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Council for Trade in Services

REPORT OF THE SECOND SESSION OF THE REVIEW MANDATED UNDER PARAGRAPH 5 OF THE ANNEX ON AIR TRANSPORT SERVICES HELD ON 2 OCTOBER 2007

Note by the Secretariat[1]

1. On 2 October 2007, the Council for Trade in Services held the third meeting devoted to the second review of air transport services pursuant to paragraph 5 of the GATS Annex on Air Transport Services. The agenda was contained in document WTO/AIR/3075.

2. The Chairman, Ambassador Trevor Clarke of Barbados, indicated that the delegation of Australia wished to provide Members with a brief account of the air transport industry seminar held on 1 October 2007.

3. The representative of Australia reported on the industry seminar on developments in the air transport sector held on the occasion of the third meeting of the Council for Trade in Services dedicated to the second review of the GATS Annex on Air Transport Services.

4. The co-sponsors of the seminar expressed their appreciation for the high level of participation by Members, and in particular by capital-based air transport officials. They also acknowledged the Secretariat for its assistance in holding the event, Mr. James Bradbury of the European Commission who organised the seminar, and most importantly the industry speakers, i.e.: Mr John Willis, Chairman, International Aviation Handlers Association; Dr Warren Mundy, Group General Manager, Corporate Strategy, Infratil Airports Europe; Mr Carlos Grau-Tanner, Director, Government & Industry Affairs, International Air Transport Association; Mr Ulrich Schulte-Strathaus, Secretary General, Association of European Airlines; Mr Ulrich Ogiermann, President and Chief Executive Officer, Cargolux, and Vice Chairman, The International Air Cargo Association; Mr Christian Folly-Kossi, Secretary General, African Airlines Association; Ms Nancy Sparks, Managing Director, Regulatory Affairs, FedEx; Ms Ilse Wilczeck, Member of the Board, European Cargo Alliance. Some incisive closing remarks on the relevance of the GATS framework to the air transport sector were also made by Mr Harsha Vardhana Singh, Deputy Director-General, WTO Secretariat.

5. The intention of the seminar was to provide a forum for industry to feed their perspectives into Members' discussions within the air transport services review. Members heard from speakers on ancillary air transport services, and from airline representatives and others on developments in the air transport sector.

6. While it was not possible to provide a full report of the seminar, the representative highlighted a number of the key points made during the event. He noted that these were intended as a quick summation of some of the issues raised, to inform Members, and were not intended to represent

[1] 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.

the views of individual participants, nor of Australia or the organisers. Others might wish to add additional, or alternative, views.

7. Firstly, it was noted that there was a continuing trend towards the private and often independent provision of ancillary services. On ground handling, it was noted that there were essentially three types of services providers: airlines providing self-handling and in some cases third party handling services, particularly to alliance partners; airports and their subsidiaries; and independent handlers. Considerable differences remained in the level of access for each of these categories, leading to inefficiencies and, in some cases, abuse of market power. Members were urged by industry to open the ground handling market where space permitted.

8. In the area of airport operation services, it was noted there was a trend to merge the management services market with the capital market, although there were also market opportunities for pure management or operational arrangements.

9. On air transport services, there was a wide, if not universal, recognition of the value of multilateral or plurilateral ASAs to address limitations in the bilateral system, and improve market opportunities. Much discussion focused around the US-EU ASA and its impact both in market developments and as a potential model or basis for air services into the future, although one speaker considered it was unlikely others would become parties to this or similar agreements in the near future because of differences in regulatory approaches in other large markets and the smaller size of other markets.

10. While multilateralism and plurilateralism were a major theme, with some exceptions, speakers were not yet sure of the best model for air traffic rights. While the GATS was recognised as a possible route to address air traffic rights, there was uncertainty as to how this would work in practice and many speakers were not yet ready to state firm views, possibly indicating an area where further work might need to be undertaken. One speaker noted that his organisation was 'agnostic' on the issue, but open to being convinced, a theme that others seemed to share. Perhaps surprisingly the GATS dispute resolution measures were identified as one area of concern by industry, which was suggesting that dispute resolution could be lengthy and expensive. However, as one respondent noted, dispute resolution was more often than not achieved the consultation stage, which was not unlike the approach in ASAs.

11. All speakers with one exception supported liberalisation of air services. This speaker noted that liberalisation could result in market dominance by foreign carriers in small or developing markets. This created considerable discussion about the necessity of own country-owned or controlled airlines, as well as stimulating discussion on the value of creating internal markets within regions and to act as negotiating blocks.

12. Perhaps the two biggest issues raised were those of ownership and control and of fifth freedom market access, although seventh freedom services and cabotage were also identified as areas of concern for airlines. This was particularly prominent in the air cargo and express sectors. Representatives noted that air cargo routes were rarely round-trip; they were often one-way and relied on the higher freedoms and on change of gauge provisions to provide efficient services. Given the characteristics of the sector and its importance to world trade (carrying 30 or 40 per cent of global trade by value), a number of speakers considered that cargo rights should be considered or negotiated separately to passenger rights. This was an area Members might wish to consider further in the future.

13. In summary, the seminar had provided an important opportunity to gain a perspective from industry, which no doubt Members would feed into the general discussions at the meeting and into the future of the review.

14. The representative of the United States said that the seminar had been a good event with eloquent speakers and had provided an important background for the review meetings. She hoped that the Members which had sponsored the event would provide the Powerpoint presentations used by the speakers. She noted that the summary that had been provided was on the responsibility of the delegation of Australia and that, while her delegation might have some nuances, it thanked the co-sponsors for having organised the seminar and having shared their views.

15. The representative of Australia said that all the Powerpoint presentations of the seminar had been made available to the Secretariat for posting on the WTO Members' website.

ITEM A DEVELOPMENTS IN THE SECTOR

16. The Chairman said that agenda item A had been divided in two parts: part I covered the eleven areas for discussion at that meeting, while part II took up the Quantitative Air Services Agreement Review (QUASAR) that had been addressed at the review meeting in March.

17. Part I addressed developments in the air transport sector with regard to: plurilateral ASAs; economic and financial situation of scheduled passenger airlines; low-cost carrier services; non-scheduled passenger services; regional air transport services; general aviation services; air cargo services; slots; alliances and cooperation amongst airlines; ownership; and other significant economic and regulatory developments. To assist Members with the examination of this item, the Secretariat had produced yet another hefty background note, circulated as document S/C/W/270/Add.2.

