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Council for Trade in Services

REPORT OF THE FIRST SESSION OF THE REVIEW MANDATED UNDER PARAGRAPH 5 OF THE AIR TRANSPORT ANNEX HELD ON 28-29 SEPTEMBER 2000

Note by the Secretariat

1. The Council for Trade in Services held a meeting on 28 and 29 September 2000 devoted to the review of air transport. The agenda for the meeting is contained in document WTO/AIR/1387.

2. The Chairman proposed that the Council adopt the agenda as circulated.

3. The Council so agreed.

4. The Chairman opened the floor and recalled the terms of the mandate of the Council: "to review the developments in the air transport sector and the operation of the Annex with a view to considering the possible further application of the Agreement to the sector". He recalled that the actual scope of the Annex was defined by paragraph 2 of the Annex which excluded traffic rights and services directly related to traffic rights and paragraph 4 which by exception to this exclusion extended the scope of the General Agreement on Trade in Services to three subsectors: aircraft repair and maintenance services; the selling and marketing of air transport services and computer reservation services (CRS).

5. The Chairman noted that the Annex did not define the notion of "services related to traffic rights" and the fact that some Members had taken commitments extending beyond the three explicitly covered subsectors. He noted also that there were a number of services ancillary to air transport about which it might be asked if they were in fact directly related to the exercise of traffic rights and since they were not already covered by the GATS. He suggested therefore that one of the tasks of the review should be to clarify the actual scope of the Annex before addressing the question of maintaining or not the actual exclusion of traffic rights and of the services related to them.

I. EXAMINATION OF SUBMISSIONS BY MEMBERS

6. The Chairman invited the delegations that had produced submissions to introduce their contributions.

7. The delegation of Poland stated that the air transport sector had undergone important changes. The Aviation International Organizations especially ICAO and the European Conference of Civil Aviation had actively responded to this rapidly changing civil aviation world: they have undertaken, since the World Wide Air Transport Conference in 1994, many initiatives to assist the Member States to move towards liberalization. However, one had to take into consideration the fact that the Chicago bilateral regulatory system, based on the reciprocity clause, still existed. Poland supported the work on the improvement of GATS Rules concerning transport services in order to clarify their role in the process of liberalization of the air transport sector. The informal paper prepared by Poland listed basic general questions which should be answered during the review. These questions could also be

used as a framework of analysis during the aviation expert meetings. Without an answer to these questions it will be very difficult to expand the application of GATS Rules to the air transport sector.

8. The representative of New Zealand presented its paper on developments in the air transport services sector (S/C/W/165). Air transport services are part of a growing sector which was largely responsible for the ever increasing flow of global goods and services, including the rapidly growing tourism sector. This and an increasing recognition of the benefits of an efficient, reliable and cost-competitive air services sector had placed new charges on regulators. An increasing number of "open skies" air services agreements have been a response. Even more significant however was the desire to move beyond the traditional bilateral system through the negotiation of regional and multilateral air services agreements. For New Zealand, the discussions on the developments in the air transport sector had to be considered essentially as the educational phase of the review. This phase should enable Members to better approach the second aspect of this review, namely the evaluation of the operation of the Annex itself and the consideration of the possible further application of the GATS in this sector.

9. The significance of the transport sector as a whole to the growth of a global economy could not be understated. Air transport services in particular were the conduit for trade in high value goods, "just in time" items and perishables, and the principle means of access for the ever expanding number of tourists. The most notable commercial development in recent years has been the rapid formation of airline alliances. This development should be viewed as a commercial response to both the increasing privatization of international airlines and a bilateral system of air services agreements, which through the application of national ownership criteria restricts border integration. The airlines alliance system has led also to a rapid growth in the number of code share services. Services which exist to support air transport, such as air traffic control services and airport management services have continued to devolve from the control of governments, similarly ground handling and aircraft repair and maintenance services have been separated from the core operation of airlines. In New Zealand's view greater exposure to competition will better enable infrastructural services to cope with projected growth in the air transport sector.

10. More specifically, as far as Computer Reservation Systems were concerned, New Zealand did not favour regulation through bilateral agreements but through competition law. On Ground handling services, he underlined that where an airline had no choice over its ground handling service provider, the quality of the product it wished to offer passengers could not be assured. There were no barriers to the provision of ground handling services in New Zealand and its model bilateral air service agreement allowed designated airlines the right to perform their own ground handling in the territory of the other party or, at their choosing, to select among competing agents for such services.

11. The supply of catering services to an airline was little different to that of the supply of services to hotels and restaurants. He noted the comment made in the Secretariat paper that in-flight catering appeared to be regulated in the same manner as all food service providers. As far as airport management was concerned airports required effective management and an access to capital necessary to meet development and maintenance needs. Many countries including New Zealand had responded to these requirements by placing airports on a firm commercial footing or by opting to privatise. He noted the essential role of Air Traffic Control services to the operation of air services. Flight delays, the lack of a common air traffic control system within regions and system breakdowns potentially compromising safety, were the challenges to this sector.

