989 [1994] ATS 8".
http://www.austlii.edu.au/au/other/dfat/subjects/Civil_Aviation.html.
 - 1996. "The Single Aviation Market". Agreement between Australia and New Zealand. http://dfat.gov.au/geo/new_zealand/sam.pdf.
- Australia – New Zealand Single Aviation Market Arrangements.
http://www.dfat.gov.au/geo/new_zealand/sam.pdf#search=%22australia%20New%20Zealand%20single%20aviation%20Market%22.
- Australian Treaties Library. Civil Aviation.
http://www.austrlii.edu.au/au/other/dfat/subjects/Civil_Aviation.html.
- Canada. "National Transportation Act", 1987, R.S.C.
- Canadian Transportation Agency, Air Transportation. "Report of Bilateral Air Relations Between Canada and Other Countries". Government of Canada Publishing. http://www.cta-otc.gc.ca/air-aerien/agreements/main_e.html. 2003.
- European Commission. Key Speeches by Neil Kinnock.
<http://www.europa.eu.int/en>. 1995-1998.
- 28 April 1995. "Speech by Neil Kinnock to the Association of European Airlines". Luxembourg. Speech/95/82.
 - 9 June 1995. "Transport Priorities for Europe". Financial Times Conference: Transport in Europe – Towards 2020. London. Speech/95/06/09.
 - 23 February 1996. "Promoting a Competitive Aviation Sector in Europe". UBS Conference. London. Speech/96/02/23.
 - 16 September 1996. "The Liberalisation of the European Aviation Industry". Swiss Banking Corporation Warburg's – European Transport Conference. London. Speech/96/09/16.
 - 27 January 1998. "Meeting the Global Challenge: the Outlook for Civil Aviation in the EU". Forum Europe. Brussels. Speech/98/11.

- 21 April 1998. "Keynote Speech on Aviation Policy in Europe" at the High Level Dialogue ACI-Europe. Brussels. Speech/98/77.
 - 3 September 1998. "The Future of the Global Airline Industry". 12th Annual FT World Aerospace and Air Transport Conference. London. Speech/98/08/03.
 - 30 October 1998. "Speech to Association of European Airlines Presidents' Assembly". Berlin. Speech/98/224.
- European Commission. "Commission Takes Further Legal Action Against Member States' "Open Skies" Agreements with the United States". Brussels. 11 March 1998.
- European Commission. "Open Sky Agreements: Commission Welcomes European Court of Justice Ruling". IP/02/1609. Brussels. 5 November 2002.
- 5 November 2002. "Judgements in Cases C-466/98, C-467/98, C-468/98, C-469/98, C-471/98, C-472/98, C-475/98, and C-476/98, Commission v United Kingdom, Denmark, Sweden, Finland, Belgium, Luxembourg, Austria, Germany". Press Release No 89/02. Press and Information Division.
 - 5 November 2002. "Judgement of the Court". Case C-466/98. Court ruling on the Commission of the European Communities v. the United Kingdom of Great Britain and Northern Ireland. Full text at: <http://www.curia.eu.int/jurisp/>.
 - 5 November 2002. "Judgement of the Court". Case C-467/98. Court ruling on the Commission of the European Communities v. the Kingdom of Denmark. Full text at: <http://www.curia.eu.int/jurisp/>.
 - 5 November 2002. "Judgement of the Court". Case C-468/98. Court ruling on the Commission of the European Communities v. the Kingdom of Sweden. Full text at: <http://www.curia.eu.int/jurisp/>.
 - 5 November 2002. "Judgement of the Court". Case C-469/98. Court ruling on the Commission of the European Communities v. the Republic of Finland. Full text at: <http://www.curia.eu.int/jurisp/>.
 - 5 November 2002. "Judgement of the Court". Case C-471/98. Court ruling on the Commission of the European Communities v. the Kingdom of Belgium. Full text at: <http://www.curia.eu.int/jurisp/>.
 - 5 November 2002. "Judgement of the Court". Case C-472/98. Court ruling on the Commission of the European Communities v. the Grand Duchy of Luxembourg. Full text at: <http://www.curia.eu.int/jurisp/>.
 - 5 November 2002. "Judgement of the Court". Case C-475/98. Court ruling on the Commission of the European Communities v. the Republic of Austria. Full text at: <http://www.curia.eu.int/jurisp/>.
 - 5 November 2002. "Judgement of the Court". Case C-476/98. Court ruling on the Commission of the European Communities v. the Federal Republic of Germany. Full text at: <http://www.curia.eu.int/jurisp/>.
- European Communities. "A Policy Built on 3 Key Pillars". http://ec.europa.eu/transport/air_portal/international/pillars/common_aviation_area/index_en.htm. 2006.
- European Union. Official Journal of the European Communities. Legislation. L 365 Vol. 30. 31 December 1987.
- 31 December 1987. Official Journal of the European Communities, Legislation. L 364 Vol. 30.
 - 31 December 1987. Official Journal of the European Communities. Legislation. L 374 Vol. 30.