18. A representative of the Secretariat said that, while the Secretariat was mindful of the delay with which the document had been issued, it was also hopeful that, having seen its content and depth, Members would be indulgent. He also explained that the Secretariat had faced technical constraints related to the formatting and circulation of such a big document, which had further delayed its issuance.

19. He also noted that the Secretariat had relied on the same types of sources of information as for the previous review documents and thus extended the invitation to Members to communicate any errors or omissions to the Secretariat, so that these could be included in the final version of the document. The structure of the document was also in line with past practice, addressing economic and regulatory developments in the sector. The only new elements concerned: the application of QUASAR to plurilateral ASAs, with the emergence of interesting conclusions in terms of degree of openness and traffic coverage; the section devoted to low-cost carriers, one of the most significant new developments in the sector; the section dedicated to regional air services; and the ownership part, which had been improved and refined since the first review.

20. The Chairman suggested that, in order to better structure the debate, each area covered in the Secretariat note be taken up individually.

A. PLURILATERAL AIR SERVICES AGREEMENTS

21. The representative of the United States said that he had been perplexed by the absence of the most significant plurilateral arrangement, i.e. the EC Single Aviation Market, from the relevant section of the documentation on the grounds that it was considered as covering domestic traffic. While some consideration had been given to the fact that Commission had been given certain mandates by Member States to negotiate on their behalf, the reality was that the EC Member States were all sovereign Signatory Members of ICAO. He therefore sought further clarification on the issue.

22. With regard to the application of QUASAR to the First Phase US-EU Air Transport Agreement concluded between the United States, the European Union and its Member States, it was important to note that, while the agreement had been signed on 30 April 2007, it would only be provisionally applied starting on 30 March 2008, so that any application of QUASAR and attribution of traffic were premature.

23. The representative informed Members about the significance of the agreement. The agreement extended valuable "opens skies" rights between the United States and all of the Member States of the European Union. It would authorize every US and every EU airline to fly between every city in the European Union and the United States, operate without restrictions on the number of flights, aircraft and routes, allow carriers to set fares entirely according to market demand, enter into cooperative arrangements including code-sharing, franchising and leasing arrangements, such as the provision of aircraft with crew, subject to normally applied regulatory requirements.

24. The agreement would also foster enhanced regulatory cooperation in areas as diverse as competition law, government subsidies, the environment, consumer protection and security. It established a consultative joint committee through which the United States and the European Union could resolve questions and develop further areas of cooperation. In advance of the provisional application of the agreement, US and EU delegations had already begun holding preliminary meetings of the joint committee, where they had focused on progress already achieved on the regulatory front, including through the US-EU Transportation Security Coordination Group and the joint launch between the European Commission and the US Federal Aviation Administration of the Atlantic Interoperability Initiative to Reduce Emissions. The joint committee had also already focused on the question of developing procedures, including amendments if necessary, to bring third countries into the agreement and had agreed to focus as a priority on States that acceded to the European Union.

25. The agreement also had investment measures. US investors were allowed to invest in a EU airline as long as the airline was majority-owned and effectively controlled by a Member State and/or nationals of Member States. The agreement made clear that EU investors might hold up to 49.9 per cent of the total equity of the US airline, on a case-by-case basis even more provided that foreign nationals did not own more than 25 per cent of the voting stock and the airline was under the actual control of US citizens. The agreement also opened the possibility for EU investors to own or control airlines from Switzerland, Liechtenstein, members of the European Common Aviation Area, Kenya, and other US "open skies" partners in Africa, without putting at risk such airlines' rights to operate to the United States.

26. Finally, the grant of new traffic rights to EU carriers opened the door to cross-border airlines mergers and acquisitions within the European Union because it endorsed the concept of the EC carrier and as a result those carriers' operated rights were no longer in legal jeopardy.

27. A representative of the European Communities said that the information contained in the Secretariat note was very valuable in clarifying the picture with regard to plurilateral ASAs. By way of preliminary remarks, he had also been surprised by the omission of the EC Single Aviation Market, as the agreement provided an extreme example of regional liberalisation in the sector, which went beyond just market access issues and provided for very significant regulatory convergence. He would also welcome seeing the agreement included in any future work. Another interesting omission, which had been highlighted by the previous day's seminar, related to the fact that the documentation concentrated solely on passenger air traffic rights, while the cargo sector was also of great importance. 30 to 40 per cent of world cargo by value was transported by air and the needs of that segment of the industry differed from those of passenger services. He would welcome an investigation into whether it would be feasible to extend the analysis to cargo services.

28. With regard to the content of the plurilateral section as it referred to the EC, he noted a couple of points, for the sake of accuracy. First, he underlined that both the US-EU, Euro-Med and ECAA were new types of ASAs as compared to both bilateral ASAs and other plurilaterals, because they included security elements and provided for regulatory convergence on safety and competition policy. He then noted that the US-EU agreement did not provide for multi-designation of carriers, but actually contained no designation provision, which was a step much forward than just multiple designation.

29. After commending the Secretariat for its work, the representative of New Zealand said that the diagram contained on page 12 of the Secretariat documentation was very telling in illustrating the number of plurilateral ASAs developed around the world. He appreciated that in some cases plurilateral ASAs were firmly in place, in some cases they were imminent, in others just aspirational, but highlighted that they tended to be much more liberal than bilateral ASAs. He informed Members about developments with regard to the PIASA, a plurilateral agreement that had been a decade in the making. Whereas the PIASA was shown in the Secretariat note as not being in force due to an insufficient number of ratifications, the missing ratification for entry into force was actually expected in the following two weeks. One of the elements that was of significance was the granting of fifth freedom traffic rights, not only on long-haul services, for example from New Zealand and Australia to Europe, but also for the small airlines of the South Pacific islands, scattered over a vast area of the Pacific Ocean, to establish viable air services essential to tourism and trade.

