

**Council for Trade in Services**

**REPORT OF THE FIRST SESSION OF THE REVIEW MANDATED  
UNDER PARAGRAPH 5 OF THE ANNEX ON AIR TRANSPORT SERVICES  
HELD ON 12 SEPTEMBER 2006**

Note by the Secretariat<sup>1</sup>

1. On 12 September 2006, the Council for Trade in Services held the first meeting devoted to the second Review of Air Transport Services pursuant to paragraph 5 of the GATS Annex on Air Transport Services. The agenda is contained in document WTO/AIR/2882.
2. The Chairman, Ambassador Major of Hungary, recalled that at the meeting of the Council for Trade in Services held in February 2006, Members had agreed that the Review would be organised broadly along the structure laid out in document Job No. 2451, dated 19 April 2000. The agenda for the meeting, which had been circulated earlier as a draft, reflected that decision. With regard to agenda item B, he indicated that some delegations had requested that its consideration be postponed to the following meeting, since the documentation to be provided by the Secretariat for the Review was not yet available in full. While he believed that the suggestion should not raise particular problems, he nevertheless intended to provide an opportunity to any delegation who had a submission to table under item B to introduce it briefly. The discussion of such submissions would be postponed to the following meeting. As no items were raised under Other Business, he proposed that the Council adopt the agenda as circulated.
3. The Council so agreed.
4. Before moving to the first item of the agenda, the Chairman offered the floor to any delegation wishing to make statements of a general nature on the second Review of Air Transport Services.
5. The representative of Australia welcomed the opportunity to review again the Annex to the GATS on Air Transport Services and thanked the Secretariat for the comprehensive background paper on "Developments in the Air Transport Sector since the Last Review" contained in document S/C/W/270, as well as the Chairman and his predecessors for getting Member to this first dedicated meeting. His delegation wished to make some general points before presenting its own approach to the Review. Firstly, Australia considered it important that Members assess the developments in the air transport sector as a whole and therefore looked forward to the second part of the Secretariat paper. Secondly, his delegation considered that the Review was timely, as there had been many developments since the end of first one, which included the volatility of the global market and the increasing variety of business models used by airlines and other industry participants. These developments had all occurred against a backdrop of continuing liberalisation and increasing competition.

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<sup>1</sup> This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

6. Turning to Australia's objectives for the Review, his delegation wished to ensure that the second Review led to concrete outcomes and opportunities for Members, if they so desired, to make commitments on ancillary air transport services in the GATS. The Review implied assessing developments in the aviation sector, while also providing an opportunity for Members to clarify the Annex. It was not about negotiating or making new commitments on air transport services. Moreover, Australia continued to believe that the reciprocity-based system captured in bilateral Air Service Agreements and the MFN system could co-exist for different elements of the aviation sector. While his delegation would make some specific comments on the Secretariat paper, it might seek to return to some issues at subsequent meetings of the Review.

7. As for the issues under discussion at that meeting, he noted that the Secretariat background paper supported Australia's view that considerable changes had taken place in ancillary services since the previous Review. On maintenance and repair, according to IATA, there had been considerable progress over the previous five years in harmonizing maintenance standards worldwide. On selling and marketing of air transport services, the Secretariat paper indicated that the increasing share of direct sales by airlines and their distribution mix had been confirmed and amplified during the period under review, as had the channels for direct sales. Total turnover of online travel agencies had been estimated at US\$55 billion in 2004, up from US\$35 billion in 2002. These developments presented both opportunities and challenges to service providers.

8. Australia also remained committed to the consideration of ground handling matters in the GATS. While Members were familiar with the approach Australia and others had taken to ground handling during the first Review, his delegation did not intend to return to the definitional issue of whether or not ground-handling was addressed in the GATS, even if it had not resiled from its earlier position, but would rather look at options which provided certainty for Members rather than legal debate. He felt that the Annex Review was the correct place for this to occur. To this end, Australia and a number of co-sponsors would submit later in the day a Job document under agenda item B. They were not proposing substantive discussion of the paper at that meeting, as this would be premature; rather, the paper was being tabled to enable Members to consult with capitals and facilitate informed debate at the following meeting of the Review, as the issue was important and required measured consideration.

9. He added that many important issues awaited the second meeting of the Review and the second part of the Secretariat paper. Australia hoped that this second meeting could take place before the end of the year, possibly in mid December.

10. The representative of the European Communities welcomed the start of the Review and noted its timeliness given developments in the sector. His delegation was very committed to the Review process and would try to ensure that it was conducted in the best possible way through an in-depth and fruitful discussion. He noted that, in today's globalised world, no-one questioned the economic importance of the air transport sector, both in itself and as a facilitator for the provision of a range of other services. Such economic importance was continuously growing and the activities performed, as well as the service providers involved, had become more and more diversified and sophisticated. Against this background, Members' collective duty was to carefully monitor developments in the sector in order to: first, assess if the regulatory framework currently applying to air transport services was the most suitable one vis-à-vis today's business models to accompany and encourage the progressive and necessary liberalisation process that was occurring in more and more Members; and, second, determine the impact of these developments in terms of the GATS coverage of the sector.