- 24 August 1992. Official Journal of the European Communities. Legislation. L 240 Vol. 35.
- 1 May 1995. Official Journal of the European Communities. "Resolution on the Bilateral 'Open Skies' Agreements concluded by Several Member States with the US". C109. 325.
- Integration Office DFA/DEA: Switzerland – European Union. "Civil Aviation". www.europa.admin.ch. Summary notes can be found at: <http://www.europa.admin.ch/ba/expl/factsheets/e/luftverkehr.htm>. January 2005
- Japan. Ministry of Land, Infrastructure and Transport, Civil Aviation Bureau. "Bilateral Agreements". http://milt.go.jp.koku/english/09_data/03_bilateral.html. January 2005
- New Zealand Bilateral Air Services Agreements. <http://www.mfat.govt.nz/Treaties-and-International-Law/Treaty-making-process/International-Treaties-List/15-Transport.php> and <http://www.transport.govt.nz/publications/211201-07.php>.
- New Zealand Ministry of Foreign Affairs. "Multilateral Agreement on the Liberalization of International Air Transport". <http://www.mafiat.govt.nz/country/index.shtml>. 2000.
- New Zealand Ministry of Transport. "New Zealand's Air Services Agreements". <http://www.transport.govt.nz/publications/211201-07.php>.
- New Zealand. Repository for "Multilateral Agreement on the Liberalisation of International Air Transportation". <http://www.mfat.govt.nz/support/legal/nia/nzdepository/treaty/20.html>. 2005.
- Sheridan Scott, Commissioner of Competition, Competition Bureau, Canada. "Air Liberalization and the Canadian Airports System: Remarks to the House of Commons Standing Committee on Transport". <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1445&lg=e>. 4 May 2005.
- Swain, Paul Hon., Government Spokesperson. "Air Services Agreement Signed with Vietnam". <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=18145>. October 2003.
- U.S. Department of State. "Bermuda I Air Transport Agreement of February 11, 1946". <http://www.state.gov/e/eb/rls/othr/2005/22281.htm>.
- United States Government. "Fact Sheet: "Open Skies" Agreements". <http://usembassy.or.cr/openskye.html>. 8 May 1997.
- U.S. Department of State. "Agreement between the United States and the United Kingdom concerning air services, with annexes and exchange of letters". Signed at Bermuda July 23, 1977. Entered into force July 23, 1977. 28 UST 5367; TIAS 8641. Amendments: April 25, 1978 (29 UST 2680; TIAS 8965). 1977.
- 1 March 2000. U.S. Department of State, Office of Aviation Negotiations, Bureau of Economic and Business Affairs. "Open Skies Agreements: Fact Sheet". <http://www.state.gov/www/issues/economic/tra/>.
- 10 October 2000. U.S. Department of Transportation – Office of the Secretary of Transportation, Office of International Aviation. "A U.S. Standard "Post 1977" Agreement 15 May, 1989".