30. Another element of importance was the liberalisation of ownership and control provisions. This had been well-illustrated within Europe, and in this regard he concurred with the comments about the omission of the EC Single Aviation Market. One technical point in this regard was that the Secretariat had understandably allocated to the MALIAT the traditional substantial ownership and effective control provision. In fact, the agreement provided for greater flexibility than the traditional ownership clause would imply. It restricted ownership from a country investing into an airline of another party to the MALIAT to then fly back to the initial investor country; this was designed to avoid the establishment of off-shore airlines potentially undercutting labour conditions. This had been an issue of particular concern to one of the members of the MALIAT, but not to the others, who had hoped for a more liberal ownership condition. He had also noted with great interest comments by the EC and the United States that they were looking at the possibility of accession to their new agreement by additional parties, and also noted that the EC was considering mandates later in the year for negotiations with other parties, and registered New Zealand's interest in this regard.

31. The representative of the United States said that he had omitted a very important part of the US-EU agreement. The agreement was very definitely a first stage agreement between the United States and the European Union. In addition to the areas of cooperation that had been established and the work of the joint committee, there was a mandate to come back to the table in 2008 to discuss further liberalization. His delegation anticipated that those negotiations, in tandem with the work of the joint committee, would further enhance trans-Atlantic aviation and perhaps provide a vision and a model for wider application. His delegation could not predetermine the outcome of those negotiations, which would be tough and address serious issues, but they would cover items of priority interest for both sides, including further liberalization of traffic rights, additional investment opportunities and the impact of environmental measures and infrastructural constraints on the exercise of those traffic rights.

32. The representative of Australia echoed other delegations' comments about the importance and quality of the Secretariat note, which added to the body of knowledge about developments in the air transport sector. He felt this work would be of great interest to air transport officials around the world, and encouraged delegations to pass back the information to their capital-based transport officials, to ensure greater participation in the review.

33. With regard to plurilateral ASAs, he said that while Australia was not currently signatory to any such ASAs, it was open-minded about them. He also indicated that a horizontal agreement had been initialled with the EC, and that his delegation was interested in a comprehensive agreement with the EC. He had a number of technical amendments with regard to the information in the Secretariat document, which he would submit directly to the Secretariat separately. With respect to the suggestion in paragraph 11 of the Secretariat note that the text of all plurilateral agreements be published, he noted that, while the resource implications might need to be considered, his delegation strongly supported in principle any initiative aimed at increasing transparency in air services arrangements. He mentioned the specific MALIAT's website, which was maintained by New Zealand, as a good example of such transparency initiatives. The representative of New Zealand supported the statement by Australia on the desirability of transparency with regard to the status and the content of plurilateral ASAs.

34. The representative of the United States pointed out a clarification with regard to paragraph 37 of the Secretariat document. In that paragraph, it was noted that, in coding the US-EU agreement with regard to seventh freedom rights, the totality of the points attributable had been assigned, in spite of the fact that seventh freedom rights only applied to EU carriers and only to a very limited geographical area. He indicated that the geographical scope was slighted misleading because the seventh freedom rights applied to services between the United States, all 27 EU Member States plus ECAA countries including Norway, Iceland and the Balkan States. Services by an EU carrier from an EU Member State that was not its home State to the United States were a grant of seventh freedom rights.

35. The representative of South Africa posed two questions. He wished to know, first, whether the US-EU agreement allowed cabotage and, second, what the withholding provision of the agreement was. The representative of the European Communities indicated that cabotage was not covered by the US-EU agreement. The issue needed to be looked at in terms of balancing market access opportunities; intra-EU Member States flights were international flights, while intra-United States flights, which could cover very large distances, were domestic flights, to which cabotage restrictions applied. The freedom to operate intra-EU Member States flights was granted to US carriers, while on the other side seventh freedom rights had been granted uniquely to EU carriers, and not to US carriers, as a way of balancing the agreement. Replying to the second question, the representative of the United States said that part of the genesis of the US-EU agreement was to accommodate a situation where the acquisition of a stake in a carrier resulted in that carrier, when serving the US market, no longer fulfilling the withholding clause in the bilateral agreement with the United States, i.e. no longer being substantially owned and effectively controlled by the nationals of the State designating it. Such situations could put rights in legal jeopardy, even if no immediate action was necessarily taken in that regard. It had always been US policy to consider waivers to the ownership and control requirements, provided some public interest conditions were met, many of which were indeed satisfied if both parties concerned had an "open skies" agreement with the United Sates. Even before the US-EU agreement had been concluded, the Air France/KLM example was illustrative of an instance were the carriers' operations themselves had not been jeopardised by the change in ownership structure.

36. The representative of Chinese Taipei expressed appreciation for the Secretariat note. Even if the core activities of the air transport sector, i.e. scheduled, non-scheduled, cargo and low-cost carrier services, were not covered by the GATS, the note illustrated that significant progress in the liberalisation of air transport had been achieved through bilateral or plurilateral ASAs, and especially with the US-EU agreement, which was very comprehensive both in terms of geographic coverage and content. While her delegation also supported the concept raised by some Members that the second review should lead to concrete outcomes by widening the sectoral coverage of the GATS, it was of the view that the contribution of such an approach to the liberalisation of air transport might be fragmented and not so effective as a multilateral air service agreement. She therefore wondered if it might not be possible in the future for two plurilateral agreements to be combined, such as, for

instance, the US-EU agreement and the MALIAT, and was interested in observing the development of such tendencies.

37. The representative of New Zealand was of the view that Chinese Taipei had raised an interesting point and would welcome delegations' thoughts on the possible rationalisation of plurilateral agreements, also in light of their relatively similar nature. He indeed wondered if some kind of merger of these agreements was one of the longer-term trends to be looking towards, and had welcomed the EC and US comments about possible accession to their agreement by third parties.

38. With regard to the issue of accession, the representative of the European Communities said that the accession provision was primarily meant to address the fact that the European Union was still growing. However, he also added that the provision as such was generic and there was the possibility of looking at other third parties and working out whether in the future there would be feasible means, subject to the agreement by both the US and the EU, of extending the agreement to them.

B. ECONOMIC AND FINANCIAL SITUATION OF SCHEDULED PASSENGER AIRLINES

39. The representative of Australia said that the section provided a sound analysis of developments in the sector since 2000, one of the most tumultuous periods for the aviation industry. He had a comment with regard to section C dealing with government support. Paragraph 124 noted that "heavy capital injections were needed on the part of governments to keep several of the major airlines afloat", while paragraph 130 stated that "governments had to intervene to prop up their collapsing airlines". While these statements were factually correct in many instances, he felt that such aid, while a legitimate policy option, was not always necessary, or indeed optimal, as it could lead to market distortions. He mentioned the case of Ansett Australia, Australia's second largest airline, which collapsed on 12 September 2001. At that time, the Australian government chose not to provide financial support to keep the carrier afloat. This had naturally created great anguish to the employees of the airline, to some of the communities it served as well as short-term disruptions to the transport system. However, in the longer term the decision proved right, as the Australian aviation sector emerged stronger and more competitive. Australia had been fortunate to have other successful airlines, namely Qantas and Virgin Blue, both of which were able to respond quickly and successfully to changes in the market, also helped by the fact that Australia had already deregulated its domestic market and promoted competition on the international market.