11. In his delegation's opinion, the Review needed to be both comprehensive and forward-looking. Comprehensive, as the air transport Annex left no issue outside the scope of the Review and therefore all aspects of the sector had to be subjected to it, and forward-looking, given the rapid

evolution and innovation in the sector. The Review needed to be, and remain, a dynamic and flexible tool to allow Members to adapt to circumstances at any time.

12. He thanked the Secretariat for all its efforts and for the high quality note it had produced in document S/C/W/270. He looked forward to receiving the additional work that he understood the Secretariat was undertaking on the issue of traffic rights. Once his delegation had seen and examined the complete set of Secretariat documentation, the EC and its Member States would prepare a submission stating in detail their position on the different aspects of the air transport services sector. Pending the circulation of this submission, his delegation would actively participate to the discussion on individual aspects, such as on ground handling and airport operation services.

13. The representative of New Zealand recalled the essential role played by the air transport sector for a geographically isolated economy like New Zealand and for its tourism industry. She shared the views expressed by the representatives of Australia and the European Communities regarding the Review, and noted how the objective of this process was that Members had a full review of developments in the sector as well as of the operation of the Annex, in particular to clarify its scope for ancillary services. She said that the note by the Secretariat, contained in document S/C/W/270, represented an excellent summary of recent developments in aspects of air transport services, and welcomed the way in which the Secretariat had made use of ICAO's database of bilateral air services agreements. In this regard, however, she noted that a number of gaps had emerged in the database and stressed the importance of Members registering their bilateral agreements with ICAO. She also welcomed the compilation of the documentation the Secretariat had produced for the first Review.

14. Thanking the Secretariat for its note in document S/C/W/270, the representative of Switzerland, said that it provided an excellent basis for discussion and was another high-quality document for which he commended the Secretariat. He also welcomed the compilation of the documentation produced for the first Review, adding that these two documents would facilitate the Council's task, as stated in paragraph 5 of the Air Transport Annex, of reviewing periodically developments in the air transport sector. Thanks to this mandate in the Annex, the aviation sector was probably one of the best researched and documented sectors among the many services sectors. His delegation was still analyzing the Secretariat paper and might revert to it at a later stage.

15. By way of general remarks, he said that the Secretariat note described the aviation sector's significant economic weight and strategic relevance. 2.4 per cent of world GDP was generated by the sector, almost 30 million jobs depended on it, 2 billion passengers were transported annually, 40 per cent of international tourists travelled by air and 40 per cent of intercontinental exports of goods by value were dependent on air transport. Manufacturing and tourism – two sectors highly relevant for developing and developed countries alike – were directly dependent on air transport services. Generally speaking, the development of any international business location or of a tourism industry was directly dependent on access to air transport services. All of these figures provided good reasons why the Council should pay outmost attention to the Review. As far as Switzerland was concerned, the Swiss economy was a global consumer and provider of air transport services, especially in the areas of ground handling and airport operation services, aircraft repair and maintenance services and more.

16. He added that his delegation looked forward to seeing the second part of the Secretariat documentation, which would deal with "hard rights", and invited Members to make the best use of the documentation, thus laying the ground for successfully accomplishing the second part of the mandate in paragraph 5 of the Annex, i.e. to "consider the further possible further application of the Agreement in this sector". He reiterated that the Review was the appropriate place to discuss questions relating to the scope of the Air Transport Annex.

17. The representative of China thanked the Secretariat for its note, contained in document S/C/W/270, and added that it laid a good foundation for the commencement of the substantive discussion of the second Review. Document S/C/W/270 provided not only information about the economic and regulatory developments in aircraft repair and maintenance, CRS, and the selling and marketing of air transport services, sub-sectors which were explicitly covered by the Air Transport Annex, but also covered the sub-sectors of franchising, services auxiliary to all modes delivered in the context of air transport, leasing, catering, fuelling, ground handling, airport management services and air traffic control services. Members were thus able to review developments in the air transport services sector substantively.

18. He then commented on the statistical aspects of document S/C/W/270. He noted that there were currently two main issues concerning data in the air transport sector, as well as in other services sectors. First, there existed some obvious differences between the statistics standards employed in the IMF Balance of Payment Statistics Yearbook and the definition of international trade in services contained in the GATS. Second, there was the issue of data availability. This concerned not only the items currently present in the Balance of Payments under the air transport title (i.e. passenger, freight and other), for which no data were available for a number of Members, but also the data for sub-sectors such as ground handling or airport management services, which were also lacking. This resulted in an incomplete picture of the air transport sector around the world. Whereas the first issue was being solved through coordination between the WTO and relevant international organizations, the second one, which was vital to the comprehensive and exact understanding of the relevant sub-sectors, required that Members cooperate with the Secretariat.

19. He noted that the Secretariat had had to turn to some publicly available sources to gather the data necessary to produce document S/C/W/270 and that it was unavoidable that some of information contained in such sources be inaccurate at times. It was therefore critical to locate the right sources to provide the right data. His delegation believed that Members' cooperation with the Secretariat in this regard could be very important and useful, and, for its part, his own delegation would direct the Secretariat to the relevant information sources for China's air service sector. His delegation was also interested in the suggestion, put forward by the Secretariat in the box below paragraph 9 on page 2 of document S/C/W/270, about a more systematic data collection process based on a questionnaire addressed to each Member, as had been done for telecommunications and maritime transport services.