- 2000. U.S. Department of Transportation – Office of the Secretary of Transportation, Office of International Aviation. "Model Open Skies Agreement".
- 20 October 2005. U.S. Department of State. "Open Skies Partners". <http://www.state.gov/e/eb/rls/othr/2005/22281.htm>.
- United States of America, Office of the Press Secretary, the White House. "Multilateral Agreement on the Liberalization of International Air Transportation". Released at Bandar Seri Bagawan, Brunei. Full text at: <http://www.state.gov/e/ris/othr/2573pf.htm>. 15 November 2000.
- Webb, Richard on behalf of the Parliament of Australia. "Liberalisation of International Passenger Airline Services". Research Brief No. 14. Economics, Commerce and Industrial Relations Section. <http://www.aph.gov.au/library/pubs/rb/2005-06/06rb14.htm>. 24 March 2006.

Intergovernmental Organisations

- International Civil Aviation Organisation. "Fifth Worldwide Air Transport Conference: Challenges and Opportunities of Liberalization". AT/Conf5. <http://www.icao.int/icao/en/atb/atconf5/>. 24-28 March 2003.
- 7 December 1944. "International Air Services Transit Agreement, signed at Chicago, 7 December 1944 (Transit Agreement)". <http://www.mcgill.ca/files/iasl/chicago1944b.pdf>.
- January 1994. Memorandum on ICAO: The Story of the International Civil Aviation Organisation. 15th ed. Montreal: Public Information Office of the International Civil Aviation Organisation
- 1996. International Civil Aviation Organisation. Manual on the Regulation of International Air Transport. Doc 9626. First ed. Montreal, Quebec: ICAO.
- 2000. "Agreements Registered with ICAO including ground handling provisions (as of 31 December 1999)". ICAO database.
- 26 August – 4 September 2002. "Economic Contribution of Civil Aviation: Ripples of Prosperity". Statement by the ICAO to the World Summit on Sustainable Development. Johannesburg, South Africa.
- January 2006. "Main Terms and Descriptions used in Civil Aviation Statistics". <http://www.icao-data.com/Terms.aspx>.
- January 2006. "Air Carriers: Financials". Aviation Statistics and Airline Data from ICAO Data. Traffic, Personnel, and Financial Information. <http://www.icaodata.com/modules/airlines/Financials/Results.aspx>.
- International Monetary Fund. <http://www.imf.org>.
- OECD Directorate for Science, Technology and Industry Division of Transport (18 September 2000). OECD Principles for the Liberalisation of Air Cargo Transportation: Comments on Articles Contained in DSTI/DOT(2000)1. Paris: OECD. 2000.
- 30 November 2001. "Liberalisation of Air Cargo Transport". DSTI/DOT(2002)1.
- United Nations. Provisional Central Product Classification: Statistical Papers. Series M No. 77 Department of International Economic and Social Affairs. Statistical Office of the United Nations. United Nations: New York. 1991.
- World Bank. "Development Indicators". <http://worldbank.org>.

- 2005. *Global Economic Prospects: Trade, Regionalism, and Development 2005*. Washington, DC: The World Bank.
- World Tourism Organization. "The TSA Project". Statistics & Economic Measurement of Tourism. www.world-tourism.org/statistics/tsa/project/tsa_project.htm.
- World Trade Organization. <http://www.wto.org>.
- World Trade Organization (April 1994). *GATS: The General Agreement on Trade in Services and Related Instruments*. Geneva: World Trade Organization.
- 1995. *The Results of the Uruguay Round of Multilateral Trade Negotiations: the Legal Texts*. Geneva: the World Trade Organization.
- 1995. *Guide to GATT Law and Practice: Analytical Index. Volume 1*. Geneva: the World Trade Organization.
- 1995. *Guide to GATT Law and Practice: Analytical Index. Volume 2*. Geneva: the World Trade Organization.
- 1999. *Guide to the Uruguay Round Agreements*. The Hague: Kluwer Law International.
- 29 March 2001. "Guidelines and Procedures for the Negotiations on Trade in Services". S/L/93.
- 20 November 2001. "Ministerial Declaration". Doha WTO Ministerial. WT/MIN(01)/DEC/1.
- 20 February 2002. "Technical Aspects of Requests and Offers: Summary of Presentation by the Secretariat". WTO Seminar on the GATS. Geneva, Switzerland.