40. The representative of New Zealand said that Ansett was owned by Air New Zealand at the time of its collapse but that, because of ownership and control provisions in bilateral ASAs, the options available to Air New Zealand and the New Zealand Government were limited. Some countries had very small equity markets, and even some large countries had relatively small equity markets when it came to investing in the risky airline sector, while other countries had other mechanisms to deal with these problems, like the Chapter 11 provisions under US law. He further noted that Ansett's major competitor was Australian Airlines, which had been merged with Qantas only after its debt had been written off by the Australian government.

41. The representative of the European Communities said that the period under review had seen some of Europe's flag carriers disappear as well as the impact of EC's strict, "first time, last time" rules on the granting of State aid, but that the industry was now back to profit for the first time globally. European carriers on the whole had remained profitable since 2002-2003. Interestingly, the huge growth of low-cost carrier transport had required the Commission to look more carefully at the way in which routes were being developed. A need had emerged for clear State aid rules to be developed with regard to the way in which new point-to-point services were being set up between regional airports. This was a niche in the market that low-cost carriers had exploited to the full, especially by taking advantage of the Single Aviation Market. Nevertheless, opportunities which were offered to low-cost carriers had to be offered to all carriers on a non-discriminatory basis. That

had been the main rationale behind the 2005 State aid guidelines by the European Commission. These guidelines had been beneficial also to regional airports, many of which were undertaking important investments and were heavily dependent on only one carrier, usually a low-cost one, as they provided a stable and predictable environment for regional airports to conclude their contracts for air services.

42. The representative of China said that the Secretariat note was valuable and helpful. He then provided some information about scheduled passenger transport in China. 2006 saw rapid development of air transport in China: 160 million passengers were carried and the growth rate of passenger kilometres was 9.8 percentage points higher than that of the world's average. The shares of domestic and international passenger kilometres were 77.9 per cent and 22.1 per cent, respectively. From 2000 to 2006, the annual average growth rate of passengers carried was 15.6 per cent, and international passengers increased 12.7 per cent annually. In 2005, scheduled passenger kilometres in China surpassed those in Great Britain and ranked second among the ICAO members. In the first seven months of 2007, passenger traffic still maintained a fast growth rate and, compared with the same period of the previous year, passenger traffic increased 16.5 per cent, higher than the annual growth rate in the previous six years. Scheduled airlines in China earned a net profit of CNY 2.38 billion in 2006, a CNY 2.73 billion increase from 2005.

C. LOW-COST CARRIER SERVICES

43. The representative of New Zealand said that he would provide an update of recent developments in Australasia with regard to low-cost carriers (LCCs), and would also do so in detail subsequently with the Secretariat. Since the Secretariat note had been written, the Australian-owned and controlled carrier Pacific Blue, subsidiary of Virgin Blue, had announced that it would be commencing cabotage services within New Zealand. Access to terminal facilities was an issue for LCCs. As for the way in which established carriers had adapted in their response to LCCs, in Air New Zealand's case a "less frills" products was introduced and air fares were cut. The Secretariat note indicated that Air New Zealand, like many other legacy carriers, had established a low-cost subsidiary, Freedom Air, which was actually being wound up. The development of LCCs in the South-West Pacific region had had an impact on some of the smaller Pacific islands' airlines, which had found it difficult to compete, but had also had a considerable positive effect on tourism, in light of its significant positive economic and employment spin-offs.

44. The representative of the European Communities noted that in the EU the fight for market share was taking place between full network carriers, LCCs and those airlines in-between, such as Virgin Express and Brussels Airlines, which had recently merged. It appeared that in the low-cost sector there was often a deliberate strategy to undermine competitors by competing directly on the routes that the incumbents served. LCCs were not part of the alliance networks, could not provide interconnectivity to intercontinental flights and in that respect they were offering a different type of product from full network carriers. He also wondered about the viability of the low-cost model on flights beyond 3 hours.

45. The representative of Australia echoed New Zealand's comments about developments in the South Pacific with regard to LCCs. He noted that, while LCCs had attracted a lot of attention and a substantial body of literature existed on the topic, low-cost was really just a business model, and these carriers not subject to separate regulatory treatment in most instances. He therefore wondered if, at the time of the next review, LCCs would not just be treated as part of the industry as a whole, rather than a constituting a sector in its own right, which he did not think they were. He said that there was a great deal of diversity in the low-cost sector; only some carriers were following the "pure" Southwest model, while others were moving away from it. In reality, he thought that this was just a reflection of different airlines identifying different business opportunities and niches. One area that was quickly changing, however, was the medium- to long-haul sector of the low-cost market, particularly in the

Pacific region, not least because of the long distances required to travel internationally. Jetstar was offering international services in a two-class configuration from Australia to destinations up to eight-hours away, VivaMacau was flying from Macao to Australia and AirAsiaX was also intending to serve Australia from Kuala Lumpur. These market trends were evidence of the fact that LCCs were continually evolving their business model to take advantage of any new business opportunities that emerged. With regard to the issue of access to terminal facilities, he noted that one of the great markers of many LCCs was their level of innovation and that many had opened up both secondary airports and terminal facilities very quickly.

46. The representative of China said that the Secretariat note gave a brief account of low-cost airlines in China, and that we wished to share a bit more information with Members on this model of air transport in China. In order to satisfy the differentiated needs of consumers, the Chinese government had approved several airlines since 2005, which aimed to operate as low-cost airlines. To better understand the needs of consumers, in 2005, before the launch of Spring Airlines, the Civil Aviation Administration of China (CAAC) had held a public hearing on the service differentiation for Spring Airlines to develop low-cost operation. The service differentiation included lowering free baggage allowance, providing no free food, using no passenger loading bridges, introducing specific procedures for passengers enplaning and deplaning, cutting unnecessary services on ground, turning aircrafts around fast, and developing own sale, arrival and departure information IT systems, etc.