20. He then corrected a piece of information contained in paragraph 483, where it was mentioned that in 2004 Airways New Zealand began to provide navigation services in China. This was incorrect, as no foreign air traffic control services provider had provided navigation services in China up to that moment. He also said that the "Note" below Table 4 on page 11, which stated that "the names of the countries/territories have been drawn directly from the respective websites of FAA and EASA, they have no legal implications for WTO purposes", was misleading and essentially deviated from the standard practice of the WTO. He therefore said that it should be deleted.

21. The representative of the United States expressed her delegations' appreciation for the efforts of the Secretariat. She said that the Secretariat's detailed study of recent trends, developments, and issues in several air transport service sectors provided ample material for the initial discussions in the Review. The Secretariat had compiled and made sense of an enormous amount of technical and timely material, some of which might simply not be available anywhere else or in any kind of consolidated fashion.

22. As had happened during the first Review, she indicated that the United States intended to participate fully in the discussions and looked forward to a fruitful exchange of information and views with other Members. She also shared her delegation's firm conviction that the Review should commence, as set forth in the mandate, with a thorough discussion of developments in the air transport services sector, based on the Secretariat's materials and information submitted by Members.

23. In terms of organizing the work, the United States believed that the Council should review developments in the air transport sector and the operation of the Annex before turning to consideration of any possible further application of the GATS to this sector. While she noted that some Members had indicated that they would be submitting proposals on amending the Annex, she agreed that it would be premature to consider such proposals at that stage of the Review process. The rationale, if any, for changes to the scope of the Annex's negotiated exclusions needed come out of a full and objective review of underlying developments and associated issues. Her delegation intended to reserve its positions on any such proposals until the appropriate stage of the review.

24. As for developments in the sector, at the commencement of the first Review, her delegation had stated without reservation that the five year period prior to that moment had witnessed greater liberalization than any comparable period in the history of air transport. During that time-frame, from 1993 to 1998, "Open Skies" agreements had become the model instrument utilized by the United States for the exchange of international traffic rights, both scheduled and non-scheduled, for passenger and cargo services, and these agreements had also set a new standard for advancing pro-competitive market disciplines into ancillary aspects of air transport such as selling and marketing, ground handling, inter-modal transportation and Computer Reservation Systems services. Open routes and entry for international services and liberal code-sharing provisions, including third-country code sharing, had dramatically opened the environment for airlines to transform their service networks. Hence in many markets, particularly on transatlantic routes, new forms of alliance competition had emerged, with a dramatic increase in traffic and city-pairs served and significant decreases in the average fares.

25. For the United States, the subsequent period had been quite as transformative and nearly as productive. The United States currently had 78 open-skies partners, including agreements with very significant trading partners such as Canada, India and, most recently, Kuwait. The representative also noted the continuing establishment of open-skies agreements not involving the United States, a development which had been observed in the first Review and that seemed to be more firmly established now. She further indicated that many of the US bilateral open-skies partners, encompassing nearly every geographic region and stage of economic development, had subsequently proclaimed open-skies policies in all of their international air transport relations. She hoped that those Members would share their outlook and experiences during the course of the Review.

26. Despite these continuing achievements on a bilateral basis, her delegation also remain focused on what could be achieved by extending open-skies principles on a plurilateral or multilateral basis. The most significant agreement for the US in that regard remained the Multilateral Agreement on the Liberalization of International Air Transportation (MALIAT), which had been concluded in 2000 and had, since the first review, seen the addition of three new signatories and an all-cargo protocol that provided non-signatories the opportunity to accede to the MALIAT on a cargo-only basis. For the future, the US primary focus had for some time been on the negotiation and conclusion of a first-phase air services agreement with the European Union. As had been widely reported, the United States and the EU and its Member States had reached agreement on a draft text in November of 2005. The US remained committed to the implementation of the first-phase agreement with the EU by the end of 2006.

27. Her delegation continued to believe that the almost total exclusion of air transport services from the scope of coverage under the GATS had been farsighted and had contributed to the ongoing liberalization of air transport agreements through air services-specific agreements and the facilitating activities of ICAO and numerous regional fora. This was equally true for traffic rights and ancillary air services in support of traffic rights. Her delegation looked forward to discussing recent developments with a view to whether and to what extent that assessment remained valid and was shared by other Members.

28. The representative of Cuba indicated that her delegation would revert to the Secretariat note contained in document S/C/W/270, which her authorities were still examining. She agreed that discussion of agenda item B be postponed until all of the Secretariat documentation was ready and stressed that this should be made available in a timely manner in all there official languages, in order to facilitate discussion and expert participation.

29. The representative of Norway said that the Secretariat paper in document S/C//W/270 represented a very robust basis to conduct the Review. He stressed the importance of air transport services for his country, a remote economy geographically placed on the outskirts of Europe, and of the Review process, and called upon Members to make good use of the mandate contained in the Air Transport Annex to undertake a comprehensive review, in order to be able to increase the clarity of the Annex and adapt it to the changing circumstances of the sector. He supported the proposal by Australia that the next session for the Review be held in mid-December.