World Trade Organization, Trade in Services Documents

Note: After this thesis was written the WTO secretariat compiled all the documents used during the Air Transport Review and published them in a book, which is also listed above in the book section. *Air Transport and the GATS: Documentation for the First Air Transport Review under the General Agreement on Trade in Services (GATS). 1995-2000 in Review*. Geneva: WTO Publications. 2006.

- Australia. "Communication from Australia – Implementing the 8 recommendations for more Competitive Air Services". Job No. 3203. 19 May 2000.
- 18 September 2000. "Communication from Australia – The mandated Review of the GATS Annex on Air Transport Services". S/C/W/167. Geneva: WTO Secretariat.
- 18 March 2002. "Communication from Australia, Chile and New Zealand: Review of the GATS annex on Air Transport Services". S/C/W/206. Geneva: WTO Secretariat.
- Brazil. Communication from Brazil. "Review of the GATS Annex on Air Transport Services". S/C/W/201. Geneva: WTO Secretariat. 4 October 2001
- Chile. "Communication from Chile – The Evolution of Air Transport in Chile – an Example of Openness". S/C/W/166. Geneva: WTO Secretariat. 15 September 2000.
- Council for Trade in Services. Job(02)/27. 12 March 2002.
- European Communities. "Communication from the EC – The Review of the GATS Annex on Air Transport Services". Job No. 6541. 24 November 1999.

- 26 September 2000. "Communication from the EC – The Review of the GATS Annex on Air Transport Services". S/C/W/168. Geneva: WTO Secretariat.
- Group of Negotiations on Services. "Information on Existing International Disciplines and Arrangements". Uruguay Round. MTN.GNS/W/36. Document Number, 88-0183. World Trade Organization. 15 May 1988.
- International Civil Aviation Organisation. "Statement by the Representative of the International Civil Aviation Organization". Informational Exchange Meeting at the World Trade Organization. Job No. 6541. 24 November 1998.
- 31 December 1999. "Agreements registered with ICAO Including Ground-handling Provisions". ICAO database.
- 8 February 2000. "Communication from the ICAO". Job No. 679.
- 7 February 2001. Communication from the International Civil Aviation Organisation. "ICAO's Policies on Charges for Airports and Air Navigation Services". S/C/W/188. Geneva: WTO Secretariat.
- Japan. "Communication from Japan – Work Programme on Review of Air Transport Services". S/C/W/134. Geneva: WTO Secretariat. 10 February 2000.
- New Zealand, Chile, and Singapore. "Communication from New Zealand, Chile and Singapore – Air Transport Services". S/C/W/113. Geneva: WTO Secretariat. 15 July 1999.
- New Zealand. "Communication from New Zealand – Review of the Air Transport Review". Job No. 753. Geneva: WTO Secretariat. 10 February 2000.
- 15 September 2000. "Communication from New Zealand – Developments in the Air Transport Services Sector". S/C/W/165. Geneva: WTO Secretariat.
- Norway. "Communication from Norway: the Negotiations on Trade in Services". S/CSS/W/59. Geneva: WTO Secretariat. 21 March 2001.
- Poland. "Communication from the Republic of Poland". Job No. 1430. Geneva: WTO Secretariat. 8 March 2000.
- Secretariat Note. "Air Transport Services". Background Note. S/C/W/59. Geneva: WTO Secretariat. 5 November 1998.
- 9 December 1998. "Report of the meeting held on 23 and 24 November 1998". S/C/M/31. Geneva: WTO Secretariat.
- 13 September 1999. "Report of the meeting held on 19 and 20 July 1999". S/C/M/38. Geneva: WTO Secretariat.
- 15 October 1999. "Recent Trade-related Activities of Inter-governmental Organizations in the Field of Air Transport". S/C/W/129. Geneva: WTO Secretariat.
- 19 April 2000. "Issues for Possible Consideration in the Review of Air Transport". Job No. 2451.
- 3 August 2000. "Developments in the Air Transport Sector since the Conclusion of the Uruguay Round: Part One". S/C/W/163. Geneva: WTO Secretariat.
- 25 October 2000. "Developments in the Air Transport Sector since the Conclusion of the Uruguay Round: Part Two". S/C/W/163/Add1. Geneva: WTO Secretariat.
- 10 November 2000. "Developments in the Air Transport Sector since the Conclusion of the Uruguay Round: Part Three". S/C/W/163Add2. Geneva: WTO Secretariat.