12. On commercial air transport services, he noted that aviation was a highly capital intensive business. Lack of adequate capital had been a cause for failure for many airlines and the reason for significant injections of public money into others. Opening the door to sources of foreign capital may have averted some of these situations. Since 1997, New Zealand had relaxed the traditional "substantial ownership and effective control criteria" in 17 of its 45 bilaterals. New Zealand's preference has been for a place of incorporation and principal place of business test, whilst retaining

the criterion of an effective control. He also noted that acceptance of airlines jointly owned by regional groupings of developing countries could be particularly significant for regions over the world characterized by small capital markets, and that an International Civil Aviation Organization Assembly Resolution that New Zealand cosponsored, urged States to accept the designation of an airline substantially owned and effectively controlled by nationals of one or more developing states belonging to the same regional economic grouping for the purpose of exercising the air traffic rights of any State within the grouping.

13. On multiple designation of airlines, he stressed that the ability for new airlines to be able to operate along side incumbent carriers, therefore offering more choice to consumers on a given route, was essential. There has been a clear trend away from single designation air service agreements, towards those providing for multiple designation or dual designation. Out of New Zealand's 45 air service agreements, only 5 did not now provide for multiple designation. On codesharing, including third country codesharing, he noted that codesharing was not only a widely used marketing tool, but that it has also enabled airlines to develop new routes and sustain services on low traffic volume routes. The negotiation of codesharing arrangements by New Zealand had enabled Air New Zealand to enter markets where a considerable tourism potential exists, but where own-aircraft services are not commercially justified. Alliance arrangements that involved codesharing were, in an increasing number of countries, subject to the scrutiny of government competition authorities. In seeking approval, a difficulty that confronted airlines had been the incompatible approaches taken by the different competition authorities involved.

14. On non-scheduled services, he noted that in allowing more people to fly and at a lower cost, non-scheduled services had been one of the major contributors to growth in world tourism. Rather than see non-scheduled carriers circumventing restrictions in air services agreements applying to the operation of scheduled carriers, New Zealand had preferred to remove the restrictions and was willing to approve non-scheduled services for periods of up to six months.

15. On traffic rights he noted that open capacity, open routes, and a full exchange of fifth freedom rights marked the generally accepted threshold for "open skies" agreements. Since 1997, New Zealand had concluded ten “open skies” agreements and had more in the pipeline. Within an “open skies” agreement, New Zealand had been prepared to exchange seventh and eighth freedom rights on a reciprocal basis. Among the reasons New Zealand does not support restrictions on traffic rights are the following:

- They hampered dual or multi destination tourism;

- Developmental routes, seasonal routes, and long distance routes might not be viable if solely reliant on third/fourth freedom traffic;

- An agreement that only provided for third/fourth freedom traffic, particularly on an unrestricted basis, would be unbalanced in terms of opportunities if one partner enjoyed greater access to sixth freedom traffic, for example by enjoying a favourable geographic location.

16. On domestic air services, New Zealand indicated that it also permitted ninth freedom cabotage, and regarded this as a matter of commercial presence service supply (mode 3) rather than one involving traffic rights. The current review should not overlook the opportunity to consider domestic air services. Access to capital and the opportunity to provide competitive air services were just as much an issue in the domestic aviation market as they were in the international market. New Zealand’s decision to permit 100% foreign ownership of domestic airlines enabled New Zealand’s second domestic airline, Ansett New Zealand (now operating under a franchise of the name of Qantas New Zealand), to continue operating, thereby maintaining a level of choice and degree of service to which New Zealanders have become accustomed.

17. Finally on multilateral initiatives, he noted the OECD work on the possible liberalisation of air cargo services. Evidence for a desire to move beyond the traditional bilateral system could also be found in the current discussions between Brunei Darussalam, Chile, New Zealand, Singapore and the United States on a possible multilateral “open skies” air services agreement. Drawing membership from across the globe, and with a proven capacity to reach common agreement in other sensitive services sectors, the WTO was therefore well placed to build on these developments.

18. The representative of Chile introduced document S/C/W/166 "the evolution of air transport in Chile, an example of openness". He indicated that the deregulation process in Chile has been largely due to the geographical situation of Chile as well as to the orientation of its economy towards external trade. This policy had generated a tremendous growth of the traffic. According to the Chilean law on commercial aviation, any company, foreign or national could offer air transport services, be them of cabotage or international, without restrictions except technical and safety rules. Nor was there any aviation specific ownership limitation. In terms of tariffs the Chilean aeronautical authorities could only set tariffs when the freedom of tariffs did not exist in the territory of the bilateral partner.