30. The representative of Korea thanked the Secretariat for its high-quality note and looked forward to receiving the full documentation as early as possible. Korea was of the view that the primary purpose of the second Review was to have a clear understanding on the definition and coverage of the GATS Annex on Air Transport Services, in particular as concerned the coverage of aircraft repair and maintenance, selling and marketing and CRS services, in light of the rapid technological developments and changes in business environment having taken place in those sectors. However, his delegation remained cautious with regard to the expansion of the coverage of the Annex to some contentious sectors such as ground handling services, airport management services and air traffic control services. He stressed that any change or expansion of the Annex required the consensus of all Members.

31. The representative of Japan thanked the Secretariat for its note in document S/C/W/270 and said that he looked forward to receiving the second part of the note. He indicated that the Review had to be conducted on the basis of thorough and objective information, such as that contained in the Secretariat paper, and without prejudging its outcome. He added that, in this sense, document S/C/W/270 provided a solid basis for productive discussion. His delegation was also of the view that the current international regime in the air transport sector, based on bilateral air services agreements, had been functioning quite well and that in conducting the Review this point could be highly relevant in terms of substantive and constructive discussion. He added that Japan was fully committed to the Review process.

32. The Chairman said that the Council would take note of the statements made.

A. DEVELOPMENTS IN THE SECTOR

33. The Chairman indicated that, to assist Members with this agenda item of the Review, the Secretariat had produced a background note, contained in document S/C/W/270, Corrigendum 1 (in English only), and Corrigendum 2. Moreover, as agreed at the Council meeting of September 2005, the Secretariat had also re-issued the background documentation produced for the first Review, contained in document S/C/W/163 and its addenda, in the form of a blue booklet. This documentation still retained a high degree of relevance for the second Review, and document S/C/W/270 contained a number of cross-references to the relevant parts of the booklet. He then asked a representative of the Secretariat to briefly introduce the documentation.

34. By way of introduction to document S/C/W/270, a representative of the Secretariat said that, while the structure of the note was self-explanatory, he wished to put it into the proper perspective. The Secretariat had attempted to provide Members with background information on the sector which was as comprehensive as possible by having recourse to sources of a different nature, which included other international organisations, the specialised press, professional associations as well as operators.

The advantage of such an approach had been the depiction of a very thorough picture; the disadvantage, however, had been the impossibility of checking whether such information was always accurate and complete and the need to rely, in some instances, on terminology which was inconsistent with the standard WTO one. Since a great deal of the information that the Secretariat had not been in a position to check for accuracy related to Members and their operators, he called upon delegations who had noticed any factual errors in document S/C/W/270 to convey them orally and possibly also in writing to the Secretariat, so as to issue at the end of the Review a fully revised document that would serve for future reference.

## **1. Aircraft Repair and Maintenance**

35. The Chairman opened the discussion of the individual sub-sectors with aircraft repair and maintenance. He indicated that the corresponding paragraphs in document S/C/W/270 were paragraphs 16 to 71.

36. The representative of the United States noted that, on page 11 of document S/C/W/270, the Secretariat had suggested that the main rationale for the exclusion of line maintenance from the scope of the GATS seemed to have been the fact that line maintenance was typically done in-house, whereas now it was increasingly provided on an independent, third-party basis. He inquired whether the Secretariat had any supporting documentation for this assertion. The United States were researching the question themselves and would welcome the views of other Members in this regard.

37. He then remarked that, on page 18, there was an assertion that IATA self-regulating safety activities might not be covered by the GATS because they were undertaken without formal government mandates. He wished to urge caution in ascribing GATS coverage of any activities related to safety regulation in the air transport sector, given the clear exceptions contained in GATS Article XIV, and the critical importance of rigorous safety practices and government regulation in this area. He also stressed that the preponderance of the IATA safety audit programme activities further described in the section had no tangible connection to offline maintenance and repair services, further causing question as to why the possibility of GATS coverage of these activities would be implied.

38. The representative of Canada, noting the reference, in paragraph 7 of document of S/C/W/270, to the Secretariat's willingness to produce more specific documents for any subject of interest to Members, requested more information on maintenance services delivered through mode 1, as a number of such services, such as tele-diagnosis, had now become technically feasible.

39. The representative of Australia indicated that his authorities were still examining the possible issue for discussion raised by the Secretariat in the box under paragraph 36, which suggested that Members re-examine the exclusion of line maintenance from the scope of the Annex in view of the emergence of a third-party line maintenance market. He added that it would be premature to discuss such issues under agenda item A. He then noted that considerable efficiency gains for the air transport industry had been generated by international competition in the field of maintenance and repair services, and that competition had also pushed airlines to improve the efficiency of their in-house maintenance services. These efficiency gains had translated into reduced costs, which had been passed on to large extent to consumers in the form of reduced prices. He noted that the mention of a "drastic" reduction of in-house maintenance capacity for Qantas was probably excessive and indicated that he would provide the Secretariat with more accurate information in that regard.