47. CAAC was working hard to improve the business environment for low-cost airlines. But the price of fuel, which was an important factor in the operation of airlines, was beyond the control of airlines, even the CAAC. The fuel price guidance applied to all sectors of China's economy.

48. This relatively new model was still of experimental nature in China. International air routes of China had opened to low-cost airlines from other regions, among which Thai AirAsia, Tiger Airways, Hong Kong Express Airways.

49. With regard to the recent bid by Ryanair for Aer Lingus, the representative of South Africa wondered whether, had Ryanair been successful, the carrier would have faced any restrictions on operating transatlantic routes in light of its status as a low-cost airline. The representative of the European Communities replied that under the new US-EU agreement, but also under the bilateral ASAs of the Member States with the US, there was no requirement that an airline be a network carrier to be allowed to fly.

D. NON-SCHEDULED PASSENGER SERVICES

50. The representative of New Zealand sought the opinion of Members with a significant charter industry about what they saw as the future of that industry in an increasing deregulated, open market. His understanding was that the non-scheduled, or charter, industry had arisen because of a provision in the Chicago Convention that allowed it to develop outside the framework of bilateral ASAs. There remained some consumer protection regimes that applied to non-scheduled, but not to scheduled, operations, but he was wondering what future this segment of the industry had and how much of it would be left in five to ten years' time.

51. By way of brief response to the question by New Zealand, he representative of Australia said that, while the charter segment was not well-developed in Australia, given the constraints of the bilateral system as it was in many traditional arrangements, the charter industry was still important, as it enabled carriers to test the market with services on seasonal or small bases, and was still of great relevance to the tourism sector.

52. The representative of the United States said that New Zealand had raised an interesting question. The Secretariat note had provided a good explanation of the dynamics of the sector; as

liberalisation proceeded, some of the rationales for the genesis of non-scheduled services had changed and they now also faced the threat coming from low-cost carriers. He added that in the long-term he did not foresee any diminishing importance for non-scheduled services in the cargo sector; he noted the critical importance of non-scheduled cargo flights, for instance for the transportation of outsized or heavy cargo, military airlift, satellite launch, etc. This made it incumbent that the traditional liberal approach to charter approvals be continued.

E. REGIONAL AIR TRANSPORT SERVICES

53. The representative of Australia said that the sector was of particular interest to Australia, which was a large country with significant distances between its populations. He said that a difference should be made between regional airlines and regional air transport services, as many regional air transport services are undertake by non-regional airlines, such as for instance LCCs. In Australia, quite a number of communities, particular coastal ones with tourism markets, had had jet services for the first time through the operation of LCCs.

54. The representative of China indicated that, in 2005, the CAAC announced a package of polices to boost regional air transport services in China. The measures included that airlines would be allowed to open regional routes independently, the approval procedures for purchasing or renting regional aircraft abroad would be simplified, import tariffs conditions for regional aircraft, engines and spare parts would be improved, the development of regional airports would be enhanced, and regional airports and airlines for universal services would be offered subsidies, etc.

55. The representative of New Zealand noted that many regional services were essentially domestic, and there were very few, essentially concentrated in Europe, that were operated internationally. He wondered where regional airlines could secure their equity capital. In the case of New Zealand, as well as Australia, it was permitted very early-on in the trend towards economic deregulation to operate ninth freedom rights, on a unilateral basis, opening-up this segment of the industry to foreign investment with no restrictions. He was of the view that this was an area that could be possibly looked at for potential GATS coverage in the future. A representative of the Secretariat confirmed that most of these regional services were domestic; They had nevertheless been addressed in the Secretariat note as the mandate was to review developments in the air transport sector, not only the international air transport sector.

F. GENERAL AVIATION SERVICES

56. The representative of New Zealand said that the general aviation sector was often neglected but was an important part of the industry. He had noted with particular interest the information given on page 301 of the Secretariat note about the inclusion of speciality air services by the United States in the free trade agreements that it had been negotiating. New Zealand had picked up on this in some of the free trade agreements that it was involved in. He noted that some elements of the sector were covered by the CPC classification, for instance with regard to the education sector, and that it was often in this part of the industry that skilled pilots were trained and gained their experience, before moving on to other segments of the aviation industry. He had also read with interest about developments with the air taxi industry, particularly in the United States, as smaller, less expensive business jet aircraft were entering into the charter industry in its purest form and was interested to see how that part of the industry would evolve in the future. He suspected that quite some challenges for the development of this segment would come from the infrastructure side, particularly air traffic control.

57. The representative by the European Communities said that his delegation had identified this as an important and growing sector, and had been impressed by the amount of information gathered by the Secretariat in its note. The Commission was conducting its own investigation on what the

shape of the general aviation sector looked like and had issued its own consultation paper earlier that year in order to reach out to stakeholders for information.

58. The representative of China said that the total flight time of general aviation in China was 192,000 hours in 2005, 27.3 percent more than the previous year. Besides the pilot training, petroleum service was the main field of general aviation in China, accounting for 11.1 percent of total flight hours. Deer Jet Company, the main business jet operator in China, flied 4,168 hours in 2005, which took the 70 percent share of the business jet market. Air China and Shanghai Airlines also operated business jets. In China, business jet operators offered business jet trust management services, but there were currently no fractional ownership operators in China.

G. AIR CARGO SERVICES

59. The representative of New Zealand said that the sector had been well covered in the industry seminar of the previous day. One element that had emerged was the special nature of the sector when it came to air rights and the emphasis placed on the need for fifth freedom traffic rights that the more open agreements provided. The industry had pointed out the imbalances in the flows of cargo; on a particular route between A and B, two to three times the weight of cargo was heading in one direction rather than the other, so that the flexibility of operating triangular, if not more complex, routings was essential. Air New Zealand, by taking advantage of ASAs that New Zealand had with Australia, China, Germany and the United States, and that were open with respect to cargo, had been able to put together a one-directional, round-the-world service that was meeting the needs of traders.

60. When liberalising, New Zealand had initially taken the approach that providing separately for cargo was not necessary. More recently, however, it had been convinced that, even if a bilateral partner was not prepared to liberalise passenger services, it might be prepared to liberalise with regard to cargo services, and had begun to accept that with a number of partners. The cargo industry had different characteristics from the passenger industry, even if passenger airlines were also carrying cargo in belly-holds and had a legitimate point when they noted that they were also competing with those carriers who might have a more liberal regime to operate under if dedicated cargo carriers services were treated separately.