19. The freedoms set by the Chilean legislation remained however, constrained by the reciprocity principle which had effects on routes, capacities, designation and tariffs. The main limitation, especially for a geographically isolated country like Chile, was on fifth freedom. The constraint of this framework had led airlines to look for concrete commercial solutions at the margins of the system, for instance code-sharing agreements. In Chile, these agreements were systematically authorized when required by the Chilean company. In addition, he noted that in Chile specialized air services, such as inter alia fire-fighting and aerial surveying, were not considered in any manner as the exercise of traffic rights. There were therefore no restrictions for foreign companies operating in Chile in this area except whenever a country imposed restrictions on the Chilean companies of the sector. The inscription of this freedom in the free trade agreements signed by Chile with Canada, Mexico and Central America was an important step in this regard.

20. Chile considered that the actual bilateral system was progressively reaching its limits. The lack of binding of measures, or ratchet effect, allowed open agreements to become restricted with the passage of time. Provisions which would allow rights to be bound could benefit companies, giving them security to plan their operations in the long term and overcome the uncertainty generated by the current system. Moreover, the lack of adequate dispute settlement mechanisms stood 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 therefore be useful to examine how to improve legal safeguards, including resort to dispute settlement systems such as that of the WTO. It was worth noting in the Free Trade Agreements between Chile and Central America, specific chapters on air transport were agreed that established the principle of binding measures and making any disputes that may arise subject to the general dispute settlement mechanism under the Free Trade Agreement.

21. The representative of Australia introduced its contribution "the mandated review of the GATS annex on air transport services" (document S/C/W/167). For Australia, the continuing liberalization of international air services was inevitable. In spite of its universality the bilateral system had practical limitations that had become more apparent over the last 5 years. Australia had supported plurilateral and regional reform but was also well aware of the risks these agreements posed, as they allow founder members to dictate the terms on which later rivals can join. It was therefore important for States who may have reservations about entering plurilateral regional agreements to support a substantive review of the air transport services annex. Australia's proposal for the mandated review focused on liberalising dedicated trade services, non-scheduled services, and ownership and control provisions. However, the most important thing is to take up the opportunities presented by the review of the Annex, since if this chance was not taken up, by the time the mandated review would be due

again, the decision on what will be the next step after the bilateral system would already have been taken force.

22. The representative of the European Communities introduced document S/C/W/168 "the review of the GATS Annex on air transport services". He indicated that since the end of the Uruguay round the European Communities had developed their capacity as a regional player. It had now a single market within the 15 Member states, agreements with Iceland, Norway and Switzerland, and it was also in the process of concluding an agreement with the 11 candidate countries for EC Accession. This meant that in the coming years the European Common Aviation Area would comprise almost 30 countries and would be based essentially on the principles of the single market.

23. However, the European Communities recognised the limits of this regional integration and the limits of the bilateral framework. It was clear that air transport is an industry which is global by its own nature. Because of the restrictions of the bilateral system, airlines have to depend on commercial alliances, code-sharing, franchising, in order to try to meet this global demand. These alliances were however fragile, not always economically viable and might have negative effects on competition. So the increasing use of these arrangements was a sign that pressure may be building form the industry and from consumers to look more positively at multilateral liberalization of the sort already experienced in telecommunications or other sectors. Air transport was strongly integrated with many activities which were covered by multilateral disciplines. This was obviously the case for all activities related to the transportation of goods and passengers such as distribution, tourism, postal and courier services. At the same time, air transport itself depended on an efficient service infrastructure, for instance, telecommunications, electronic commerce, or financial services. The review was therefore an opportunity to address the tension between an increasingly global demand and supply and the limitations of the current regulatory framework.

24. An important objective for this review would be to reach a better if not common understanding of which services were related to the exercise of traffic rights and those which were fully covered by GATS. There was a broad range of services which could be considered to be disconnected from the traffic rights which actually serve as supporting services. In many domestic markets those supporting services were already fully liberalized.

25. On aircraft maintenance and repair, safety and regulatory convergence were questions to address. Hence the European Communities proposed to discuss in that respect the issue of mutual recognition if appropriate. On computer reservation systems and on selling and marketing, the situation has evolved relatively substantially. The traditional CRS as they were known to the Uruguay Round negotiators did not seem to exist anymore since the ties with the airlines had been reduced, and since CRS were also distributing now not only air transport services but all sorts of travel related services. The review might provide an opportunity to revisit definitions if appropriate. The concentration in a handful of operators led also to the idea of exploring the merits of pro-competitive principles being applied to this particular sector. The implications of electronic commerce needed to be studied and the positions expressed by the European Communities in the context of the work programme on electronic commerce notably the principle of neutrality were particularly relevant for those subsectors.