40. The representative of Costa Rica observed that, although document S/C/W/270 provided information on recent developments in the repair and maintenance sector, it would have also been interesting to delve into the obstacles that prevailed in this sector. Costa Rica had identified some of these obstacles, which appeared to still be prevalent. These included: limitations on temporary entry and departure of specialized technical personnel; authorisations to operate as a foreign maintenance

organization subject to economic needs tests; measures mandating the existence of contracts with local firms as a prerequisite for doing business from abroad; disproportionate administrative costs charged for obtaining the certifications required to provide services in the territories of certain Members; and discriminatory measures affecting foreign service providers seeking to offer repair services for aircraft flying under the national flag. His delegation was of the view that it would be interesting to have more information from the Secretariat on such obstacles, which prevented growth in the sector and the participation of suppliers of many Members, including Costa Rica, in the market. He also supported the suggestion by Canada that more information be provided on mode 1, which Costa Rica had identified as a source of new commercial opportunities.

41. The representative of New Zealand noted that maintenance revenues for Air New Zealand had effectively decreased, as stated by the Secretariat in paragraph 27. Air New Zealand nevertheless retained an export interest in the sector, in spite of the high value of the New Zealand dollar and increased competition. The renewal of Air New Zealand's fleet had also contributed to lowering its maintenance needs.

42. Responding to the remark made by the delegation of Australia on the possible issue for discussion raised after paragraph 36, the representative of the United States concurred that it would be preferable to address the issue at a later stage and indicated that his delegation would research the reasons for the exclusion of line maintenance from the coverage of the GATS and revert to the question.

43. The representative of Switzerland said that document S/C/W/270 offered valuable demonstration and examples of trade in the air transport services sector, and in particular in aircraft repair and maintenance services, taking place through various modes of supply, including through mode 1.

44. The Chairman said that the Council would take note of the statements made.

## **2. Computer Reservation System (CRS) Services**

45. The Chairman recalled that the relevant elements for this sub-sector were contained in paragraphs 72 to 180 of document S/C/W/270.

46. The representative of the United States indicated that he would add two details to the description provided by the Secretariat of the deregulation of CRS services which had taken place in the United States in 2004. First, in allowing the CRS rules to expire, the United States had taken acknowledgment of the numerous bilateral air services agreements that contained CRS Annexes. As a result, the new US policy in this regard was to no longer include CRS Annexes in bilateral agreements, and to propose to delete them from the agreements where they were still included.

47. Second, he felt it useful to describe why the activities of CRSs had been regulated in the first instance, as this had a bearing on the classification-related issues raised in document S/C/W/270. When CRS rules were originally put in place, one or more airlines or airline affiliates owned or controlled each system, airlines depended heavily on travel agencies for distribution, travel agencies used a system to research airline service options and to make bookings, and each travel agency predominantly relied on one system to perform these tasks. Systems, therefore, did not need to compete for airline participants. The airlines that controlled the systems had the incentive and ability to use them to prejudice the competitive position on non-owner airlines and to provide information on airline services through the systems to travel agents that gave an undue preference to the services offered by the owner airlines. Competitive market forces did not discipline the prices and terms for the services offered by systems to participating airlines. The US rules had been thoroughly documented in document S/C/W/270. It was worth adding, however, that the US Department of



Transportation (DOT) had adopted most of the rules under its own authority to prevent unfair methods of competition in the sale of airline transportation, an authority that empowered the DOT to prohibit practices that violated the antitrust laws or antitrust principles, but, in adopting the rules prohibiting display bias, the DOT had additionally relied on its authority to prevent unfair and deceptive practices in the marketing of airline transportation. While the DOT had allowed rules on CRS to expire, it had retained these authorities to address anticompetitive and unfair practices in the sale and marketing of airline transportation.

48. Turning to classification issues, it was the US view that CRS services, even as defined in the GATS context, properly referred only to what the Secretariat had elsewhere termed "classical CRS". This limited-scope coverage was the intent of the drafters during Uruguay Round negotiations. This was an important distinction, also in light of the fact that CRS services were regulated in many markets, as they used to be in the United States, in contrast to the unregulated market environment within which travel agencies and IT firms involved in airline ticket distribution typically operated now.

49. At the time of the Uruguay Round negotiations, as presently, it was well-known that CRS referred to a very limited number of global vendors – four, in fact – and a few regional vendors. These had been exhaustively listed in the background materials provided for both Reviews by the Secretariat. It was worth noting in this context that, in the full time period during which CRS services were regulated in the United States, from 1984 to 2004, no new CRS vendor entered the U.S. market. CRSs had had their origin in the internal reservation systems of airlines, having been subsequently spun off into separate business units and eventually, in most instances, divested of ownership by parent and participating carriers. It was the market power they could have established, as entities fully-owned and controlled by parent and participating carriers, which had given rise to the conditions leading to the regulation of their activities by the DOT and other aeronautical authorities. Those conditions were not demonstrably present among the Global New Entrants or other business-to-consumer and business-to-business firms that were emerging to serve the travel distribution market, nor were the services provided by these entities functionally equivalent to the service provided by CRSs.