- 1 December 2000. "Report of the first session of the review mandated under paragraph 5 of the air transport annex held on 28-29 September 2000". S/C/M/49. Geneva: WTO Secretariat.
- 17 January 2001. "Report of the first session of the review mandated under paragraph 5 of the air transport annex held on 28-29 September 2000", Corrigendum. S/C/M/49/Corr.1. Geneva: WTO Secretariat.
- 5 March 2001. "Report of the second session of the review mandated under paragraph 5 of the air transport annex held on 4 December 2000". S/C/M/50. Geneva: WTO Secretariat.
- 13 August 2001. "Developments in the Air Transport Sector since the Conclusion of the Uruguay Round: Part Four". S/C/W/163Add3. Geneva: WTO Secretariat.
- 13 August 2001. "Developments in the Air Transport Sector since the Conclusion of the Uruguay Round: Part Six". S/C/W/163Add5. Geneva: WTO Secretariat.
- 15 August 2001. "Developments in the Air Transport Sector since the Conclusion of the Uruguay Round: Part Five". S/C/W/163Add4. Geneva: WTO Secretariat.
- 16 August 2001. "Developments in the Air Transport Sector since the Conclusion of the Uruguay Round: Seven Part". S/C/W/163Add6. Geneva: WTO Secretariat.
- 28 November 2001. "Report of the Meeting Held on 5, 8, 12 October 2001". S/CSS/M/12. Geneva: WTO Secretariat.
- 13 February 2002. "Report of the third session of the review mandated under paragraph 5 of the air transport annex held on 9 October 2001". S/C/M/57. Geneva: WTO Secretariat.
- 5 June 2002. "Report of the Meeting held on 19-22 March 2002". Geneva: WTO Secretariat.
- 17 October 2002. "Report of the fourth session of the review mandated under paragraph 5 of the air transport annex held on 18 October 2002". S/C/M/62. Geneva: WTO Secretariat.
- 18 June 2003. "Report of the Meeting held on 14 May 2003". S/C/M/66. Geneva: WTO Secretariat.
- 28 November 2003. "Report of the Meeting Held on 2, 9 and 24 October 2003". S/W/M/68. Geneva: WTO Secretariat.
- United States. "Communication from the United States: Transportation Services". S/C/W/71. Geneva: WTO Secretariat. 24 November 1998
- 28-29 September 2000. "Statement of the United States for the Review of the GATS Air Transport Annex: First Session". Text of oral presentation.
- 8 February 2001. "The Review of the GATS Annex on Air Transport Services: Industry Review". Draft Communication.
- 3 October 2001. Communication from the United States. "Review of the GATS Annex on Air Transport Services". S/C/W/198. Geneva: WTO Secretariat.
- Non-governmental Organisations
- Global Policy Forum. "A Brief Guide to Flags of Convenience". New York. <http://www.globalpolicy.org/nations/flags/guide.htm>.