26. On traffic rights, as the bilateral framework may have reached its limits ways should be explored to overcome these limitations. There were two main points in that regard. The first one was the question of transit, and that the review should examine this in some detail in view of its importance for the operation of the airlines. The second one was to look at some options in order to overcome the limits of cooperation arrangements, alliance, franchising and other arrangements. At this stage the European Communities had no firm views on any of these options. One option was the concept of conditional MFN or plurilateral MFN on which the European Communities would like to seek views from other Members. The second option was the idea of a cargo specific regime, also mentioned by Australia and New Zealand.

27. The Chairman then opened the floor for comments on these presentations. New Zealand indicated that it considered that the questions raised by Poland were worth addressing. It indicated its support for the idea put forward by Chile in paragraph 11 of its document on the importance of fifth freedoms rights and in paragraph 13 on the notion that access to the domestic air transport sector was an investment issue or, in GATS terms, a matter of mode 3. It also supported the idea expressed in paragraph 19 that the provision of ground handling services in the wider sense could be addressed through the GATS concept of commercial presence. On the Australian contribution, New Zealand indicated that it found the paper extremely useful and supported in particular the idea expressed in paragraph 11 of a full review without any a priori exclusion as well as the accent put in paragraph 18 on the particular burden on developing countries caused by the restrictive ownership and control provisions, a point also underlined by ICAO. Finally, as far as the European Communities' contribution was concerned, New Zealand also approved its general thrust with a particular accent on the need for clarification of the actual scope of the annex expressed in paragraph 17 especially for support services developed by airlines as stand alone subsidiaries. A broader appreciation of services which were indirectly related to traffic rights was also needed.

28. Egypt made preliminary comments. First and foremost it had to be clear that the review exercise was distinct from the negotiation process and that due consideration should be taken of the impact on trade and development aspects for developing countries as agreed by the General Council. Any suggested proposals for expanding the scope or the coverage of the annex should not prejudge a Member's position on this issue. Due account should also be taken of the resolution by the economic commission of ICAO in its 31st session in 1994, which tasked ICAO to develop recommendations and proposals to meet the challenge facing international air transport, responding to the internal and external changes. According to this resolution such arrangements should be based on general goals of gradual, progressive, orderly and safeguarded changes towards market access and that interest of all parties in ensuring their effective and sustained participation in international air transport. The same resolution also requested the WTO and its Member States to accord due consideration to ICAO constitutional responsibility for international air transport and in the meantime to promote continued effective cooperation among ICAO/WTO and other international inter-government organizations, dealing with trade in services. Egypt also expressed its support to the views presented in Poland's paper. It concluded that it would be careful and cautious with regard to any ambitious proposal departing from the provisions and conventions at the international level which were already regulating this sector and, in particular, with regard to suggestions of expanding the annex of air transport.

29. Chile stressed the similarities in the documents presented. Chile indicated that it had concluded with Australia a "second generation" agreement including operational flexibility and ability to operate through third countries. It concurred with the point made in paragraph 19 of the New Zealand document that cabotage was a commercial presence question. Chile's policy was similar in that regard. For instance, a Peruvian owned company was operating cabotage services in Chile and was benefiting from the general investment legislation and not from a specific bilateral air service agreement between Chile and Peru. He stressed also that a cargo liberalization could also benefit combi-carriers as it may render a restricted passenger route economically viable that would not have been so without unrestricted cargo rights. Chile concurred to a very large extent with the point made by the Australian document. With regard to the European Communities' document, Chile underlined that the European liberalization was an internal one, but that on the external side there were various policies, some restrictive, some liberal. That is why Chile welcomed initiatives such as the draft Transatlantic Common Aviation Agreement or the first agreement signed by the Community as such with Switzerland. Another point was the support by government through subsidies or the granting of particular advantages such as route monopolies on the eve of privatization. The review should lead to transparency rules on that question with a further aim of a total elimination of such restrictions.

30. Switzerland indicated that it shared in general the goal of multilateralism, but that this multilateralism could not be exclusive. Bilateralism had its shortcomings in particular its relative heaviness but it was far from having yet reached its limits. Its representative recalled that ICAO had

stated that 157 or 85% of ICAO members were engaged in some kind of liberalization and that 97 of them were parties to agreements aimed at establishing full market access. Switzerland had concluded bilateral open skies agreements and recognized the importance of regional multilateralism. It underlined that there was a dynamic of establishing liberalized trade blocks that it in turn would establish bridges among them. It underlined also that there was some kind of confusion between multilateralism and WTO. ICAO had made a multilateral attempt in 1994 about this and had failed due to the lack of political will from many of its members. Things had probably not changed much in that regard, regardless of the forum, ICAO or WTO. Switzerland also stressed the importance of the ongoing work of the OECD on the liberalization of air cargo and its conceptual differences with the GATS framework. It also questioned the concept of "conditional MFN", and wondered if it was not a bilateralism in disguise. With regard to the presentation of Chile he noted that Members were free under the actual regulatory framework to take unilateral liberalization measures and did not need the GATS for that purpose. Finally, Switzerland underlined that its reservations were only on traffic rights since it favoured a full and fruitful review of ownership and control provisions, on ground handling and on other support services.