50. The representative of Norway pointed to an omission in paragraph 111 of the Secretariat note. He indicated that Norway, and possibly also Iceland, were missing from the list of countries having adopted the ICAO CRS code of conduct or having a national regulation which conformed to that code. Norway had in fact adopted the EU code of conduct on CRS through the European Economic Area.

51. Regarding the possible issues for discussion contained after paragraph 177, and notably with regard to the second alternative proposed therein that online providers be classified as an electronic form of travel agencies, the representative of Korea asked if what was intended there were travel agencies as part of the tourism sector and supplying services under mode 1. He noted that most of these online providers were not limiting their activities to air transport but were also covering hotels, car rentals and other modes of transportation. He therefore wondered how those activities would be treated classification-wise.

52. The representative of the European Communities noted that the EC developments were described accurately in paragraphs 140-146, and that the situation was very similar to that of the United States. CRS codes of conduct had been adopted in the EU for the same reasons as described by the United States representative, but changes in the market, notably the development of direct sales by airlines, and in particular by low-cost carriers, had meant that the significance of the rules regulating CRS had been considerably reduced.

53. Regarding the possible coverage of the cargo area by CRS as alluded to in paragraphs 78 and 178, the representative of Canada noted that, while the definition of CRS was flexible, it was not so vast as to cover cargo because the "fares and fares rules" mentioned in the definition referred to those aspects of a tariff that applied to people, and not to things. People were carried at a "fare" along with the concomitant "fare rules", whereas things were carried at "rate" expressed in terms of divisible units, such as weight or volume. With respect to the issues for discussion after paragraph 177, the representative of Canada supported the second option, i.e. that new online providers be considered as an electronic form of travel agencies, notably because of the importance of the technological neutrality concept.

54. A representative of the Secretariat briefly explained that the aim of document S/C/W/270 was to describe the considerable evolution that had taken place over the previous five years in the airline ticket distribution sector, and that it was naturally up to Members to decide if this evolution warranted a re-examination of the classification in the Annex. As to the Korean question on the classification of non-air transport activities of online providers, he noted that the "classical CRSs" were also increasingly selling non-air transport types of travel, which raised another classification question.

55. By way of additional comment on the issues for discussion after paragraph 177, the representative of Korea expressed the concern that any expansion of the definition of CRS could mean an expansion of the scope of the MFN exemptions undertaken under this heading. Therefore Korea was not certain that this question could be dealt with through technical rectifications and thought that compensations might well be needed.

56. The representative of the United States noted that recent developments in the sector had mostly consisted in the involvement of new providers in various value-added aspects outside the scope of what had traditionally been regulated by aeronautical authorities as CRSs. The emergence of these various providers might raise classification issues but those issues might not be air transport classification issues *per se*, as these providers might be new forms of travel agencies or of computer related services. He supported the statement by Canada on travel agencies and technological neutrality. He also noted that, while the US had not undertaken commitments on CRS during the Uruguay Round because at the time it was negotiating Annexes on CRS in its bilateral air services agreement, it was clear that Members undertaking commitments and listing MFN exemptions on CRS were doing it on the basis of the narrow view of classical CRS, rather than envisaging a broader range of services. The absence of a reference to travel agents in the GATS definition of CRS was not necessarily indicative of a classification problem, as the plain language of the Annex, both with its "CRS" heading and its definition, made it clear that only classical CRSs were covered. The new entities described by the Secretariat were not necessarily engaging in the provision of an air service. The United States aeronautical authorities had examined this question in depth at the occasion of their last Rule Making and had come to the conclusion that, even if they had decided to retain CRS rules, there would have been no reason to expand those rules to online travel agencies. Furthermore, as aeronautical authorities, the DOT had no authority to regulate the non-air transport activities of classical CRS providers. Those activities were therefore not covered by an air transport definition.

57. The Chairman said that the Council would take note of the statements made.

### **3. Selling and Marketing of Air Transport Services**

58. The Chairman recalled that the paragraphs dealing with selling and marketing of air transport services in document S/C/W/270 were 182 to 226.

59. The representative of the United States considered that, as with CRS, the Annex definition of selling and marketing encompassed a more limited set of activities than was implied in the Review documentation. Specifically, the Annex definition was intended to track closely with the selling and

marketing provisions typically found in standard air services agreements. These provisions, as was made clear in the Annex definition, provided rights for air carriers to sell and market their own air transport services. In practical terms, this entailed the right to open and maintain representative offices, engage in marketing and promotional activities and sell tickets to the public. The United States did not necessarily believe that the ongoing developments described in the documentation did not raise any pressing classification issues. Selling and marketing as defined in the Annex and in air services agreements focused on the broad right of a carrier to sell and market its own transportation. They did not, nor did they need to, spell out the precise means utilized, whether through a carrier's own representative offices and counters or those of its alliance partners, through general sales agents, call centres or over the internet. Conversely, related activities involved in the actual production and distribution of tickets and the publication of schedules might not properly be considered as air services at all. For example, settlement and clearing services, to the extent they were provided on a commercial basis, might be more properly classified as generic information or computer related services, or possibly as financial services, but they were not subject to any specific regulation by aeronautical authorities as air services.