Commission on Air Transport, International Chamber of Commerce. "The Need for Greater Liberalization of International Air Transport". Doc. 310/504 Rev. 3. 2001.

Newspapers

Aviation Daily. "Brazil Designs Emergency Plan for its troubled Airlines". August 2001.

Trade Associations

Airports Council International. *Worldwide Airport Traffic Report: Calendar Year 1995*. Geneva, Switzerland: ACI World Headquarters. 1996.

--- 1997. *Worldwide Airport Traffic Report: Calendar Year 1996*. Geneva, Switzerland: ACI World Headquarters.

--- 1999. *Worldwide Airport Traffic Report - 1998*. Geneva, Switzerland: ACI World Headquarters.

--- 2000. *Worldwide Airport Traffic Report - 1999*. Geneva, Switzerland: ACI World Headquarters.

--- 2001. *Worldwide Airport Traffic Report - 2000*. Geneva, Switzerland: ACI World Headquarters.

--- 2003. *Worldwide Airport Traffic Report - 2002*. Geneva, Switzerland: ACI World Headquarters.

--- December 2004. *ACI Airport Economics Survey – 2004*. Geneva, Switzerland: ACI World Headquarters.

--- August 2005. *ACI Worldwide and Regional Forecasts: Airport Traffic 2005-2020*. Geneva: ACI World Headquarters.

--- 2005. *Worldwide Airport Traffic Report - 2004*. Geneva, Switzerland: ACI World Headquarters.

--- 2006. *Worldwide Airport Traffic Report - 2005*. Geneva, Switzerland: ACI World Headquarters.

Air Transport Association of America. "Air Service Rights in U.S. International Air Transport Agreements: A Compilation of Scheduled and Charter Service Rights Contained in U.S. Bilateral Aviation Agreements". Washington: International Affairs Department. 15 June 2000.

Association of European Airlines. "Towards a Transatlantic Common Aviation Area: AEA Policy Statement. Brussels. September 1999.

International Air Transport Association. <http://www.iata.org>.

International Air Transport Association. *Regulatory Affairs Review*. Vol. 28 No. 3. Geneva: IATA. 1999.

--- May 2001. "Comparison of Relevant Rules, Recommended Practices and Airline Service Commitments". IATA Working document. Government and Industry Affairs, International Relations Department, Geneva, Switzerland.

van Fenema, Peter. "Ownership and Control". Report of the Ownership and Control Think Tank World Aviation Regulatory Monitor, held at Geneva, 7 September 2000. Geneva: International Air Transport Association. 2000.

Notes and Interviews

Numerous interviews and discussions were held with delegates throughout the period leading up to and during the Review (1999 – 2003). Due to political sensitivities, the names of people are withheld.

Minutes and Transcripts

The transcripts of the meetings were used to verify oral statements and supplement personal notes that were taken throughout the meetings. They are normally used to ensure Minutes of the meetings are written accurately. The transcripts are not available for public use and are normally not kept for extended periods of time.

WTO Secretariat. "Report of the First Session of the Review Mandated Under Paragraph 5 of the Air Transport Annex Held on 28-29 September 2000". S/C/M/49. 1 December 2000.

--- 1 December 2000. "Report of the First Session of the Review Mandated under Paragraph 5 of the Air Transport Annex Held on 28-29 September 2000". S/C/M/49/Corr.1. Geneva: WTO Secretariat.

--- 5 March 2001. "Report of the Second Session of the Review Mandated under Paragraph 5 of the Air Transport Annex Held on 4 December 2000". S/C/M/50. Geneva: WTO Secretariat.

--- 13 February 2002. "Report of the Third Session of the Review Mandated under Paragraph 5 of the Air Transport Annex Held on 9 October 2001. S/C/M/57. Geneva: WTO Secretariat.

--- 17 October 2002. "Report of the Fourth Session of the Review Mandated under Paragraph 5 of the Air Transport Annex Held on 18 March 2002". S/C/M/62. Geneva: WTO Secretariat.