31. The United States indicated they would participate fully in this review. They indicated however that, while specific proposals for amending the annex had already been suggested, they would not have a position on this issue until after the review is completed. They indicated also that in their views the Council should review developments in the air transport sector and the operation of the annex *before* considering the possible further application of the agreement in this sector. On developments in the sector the United States considered that the period since 1993 had witnessed greater liberalization than any comparable period in the history of commercial air transport. "Open-skies" agreements in full or staged had become the model for international aviation. These developments attested to the flexibility and adaptability of the bilateral system. There was also wide recognition that greater liberalization could be possible by extending open-skies principles on a plurilateral or multilateral basis. The word "*extending*" deserved emphasis, because each participant should retain progress already made in bilateral and regional agreements. In this regard, the APEC air services group work that was noteworthy, as well as the attempt by five APEC members to devise a plurilateral air transport services agreement that would build upon the open-skies approach. OECD work on air cargo was a promising approach building on the fact that cargo liberalization has often been achieved ahead of corresponding improvements in passenger regimes. An important feature of these and other plurilateral/regional initiatives that have been proposed was that they provided for accession by additional, like-minded countries. The key was that the joining parties must embrace the high standards of liberalization embodied in the agreements. It was therefore not correct to label these agreements as exclusive or restrictive because of the high standards required of participants. These various progresses demonstrated that no one proposal could realistically be called the last or only opportunity to move forward. The United States supported and participated in these efforts already underway, and looked forward to considering seriously any other proposals that might provide equal or superior prospects for liberalization and growth in air transportation.

32. On alliances, the United States indicated that the U.S. Department of Transportation had studied traffic and fares between the United States and Europe (available at: http://ostpxweb.dot.gov/aviation/.). This study showed that the growth of the transatlantic traffic accelerated, from 5.2% for 1993 over 1992, to 9.9% for 1998 over 1997. While many factors contributed to this growth, it was clear that expansion by alliances, and stimulation by alliance competition, played a significant part. The total number of city pairs served by the three main alliances had grown from 6000 in 1992 to 14,200 in 1998. From 1996, when the second and third alliances obtained U.S. antitrust immunity, to 1998, average fares in transatlantic markets fell 13.7% in markets with open-skies aviation agreements while there was only a 2.7% decline in other markets.

33. Japan supported the point made by Egypt that that the review should be distinct from the negotiation and shared the view expressed by the USA that a possible further application of the GATS should be discussed at a later stage only after the completion of the review. Japan underlined that

ICAO was a competent forum for transport and therefore welcomed its participation as observer to the meeting. As far as the cargo specific regime concept mentioned by New Zealand and the European Communities was concerned Japan underlined that this seemed to be difficult to envisage in view of the differing level playing that it would create between combi-carriers and all cargo carriers.

34. Canada indicated that it considered like Egypt, the US and Japan, that proposals for the possible further application of the GATS to the sector would be best considered at the end of the review process.

35. Senegal stated that the review on air transport should be distinct from the negotiations underway as the terms of the review negotiations clearly established it. Senegal also stressed the role of ICAO as the forum for matters relating to the air traffic sector. Finally it supported the positions expressed by Egypt.

36. The European Communities acknowledged the need expressed by Egypt to focus the review on the relationship between development and air transport in general. Their representative also underlined that regional integration was in no way exclusive of liberalization on the multilateral level. On conditional MFN, the European Communities indicated that this was an issue or an idea that they would like to explore with others while recognizing that it has plurilateral elements and that it could only be a first step.

37. Jordan indicated its full support for the paper presented by Poland and the position expressed by Egypt particularly on the importance and the constitutional role of ICAO in this matter. Guatemala expressed interest in the US bilateral agreements on maintenance and repair of aircraft (BASA) mentioned in paragraph 33 of the Secretariat document and enquired about the conditions of participation to these agreements. It stressed also that in spite of a regime that favoured foreign investment and of an open sky policy Guatemala had not always drawn the full benefits of liberalization as for instance alliance strategy has led one major foreign carrier to stop its services.

38. Cuba stressed that even for repair, maintenance, sale and commercialization of air transport and the CRS (Computerized Reservation Service), it was not absolutely clear as to exactly what the definition and classification were in relation to what was covered by the Annex as regards traffic rights and services directly with traffic rights. It seemed that those three services could be considered as being directly related to air traffic rights and covered by the GATS only by exception. Therefore even before considering including services such as cargo services and non-scheduled flights and non-regular flights as well as other services which are perhaps not directly related to air traffic, a very careful study of the repercussions of any proposal for the inclusion of a service or an activity in the air transport sector in addition to those presently contained in the Agreement, should be undertaken, bearing in mind the need for security in air traffic. Cuba also recalled the 25 November 1999 ICAO resolution calling for the continued exclusion of traffic rights from the scope of the GATS in order to ensure effective and sustained and continuing participation in international transport. In addition the notion of serviced directly related to traffic rights should be clarified. Cuba noted also the importance of MFN exemption in the sectors already covered. The clarification of the actual scope was an absolute prerequisite. Finally, it indicated that it considered that the ICAO should continue to be seen as an appropriate forum for analysing all these aspects and to work gradually and progressively.