60. The Chairman said that the Council would take note of the statement made.

#### **4. Franchising**

61. The Chairman recalled that the relevant elements for this item were contained in paragraphs 249 to 269 of document S/C/W/270.

62. The representative of Australia sought, first, clarifications from the Secretariat about its description, in paragraph 262, of the situation of regional airlines and low-cost carriers with regard to airports taxes. Second, while recognizing that there was no internationally agreed definition of franchising, he drew Members' attention to some recent developments that might not all fall within franchising but that were linked to it because of the use of a brand. In particular, he noted the emerging tendency of large airlines to develop separate business units for different aspects of their operations, such as a separate regional airline or a low-cost unit within the same group. Other examples related to large airlines using their frequent flyer programmes or marketing activities to benefit other airlines within the same group while not being franchisors in the truer sense. Another interesting development was that of airlines based in different countries but using a similar branding, such as the Virgin brand, or which might even have different owners. Jetstar was one such example: it was 100 % Australian-owned when operating domestically and majority-owned and controlled by Singaporeans when operating internationally. AirAsia and LAN were other cases in point. A last interesting development was the use a non-aeronautical brand by newly-established airlines for marketing purposes: Kingfisher Airlines in India was one such example.

63. The representative of the United States indicated that franchising was not regulated as an air service in its own right. In any such commercial arrangement between carriers, both carriers would be required to operate under their own Aircraft Operating Certificates and secure any additional permission necessary, including authorization to hold out services on the relevant routes. There might be particular concerns with cross-border investment in a franchising/affiliate relationship, which could involve ownership and control issues under relevant air services agreements. In fact, there could potentially be control issues with franchise relationships even in the absence of cross-border investment, and the US Department of Transport had, in some instances, placed conditions on grants of antitrust immunity where common branding was in place. At any rate, it was not clear to his delegation that franchising *per se* generated any particular classification or economic regulation issues.

64. A representative of the Secretariat answered the question by Australia on the respective position of low-cost and regional carriers with regard to airport taxes by indicating that, while in

paragraph 262 the use of the term "charges", rather than "taxes", would have been more appropriate, what was referred to here were the rebates given by secondary airports and the subsidies granted by local authorities to low-cost carriers, which regional carriers would not have obtained to the same degree because of lack of negotiating power.

65. The Chairman said that the Council would take note of the statements made.

#### **5. Services Auxiliary to All Modes of Transport when Delivered in an Air Transport Context**

66. The Chairman recalled that the relevant elements for this item were contained in paragraphs 263 to 269 of document S/C/W/270.

67. The representative of the United States noted that, in paragraph 263, the Secretariat asserted that freight forwarding and warehousing had remained activities that were not specifically linked to a mode of transport. While this might be true from a certain business standpoint, this was not necessarily true from a regulatory standpoint. At least in the US experience, separate air, maritime and surface regulatory regimes were often involved in freight movements, and air freight forwarding specifically was regulated under aeronautical codes as indirect air transportation. This did suggest the importance of designing effective inter-modal policy regimes, to ensure that freight could move between modes as seamlessly as possible.

68. The Chairman said that the Council would take note of the statement made.

#### **6. Rental and Leasing**

69. The Chairman recalled that the relevant elements for this item were contained in paragraphs 270 to 290 of document S/C/W/270.

70. The representative of Australia noted that, in paragraph 288, the number of bilateral agreements containing a leasing clause was probably significantly underestimated because of gaps in notifications to ICAO. For instance, Australia had negotiated leasing clauses in many, if not most, of its bilateral agreements. Those clauses were contained in a more general article regarding business opportunities, which included also provisions on selling and marketing, ground handling, code-share, slots and currency conversion. This made the identification of these leasing clauses more difficult. Australia had a liberal policy regarding wet and dry leasing, and, as a standard approach, sought to allow the airlines of each party to conduct air transport including with leased aircraft, provided appropriate safety and security requirements were abided by.

71. The Chairman said that the Council would take note of the statement made.

#### **7. 8. and 9. Catering, Refuelling and Ground Handling**

72. The Chairman indicated that he would take up these three sub-sectors jointly, as the Secretariat documentation addressed them together, and recalled that the relevant elements were contained in paragraphs 291 to 375 of document S/C/W/270.

73. The representative of the European Communities noted that also in European legislation these three sub-sectors were regrouped under a common heading. He also underlined the growth of independent providers in the market and the overall movement towards liberalization.

74. The Chairman said that the Council would take note of the statement made.

## **10. Airport Management Services Including Charging Systems**

75. The Chairman recalled that the relevant elements for this item were contained in paragraphs 376 to 446 of document S/C/W/270.

76. No statements were made under this item.

## **11. Air Traffic Control Services Including Charging Systems**

77. The Chairman recalled that the relevant elements for this item were contained in paragraphs 447 to 518 of document S/C/W/270.

78. No statements were made under this item.

79. Concluding the discussion under this agenda item and noting that some of the comments made were of a preliminary nature, the Chairman suggested that a point covering the eleven sub-items discussed at the meeting be inscribed to the agenda of the next dedicated meeting of the Review, so as to allow delegations to revert to them.