61. The Secretariat note had asked whether the cargo sector warranted further work, and he indicated that it would be worth exploring whether globally separate provisions were being made for cargo services, although, conscious of the data constraints that existed, he indicated that the first step was to assess the feasibility of undertaking such work. He felt that it would be a useful extensions of the QUASAR methodology, but that perhaps one way of getting a feel for the task would be to focus on the major cargo flows, similar to the work on passenger services, where the Secretariat had identified that the top 100 or 200 ASAs would cover the bulk of the industry.

62. He also noted that cargo was an area which had been looked at as a pilot for the possibility of extending the GATS to cover hard rights. Conceptually, his delegation was interested in this work, but stressed the need for careful examination of the relevant pros and cons, and added that useful food for thought had been provided by discussions held during the industry seminar. He also noted that, starting on page 355 of the Secretariat note, an author's thoughts as to what an agreement covering cargo might look like had been reproduced. From an initial reading, he felt that the agreement looked more like an ASA than an arrangement that might take advantage of the kind of provisions found in the GATS.

63. The representative of China indicated that freight and mail traffic in China had reached 3.49 million tones in 2006, a 13.9 per cent increase from 2005. The annual average growth rate was 12.6 percent during 2001 and 2006. China's policy on foreign investment in all-cargo airlines was consistent with that of all-passenger airlines or combined airlines; the policy was that the total foreign

capitals were allowed to hold 49 per cent shares of airlines in China while the shares of a foreign investor and its affiliates could add up to 25 per cent at most.

64. In recent years, some all-cargo carrier joint ventures were being founded or had been founded just as described in document S/C/W/270/Add.2. However in paragraph 396 there was a minor mistake about the cooperation between China Eastern Airlines and Singapore Airlines. The two airlines sought for a complete strategic alliance instead of mere cooperation in air cargo. The negotiation had been concluded, and Singapore Airlines and Temasek Holdings would take a 24 per cent share of China Eastern Airlines. But the deal was waiting for the approval of the shareholders of both sides by the end of the year. All-cargo airlines designated by the United States were permitted to establish their own cargo hubs in China Mainland after the China-US ASA was modified in 2004. FedEx and UPS were developing their cargo hubs at Guangzhou Baiyun Airport and Shanghai Pudong Airport respectively. The air cargo market between China and the United States would be liberalized completely in 2011 according to the amendments of the ASA in May that year.

65. He noted that the imbalance of international air cargo traffic between China and other regions was in line with the international trade structure of China. Processing trade comprised about half of China's international trade market. Processing trade required importing raw materials and components, and the final products had to be sent out to the rest of the world. The importing might be carried by sea, while exporting by air due to the different time sensitiveness.

66. The representative of the United States said that China's statement illustrated that gains that could be reaped from innovating in liberalisation. He stressed the importance that cargo liberalisation had had in China-US relationship with China coming together with the United States in a very significant achievement to completely open its cargo market by 2011. This agreement had already facilitated FedEx and UPS in opening hubs in China and would contribute significantly to tie together the US, Asian and European markets in terms of seamless express delivery services through those markets, greatly facilitating global trade.

67. The representative of Australia noted that the pace of cargo liberalisation reflected the centrality of the service to global trade. He concurred with New Zealand's statement about the importance of fifth freedom rights for the cargo industry, but stressed the increasing importance also of seventh freedom rights. Paragraph 472 in the Secretariat document noted that the round-the-world cargo service that fifth and seventh freedom traffic rights enabled was a system that had no equivalent in the area of passenger transport, where it was largely unthinkable. This was indeed largely the case at the moment, but hopefully this was an area where some progress could be made in the future. Australia had had a policy of negotiating completely open cargo agreements for the previous ten years; it now had open cargo agreements, including for fifth freedom rights, in over a third of its ASAs, which still did not account for the full picture as many of these ASAs had been negotiated in the previous ten years and concerned Australia's main trading partners. His delegation would provide further comments to the Secretariat at a later stage.

68. He also supported New Zealand's suggestion that cargo was an area where further conceptual work could be undertaken, whether in the current review or into the future; it was an area where multilateralism had a lot to offer, and where the GATS might provide a useful model as well as alternative.

H. SLOTS

69. The representative of China said that, in 2006, aircraft movements at the airports in China Mainland totalled 3.49 millions and Beijing Capital International Airport saw 380 thousand aircraft movements, a new record, while aircraft movements at airports in Shanghai and Guangzhou had also

increased. The boost of aircraft movements led to a conflict between the rapid rise of market demand and the limited slots available. In August 2007, the CAAC issued Provisional Rules on Slot Management, which constituted the slot management system of government regulating and stakeholders participating. Slot Coordination Committees were set up at busy airports and the members of the Committee came from the CAAC, air traffic control bureaux, airlines and airports. The prevailing principles around the world were adopted to ensure the openness, equality and justice in slot allocation.

70. The representative of the European Communities said that in its note the Secretariat had reported quite extensively on the investigative work on-going in the EC about ways of meeting the challenge of airport capacity in Europe, where many airports were congested and fully coordinated throughout the day. That investigation was exploring whether there were ways of improving market access possibilities for airlines and addressing the issue of the so-called "grey market", whereby airlines traded slots between themselves rather than going through the coordinator which allocated the slots at the beginning of each scheduling season. The EC consultations were on-going with interested parties, including the Member States' civil aviation authorities and other transport stakeholders, with a view to finding a system that could satisfy the capacity issue in Europe in the shorter-term. When it came to the long-term planning of airport infrastructure, these were planning issues which were dealt with at the local level by the local or national authorities of the Member States.

I. ALLIANCES AND CO-OPERATION AMONGST AIRLINES

71. The representative of New Zealand said that alliances and other forms of cooperation were a way for airlines to cope with the constraints of the bilateral framework that it was operating in, and a business reality. As for the Secretariat paper, he noted that one element which was missing, and which was of continuing importance in particular for airlines that were not aligned to some of the global alliances, was the role that IATA had been playing and which had been affected considerably by the competition authorities of a limited number of Members. This was impacting on the industry, and though he appreciated that the GATS did not focus a great deal on competition regulation, he felt that this was an area that would have perhaps warranted some analysis.