39. Brazil indicated that it saw the review as an important opportunity for the exchange of information on regulatory and economic developments between Members and international organizations related to air transport services. In this connection, it noted the relevance of discussing matters related to the clarification of the scope of the Agreement, both in relation to the three services already covered as well as to other services directly, or indirectly related to the exercise of traffic rights. With regard to the traffic rights, it considered that members should bear in mind the system of bilateral reciprocity agreements in existence under the aegis of the ICAO. As previous speakers, it considered that this system, despite its flaws, was still far from being exhausted. It supported the

points raised by Poland's contribution in that regard. Finally, it indicated that it considered that, in any event, any consideration on the expansion of the scope of the Agreement is an issue for a negotiation and would have to await the conclusion of the examination of the developments of the sector and of the operation of the Annex.

40. Korea underlined the complexities of the concrete modalities of liberalization: factors such as the volume of air traffic demand, the geographical conditions, the airport infrastructure and the slot allocation had to be taken into consideration. The question of the nature of the traffic rights also arose: were they tradable or not. As of now traffic rights have been considered traditionally as a national asset, not tradable, but one may reflect on the ways to make them tradable. Korea considered in that respect the EC paper as a useful one and considered that the paper from Poland also deserved answers. Finally Korea supported the positions taken by Japan and the United States related to the importance of the review process.

41. Uruguay stressed that Members had to stick to the exact terms of reference provided in paragraph 5 of the Annex, and to distinguish the review from the negotiations. It considered also negotiations in terms of air transport services had to be maintained in the bilateral field under the aegis of ICAO as this had been the case so far.

42. Hong Kong, China found particularly thoughtful the contributions from Australia and the European Commission and stated it had an open mind on the scope of the air transport services review. Hong Kong, China was willing to talk about all aspects of air transport, but believed that this should be done whilst respecting the agreed framework for the review. The exercise was complex but useful. An important task was to seek to define clearly what constitutes air transport and air transport related services and in particular to better define "services directly related to the exercise of traffic rights", as well as those services that were not so related and hence, potentially could be subject to GATS disciplines. In this regard Hong Kong, China fully agreed with paragraph 17 of the EC paper. This paper had several other interesting features like comments on CRS and the concept of pro-competitive principles which might be relevant in other aspects of air transport services.

43. Indonesia expressed deep concerns on the review and hoped that the discussion would clarify the problems at stake.

44. The Chairman took note of the contributions and the comments made.

II. EXAMINATION OF THE DOCUMENTATION PREPARED BY THE SECRETARIAT

45. The Chairman recalled that document S/C/W/163 only covered 7 of the ancillary services and did not give a complete picture of the developments in the sector. He indicated that further papers would cover the developments in the remaining subsectors. He also stressed that this document had to be read in conjunction with two earlier documents prepared by the Secretariat: S/C/W/59 and S/C/W/129. He then opened the floor subsector by sector.

46. On maintenance and repair of aircraft, Korea commented on paragraph 34 of document S/C/W/163 by stressing that the strengthening of the US regulation on foreign repair stations was laudable from the viewpoint of safety but that those measures should not act as trade barriers. In answer to a request by Canada, the Secretariat clarified paragraph 19 on the growing importance of mode 4 by explaining that there were numerous temporary movements of engineers and technicians in the sector, specialized companies in this area and that the internet had given new impetus to this evolution.

47. On computer reservation services, New Zealand found the description made by the Secretariat on the evolution of classical CRS, on the electronic commerce impact and on the appearance of new

types of CRS providers extremely useful. This raised a number of issues for Members to consider during the review.

48. On both CRS and selling and marketing, the European Communities suggested that Members should look more closely at the definition under paragraph 3 of the Annex because it appeared from the description of the current market situation that these definitions might need some updating. The change from CRS distributing only air transport services to GDS (Global Distribution System) distributing all sorts of travel services was an example of that problem. Another point was that the Secretariat description pointed at the fact that there was, in some cases, some overlap between selling and marketing on the one hand and CRS on the other. The European Communities were therefore wondering whether this should not be addressed and was looking for views from other Members on this question. The implication of electronic commerce on these particular subsectors should also be looked at. Finally, the competition issue was particularly important in the case of computer reservation systems. One possibility to deal with them was to try to use as a concept the telecom reference paper which had proved to be very efficient in the case of telecommunications and see or explore whether a similar concept could be used in the case of this subsector.