80. The representative of Brazil said that it appeared clearly from the debates that classification was a cross-cutting issue for the sub-sectors listed, in particular in view of the evolution of business practices since the negotiation of the Annex. There was a significant lack of clarity in that regard. He was not sure that the thesis according to which the commitments of a Member should be governed by the interpretation that the Member had as to what was included under the respective definitions at the time it undertook the commitments would withstand scrutiny if taken before the Dispute Settlement Body. More generally, this lack of clarity or certainty regarding the future evolution of business realities was precisely one of the reasons why Members were hesitant in undertaking commitments under the GATS. He also questioned whether the Review included a mandate to clarify classification issues raised by the Annex, given that such clarifications were not expressly mentioned in the Annex.

81. The representative of the United States said that she had no objection to the suggestion that a point covering the eleven sub-sectors discussed at that meeting be included in the agenda of the next meeting, but noted that the statements her delegation had made were not of a preliminary nature. She further stressed that the remarks made by her delegation with regard to classification were purely circumscribed to air transport and to the present Review.

82. The representative of the International Civil Aviation Organization (ICAO) recalled the constitutional responsibilities on civil aviation matters devolved to ICAO by the Chicago Convention on International Civil Aviation of 1944. ICAO was a member of the United Nations system and was recognized as the specialized agency in civil aviation with a full mandate in civil aviation matters. ICAO's constitutional role and its institutional framework were geared towards "safe, regular, efficient and economical international air transport". As recognized by the Fifth Air Transport Conference held in 2003, liberalization was the cornerstone upon which to build the future growth of the air transport industry. It was recognized that this process was well underway. ICAO's leadership role in international air transport had been reaffirmed by the Declaration of the Global Principles adopted unanimously by its Contracting States at the end of the Conference. This leadership role was also reaffirmed in an Assembly Resolution adopted during the 35th Session of the ICAO Assembly held in 2004, where the ICAO Council was requested to continue to exert a global leadership role in facilitating and coordinating the process of economic liberalization, while ensuring safety, security and environmental protection in international air transport.

83. ICAO was pursuing developments in trade in services that might impinge on international air transport in a proactive manner. As with the first Review of the Air Transport Annex, ICAO was very

much interested in developments taking place at the WTO. The ICAO Secretariat had worked very closely with the WTO Secretariat for the current second Review. In April 2006, the President Emeritus of the Council of ICAO had met with the Director General of the WTO. They had discussed the working arrangements between ICAO and the WTO and had sought to ensure coordination and cooperation between the two Organizations regarding the air transport sector. The representative announced that ICAO was about to hold a global seminar on liberalization in Dubai. She also noted that the work of ICAO had been accurately reflected in the WTO Secretariat documentation and welcomed the intention expressed by some Members during the meeting to improve their notification record with ICAO.

84. The Chairman said that the Council would take note of the statements made.

B. OPERATION OF THE ANNEX

85. The Chairman recalled that it was understood that the documentation produced by the Secretariat would not touch upon the question of the operations of the Annex, and that the debate on this issue would take place only on the basis of Members' contributions and comments. He opened the floor for any comments that delegations might have at that stage of the discussion, indicating that the Council would be reverting to this item at its next dedicated meeting.

86. The representative of Australia indicated that his delegation would circulate shortly a proposal in the form of a Job document (later circulated as JOB(06)/237), cosponsored by the European Communities, New Zealand, Switzerland and Norway. He recalled that the Australian position on ground handling and airport services expressed during the last Review was well known, but that Australia and its co-sponsors wanted the debate to move on. The question was not whether ground handling and airports services were included in the GATS but whether they should be. The Review process could help Members determine this. Those two sectors continued to grow and to develop and it was therefore important that Members and the industry gain certainty in the coverage of the sector. Australia was not seeking a substantive debate during that meeting, but had simply tabled the proposal to enable detailed discussions at future meetings and to allow delegations to consult their authorities.

87. The Chairman recalled that Members had agreed to postpone substantive discussion of this item to the following dedicated meeting and said that the Council would take note of the statement made.

C. POSSIBLE FURTHER STEPS FOR THE REVIEW

88. The Chairman recalled that Members had agreed in June that he would hold further informal consultations on the organization of the Review once the Secretariat had produced the rest of the documentation. He understood that the Secretariat was working actively on a substantial document on hard rights, which should be ready in the course of October.

89. A representative of the Secretariat recalled that in June the Secretariat had made a demonstration of the prototype of the analytical tool and visualization software for hard rights it was developing. He indicated that this project had suffered delays due, in particular, to the late availability of the underlying data and the difficulties met in developing the software. Nevertheless, the documentation should be available by the end of October.

90. The Chairman suggested that the next dedicated meeting be scheduled in mid-December.

91. The representative of the United States said that her delegation could agree to the Chairman's proposal, on condition that the Secretariat documentation would become available along the lines indicated; in case of further delays, the date of the meeting should be reconsidered.

92. The Chairman replied that, should such an eventuality occur, he would hold informal consultations. He concluded the meeting by saying that the Council would take note of the statements made.

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