72. He noted that, at the end of the relevant section in the note, the Secretariat had touched upon elements of code-sharing in terms of how they were affected by ASAs. This was an area where one was constantly learning about the original ways one's bilateral partners were tackling the issue of how to handle code-sharing, and on other area were further consideration was warranted. He was, however, aware of the documentary constraints in this respect, as code-sharing was not necessarily always addressed in bilateral ASAs that were supposed to be filed with ICAO, but was often covered in memoranda of understanding, which were much harder to obtain.

73. As for global alliances, he noted how they had been very fluid affairs in the past and how they seemed to have settled down somewhat more recently. However, there were still many airlines around the world that were not part of these global alliances.

74. The representative of Australia concurred with New Zealand that code-sharing and alliances were some of the innovative ways with which airlines responded to some of the restrictions of the bilateral framework, but they were also a way for airlines to grow market opportunities on long, thin routes; one case in point were the Australia to Europe routes, where over the past decade every continental European airline had withdrawn from the Australian market yet most retained a strong presence though code-sharing arrangements. This was an area where there was not a lot of detailed research available, perhaps highlighting some of the data limitations that the Secretariat had mentioned. As for the point made by New Zealand about code-sharing provisions being included in memoranda of understanding, he concurred, noting that the same was often true also for cargo, and added that it was unfortunate that memoranda of understanding were generally not publicly available.

Australia had a policy of making its memoranda of understanding available whenever the relevant bilateral partner agreed. This was another example where transparency of air services arrangements could really increase their understanding for academics as well as practitioners and industry participants about the opportunities available to them.

J. OWNERSHIP

75. The representative of New Zealand said that this was an exceedingly important part of the review, an area where many in the industry, if not in government, had expressed frustration and an issue that ICAO had sought to address in its Fifth Air Transport Conference. He congratulated the Secretariat for bringing the concepts together very clearly. There was an important difference between the ownership and control regime a country chose to adopt for its own carriers, as in the case of New Zealand, where airlines not substantially owned and effectively controlled by its own nationals were not designated, from the kind of criteria included in ASAs, where one was potentially denying rights to a partner in light of the ownership of its airline, particularly if the airline was looking to circumvent the arrangements a State had with another country. The United States touched on this issue well in replying to a question by South Africa and indicating that, if for example the parties involved all had "open skies" agreements, waivers could be granted. However, New Zealand had a restrictive bilateral with the United Kingdom and an issue had been raised when Sir Richard Branson sought to set up an airline within Australia to operate to New Zealand. As the airline, Pacific Blue, was now under Australian ownership and control that was no longer an issue but it had been a concern at the time.

76. Internationally there was a trend towards the adoption of criteria such as principal place of business where the effective regulatory control of the business lay. Effective regulatory control was very important when it came to safety and security concerns for flags of convenience carriers. Such concerns had arisen in New Zealand when an airline from a country in the region had been looking to operate to New Zealand but with aircraft registered in Sierra Leone and being on the EC's black list.

77. The ownership concepts were thus very important, but the key question was which was the best way forward. For years, New Zealand had sought to negotiate more flexible ownership conditions with its bilateral partners with some considerable success. But if an airline operated a network of international services, it could be constrained by operating under just very few bilateral arrangements with the traditional substantial ownership and effective control criterion and on that basis the airline concerned did not have certainty about permitting greater foreign ownership. The ability to access international foreign equity markets could be of some significance to the viability of the business, access to cheaper capital, etc. The ownership issue was not adequately addressed by the bilateral framework that most of the international airline industry was currently operating under and the real question was which was the best way to address the issue. He noted that the Secretariat had gone into considerable detail of examples of foreign investment in airlines, mostly under 25 or 49 per cent as a consequence of the bilateral constraints. Some airline groups, particularly the Virgin Group, had come up with creative way of expanding their operations internationally in partnerships, but this was one area where the airline industry was being singled out for a restrictive regime that most other services industry were not faced with.

78. The representative of China said that, according to the Provisions on the Foreign Investment in Civil Aviation Industry issued in 2002, domestic investors must hold at least 51 per cent of shares in the joint ventures of airlines when the total shares of an individual foreign investor and its affiliated enterprises must not exceed 25 per cent. Before this, the ceiling shares held by all foreign investors were 35 per cent and the voting rights were 25 per cent. The figures in Table 54 of the Secretariat note with respect to this issue were not correct. In China, domestic investment policies required that the State must own or have the controlling shares in Air China, China Southern Airlines and China Eastern Airlines. The share distribution for the above-mentioned three major airlines in Table 56 of

the Secretariat note were somewhat inaccurate. By the end of 2006, the State held 40.4 per cent of shares in Air China, Cathay Pacific took 17.34 per cent and the total shares of foreign investors were 34.21 per cent. The State owned 50.3 per cent of China Southern Airlines and foreign investors had 26.84 per cent. And 61.64 per cent of shares of China Eastern Airlines was in the hands of the State and foreign shares totalled 32.2 per cent. China Northern Airlines and Yunnan Airlines were no longer independent airlines. The former had merged into China Southern Airlines by the end of 2004 and China Eastern Airlines had taken in the latter in May 2005. The designation clause in ASAs concluded by China still used the criterion of substantial ownership and effective control. Each party could revoke the operation approval if the designated airlines failed to meet this standard.

79. The representative of Brazil commended the Secretariat for its note. Regarding New Zealand's approach to the ownership question, he wondered how the issue would relate to the GATS. Under Article XXVIII of the GATS, juridical persons of another Member were defined as any party engaged in substantive business operations in the territory of that Member, regardless of its ownership. Moreover, in the GATS jurisprudence in the bananas case it was stated that ultimate ownership did not matter for assessing which Member the services supplier was accounted for. He therefore wondered how the question of ownership would relate to GATS commitments in air transport. In response to the question raised by Brazil, the representative of the United States said that the ownership and control question at hand related to the exercise of traffic rights, and traffic rights were excluded from the coverage of the GATS by the Annex on Air Transport Services. The representative of New Zealand agreed with the United States and added that this might illustrate a possible solution to one of the international air transport industry's major dilemmas and that the GATS perhaps had something to offer in this area.

K. OTHER SIGNIFICANT ECONOMIC AND REGULATORY DEVELOPMENTS

80. No delegation took the floor on this issue.

81. Replying to some of the points raised under this item, a representative of the Secretariat said that the EC Single Aviation Market had not been covered for consistency's sake, as the agreement had always been considered throughout QUASAR as covering domestic traffic, but the Secretariat stood ready to include it in its analysis.