49. On franchising, Tunisia questioned whether the conclusion drawn in paragraph 135, that there was no linkage between franchising and traffic rights, was a hasty one and requested further explanation by the Secretariat on that point. The Secretariat replied that paragraph 135 was only one of the hypotheses of classification of franchising services mentioned (an unidentified, unclassified and uncommitted sector not directly linked to traffic rights), that there were two other hypotheses mentioned in the paper: franchising in the general sense of the CPC and selling and marketing, and that the whole section on classification of franchising was written in the conditional tense. The Secretariat also explained that the reasons that had led to the conclusion that there was no relationship with hard rights was that in practice the franchiser gave its uniform and its livery to the franchisee in the same manner that a fast food franchiser gives the right to use its logo and brand to a franchisee, and that the customer did not know, because of this appearance, who was really operating the flight, the same way that it is ignorant as to whether the fast food restaurant is operated by a franchisee or directly. In addition, the contract between the franchiser and the franchisee did not mention hard rights or slots that remained the property of the franchisee. Finally, in classification terms it was worth noting that franchising in the CPC covered not only the distribution of goods but also the distribution of any services which has led to the question of the coverage of franchising in air transport.

50. Korea remarked that the only markets where franchising had been extensively practiced were integrated air markets such as the United States' or the European Community's market where the concept of traffic rights did not exist in the first place, or did not exist any more. Franchising did not appear in international traffic because of the existence of a traffic rights regime. This showed a direct link between traffic rights and franchising.

51. Jordan indicated that in its internal legislation franchising was considered as a form of codesharing and indicated that the problem arose from the fact that the definition of these concepts and their relationship might vary from State to State. The Secretariat clarified that there was no universally agreed definition of franchising. It recalled that although franchising and codesharing were pursuing the same aim, maintaining the economic viability of a thin line, they were operationally distinct since the franchised flight was operated under a single code whereas codesharing was implying a dual code. The Secretariat finally recalled that codesharing would be dealt with at a later stage in its documentation.

52. The United States indicated that their legislation considered franchising as being a form of codesharing. They also indicated that this activity had been deregulated internally and that there was therefore no more detailed regulatory oversight of the contracts. There was however a requirement to disclose the real operator of the flight for consumer protection reasons.

53. In a remark addressed to the United States, Chile noted that there were very few codesharing agreements in the domestic market since codesharing is generally linked to international traffic and in particular to the fourth and fifth freedom. Hence, domestically speaking there was no codesharing but contractual arrangements between airlines to operate certain routes or feed domestic passengers to international routes. The United States indicated that they made no legal distinction between domestic and international codesharing in terms of disclosure requirements but that one of them (international codesharing) was regulated and the other not.

54. Thailand stressed the liberalization efforts that it had undertaken since the end of the Uruguay Round in terms of privatization, multiple designation, support services and participation with the APEC work on the subject. Nevertheless developing countries were struggling to maintain the existence of their airlines in a highly capital intensive and a highly technological activity. So far the studies on the benefits of liberalization had only focused on the benefits for developed countries. More work was needed to assess the potential benefits or challenges of liberalization for developing countries. This comment was also valid for CRS and electronic commerce.

55. Singapore indicated it supported the liberalization of air services under the GATS and favoured therefore a comprehensive and constructive review of the annex.

56. Norway indicated it was pursuing a common aviation transport policy together with Denmark and Sweden through the jointly-owned multinational airline SAS as well as with the European Communities through the European Economic Area Agreement. This policy was a liberal one with the aim of negotiating as many "open skies" type air services agreements as possible. Norway supported generally any proposal with the aim of liberalizing the regime of world civil aviation whilst bearing in mind that such liberalization must not affect safety in a negative manner. Norway believes that the best way to achieve it was to agree on multilateral and plurilateral agreements open for other countries to join. Therefore Norway looked forward to study any proposal table during this review to enlarge the scope of the annex.

57. ICAO indicated that, in view of its global responsibilities, it had always monitored closely developments in the air transport sector. Since the 1994 World Wide Air Transport Conference (ATRP), it had tracked down in particular the liberalization trends. For instance the International Air Services Transit Agreement which exchanges multilaterally the freedom of over flight and technical stops had continued to grow in membership and was currently ratified by 118 states which is an increase of 17 states in the past 5 years. A lot of progress had been made in opening up this sector through more liberal air services agreements and the rapid spread and implementation of approximately a dozen regional agreements to liberalize air transport within groups of states. More than 70 so-called open skies agreements had also been concluded approximately a half of which were between developed and developing countries. This was an accelerating and wide-spread trend: no less than 85% of ICAO's states were involved in some form of liberalization. And not only was market access opening up the sector but the competition, privatization and industry efficiency were spreading the benefits of liberalization and regulatory changes. The key point to draw from these trends was that this progressive liberalization was happening among states at a pace of their choosing which was essential in a sector where participation is a basic expectation and where there were many markets and resources disparities.

58. Another area of change was that of foreign ownership in the airline industry. As of August 2000, at least 47 carriers had shareholders in foreign airlines, while over 130 airlines had equity owned by foreign investors. A number of countries, in recent years, had adopted new policies and amended the rules regarding foreign investment in national airlines. Change in this crucial area had been relatively slow for historical reasons because of national strategic interest but nevertheless progress was made. The market-place had also been evolving. In recent years, alliances, including various cooperative arrangements, had become competitive, regulatory and market response to the need for change. By June 2000, there were more than 579 alliances among more than 220 airlines.

Within this global trend, there had been the development of a handful of global alliances involving a small group of carriers.

59. In answer to a request by New Zealand, the Secretariat recalled the genesis of the air transport annex. The exclusion of traffic rights and services related to traffic rights was essentially motivated by the will to maintain the existing framework of bilateral agreements. However, Members favouring a more extensive coverage of the GATS had obtained from their negotiating partners a review clause which led to the present exercise. Air transport was the only sectoral exception from the GATT. The only other significant exceptions to the coverage of the GATS were the services provided in the exercise of governmental authority which may be of interest for air navigation services and for any governmental aviation services if the scope of the annex was to be expanded at some stage. The drafting of the actual coverage of the annex was imprecise since it did not define the services which were related to traffic rights. That was probably the reason why certain Members had taken commitments which extended beyond the three basically covered services of CRS, selling and marketing and maintenance. Another aspect of the drafting of the annex was that it presented the coverage of those three services as an exception to the exclusion of services directly related to traffic rights. That is why the clarification of these uncertainties would be a very valuable outcome of the review.

60. The Secretariat also recalled that an hypothetical expansion of the annex would not mean that the sectors concerned would be liberalized, it would simply mean that the possibility would be open to take commitments in these sectors. In turn, those commitments would not imply wholesale and instant liberalization: they could be restricted, qualified and staged in many manners as has already been seen in other sectors.

61. Another important point was that the GATS was in no way threatening the right for States to regulate or to impose safety provisions. The sector would remain subject to any present or future domestic regulation. The WTO would not replace ICAO as the regulator of the sector itself, as it had not replaced ITU for telecoms or WIPO for intellectual property. GATS was simply concerned with the access of foreign suppliers to a given market.

62. Answering a question posed by Brazil on the potential MFN effects of an expansion of the annex, the Secretariat indicated the MFN question was at the core of the exclusion of hard rights. There was a problem of combination with progress already achieved in the bilateral liberal agreements since in any case, the intention could not be to have a multilateral regime more restrictive than the preceding bilateral one. The possibility of taking an MFN exemption for a newly covered sectors could also be one way to address the problem. For landing slots earlier work on the allocation of scarce resources, such as frequencies in telecom, could prove useful.

63. In answer to a question posed by Australia, the Secretariat recalled that a unilateral commitment in a sector not covered by the Agreement would not be valid. The scope of the Agreement could not be decided unilaterally.

64. In answer to a request by the European Communities, the Secretariat indicated that the list of items in document Job No. 2451, followed in S/C/W/163 and in further Secretariat documents to be issued, had been conceived as a continuum, starting with services explicitly covered by the annex, ending with the hard rights clearly not covered by the annex and putting in the middle a series of services that could either be regarded as being directly linked to traffic rights, or not.

65. The United States indicated that with regard to that list they considered wet leasing and franchising to be a part of traffic rights. Tunisia indicated that it considered wet leasing as an element of traffic rights and air navigation services as a service provided in the exercise of governmental authority and thereby excluded from the GATS.

66. The European Communities suggested that the Secretariat draft a paper indicating which items were or were not related to traffic rights. This proposal was supported by Australia and Chile, and was opposed by Argentina, Japan, Uruguay and Mexico. The Chairman stated that there was no consensus on this proposal.

67. On freight forwarding and warehousing, Hong Kong, China requested the Secretariat to prepare for the next meeting a note on the OECD work on air cargo and related support services. The Secretariat undertook to provide that note.

68. On rental and leasing the European Communities stressed that paragraph 167 of the document stated the various objectives of the regulators in this area: safety and economic consideration. It stressed that these were not conflicting objectives or that in other terms, the introduction into the market of a foreign leased plane did not necessarily endanger safety standards. It enquired about the respective importance of the three categories listed in paragraph 168, i.e. bilateral agreements requiring a simple notification of the lease, agreements requiring an absence of economic benefits linked to traffic rights of the lessor and agreements demanding the underlying traffic rights. The Secretariat undertook to provide this information in cooperation with ICAO.

69. No comment was made on catering services. Finally the Secretariat gave an overview of its future paper and the Chairman indicated that the next meeting would take place on 4 and 5 December 2000.