82. As for the coverage of the regulatory harmonisation elements in the description of the EC's plurilaterals, he explained that the issue had not been addressed in the document because, as noted in paragraph 9 of document S/C/W/270, the Secretariat documentation covered only pure market access elements in view of the time constraints faced. He also indicated that, in the description of the ECAA, the note had touched upon regulatory harmonisation measures, as these conditioned the market access concessions granted, and that a proposal had been made to circulate the text of the plurilateral agreements, through which regulatory measures could be appreciated. In passing, he noted that the information on plurilateral agreements was incomplete, as no data was publicly available on ratification and entry into force.

83. As for the comments by Australia and New Zealand about the resource implications of circulating the text of all plurilateral agreements, he indicated that this would not be a big task, as the Secretariat had already collected, with great effort, all of the agreements.

84. With regard to the question raised about the feasibility of including cargo in the analysis, he indicated that this would require the availability of the text of bilateral ASAs. These could be found in ICAO's DAGMAR application, an application that the Secretariat had repeatedly and, until then unsuccessfully, tried to access. No clear indications had been received from ICAO about conditions of access to DAGMAR.

85. As for extending the analysis of code-sharing, this could be undertaken relatively easily, as the Secretariat had already created a database with relevant available information. Due to time constraints, it had not been able to fully check and utilise the information therein, but it could do so easily and would take about one month. Similar considerations applied to the extension of the analysis of ownership.

86. With regard to competition policies and IATA interlining, there again the Secretariat had made a deliberate choice not to address the issue, which did not have a direct bearing on market access, also in light of the controversy surrounding the coverage of the topic by the Secretariat at the time of the first review. However, the Secretariat was both in a position and ready to undertake such work.

87. Finally, as for the erroneous data for the ownership of Chinese airlines, he indicated these had been drawn from Airline Business and in that respect he reiterated the call to Members to point out any errors and omission to the Secretariat.

88. The representative of Chinese Taipei highlighted a mistake in Table 56 on page 424 of the Secretariat note, where China Airlines was shown as belonging to China whereas the airline belonged to Chinese Taipei.

89. Turning to part II of agenda item A, the Chairman recalled that, at the dedicated Review meeting held on 1 March, the Council had discussed the QUASAR note prepared by the Secretariat (document S/C/W/270/Add.1, dated 30 November 2006). Following that discussion, several delegations had called upon Members to provide to the Secretariat updated information on their bilateral ASAs, so as to updated the QUASAR database. Moreover, at the informal meeting of the Council held on 13 March, it had been decided that the date of the third meeting of the Review, i.e. that day, would be taken as the deadline for Members' submissions of corrections and complements to QUASAR. It was against this background that the delegation of Australia had submitted, on 10 September 2007, the communication contained in JOB(07)/136.

90. The representative of Australia introduced his delegations' contribution on the Australian update of QUASAR (JOB(07)/136) He recalled that, at the March 2007 meeting dedicated to the second Air Transport Review, Australia had encouraged Members to update the information contained in QUASAR on bilateral ASAs, be those agreements of formal treaty status or of less than treaty status. He further recalled that, at the meeting of the Council for Trade in Services held on 7 June 2007, the Chairman had also encouraged Members to provide information to the Secretariat to update QUASAR ahead of the present review meeting. Australia, for its part, had done so using the template provided at the end of the QUASAR documentation, adding 27 new agreements to QUASAR and updating 34 other agreements out of 42. Additional information had also been provided, notably regarding the stage of ratification of the agreements, the 33 agreements including unlimited capacity for cargo services and the 26 agreements that contained the Australian "regional package", an initiative that provided for unlimited capacity for passengers to destinations in Australia outside the major airports of Sidney, Melbourne, Brisbane and Perth. He considered that QUASAR had the potential of becoming a very useful tool for aviation policy makers. It was therefore important that other Members considered updating QUASAR to make it as complete as possible. He underlined in that respect that the workload implied by the updating was in fact relatively minor.

91. The representative of the United States indicated that he had not been under the impression that a deadline had been set for the submission of this type of information to the Secretariat. He indicated that, in addition to the problems noted by Australia with regard to notification to ICAO and to the varying legal status of the agreements depending of their stage of ratification, the United States had further legal problems regarding the notification of this type of information, which was needed to

complete WASA and henceforth QUASAR. The United States were therefore still examining the legal feasibility and the legal consequences of a potential update.

92. The representative of New Zealand indicated that he had just provided to the WTO and ICAO Secretariats a scanned copy of virtually all of New Zealand's ASAs. Noting the US comment on the possible legal consequences of notification to ICAO, the representative indicated that he had reached an informal agreement with the ICAO Secretariat that the notification of this information would not constitute a formal filing of the agreements with ICAO - although New Zealand had the intention to do so in the future - but that New Zealand felt it was useful that ICAO benefited from the totality of this information for the purpose of its analytical work. He too considered this exercise of notification useful, as it contributed and would contribute in the future to improving the understanding of the global aviation picture, thereby allowing Members to draw conclusions on liberalization trends.

93. The representative of the European Communities noted that the EC had contributed to the updating exercise by providing information to the Secretariat on the "horizontal agreements" negotiated by the European Communities on behalf of its Member States as well as on wider agreements such as the European Common Aviation Area (ECAA). With regard to bilateral agreements linking individual Member States with third parties, he indicated the consultations would have to take place with Member States first and that at any rate such potential information would be incomplete since many provisions were enshrined in confidential memoranda of understanding.

94. The Chairman recalled that, at the end of the March 2007 dedicated meeting, it had been agreed that the Secretariat would produce a note consolidating suggestion for future work on QUASAR for consideration by Members. This note was contained in document S/C/W/284, dated 22 September 2007. A representative of the Secretariat indicated that the note listed improvements to QUASAR and ASAP that the Secretariat deemed possible, including their posting on the WTO public website, the improvement of the underlying data and their computations and displays. It also contained elements on the implications in terms of resources for the Secretariat. This list was by no means exhaustive and suggestions by Members were welcomed. The Secretariat was therefore seeking guidance on what Members considered the most useful use and refinements of the data until the next review.

95. The representative of the United States indicated the United States were still trying to ascertain what they would like to see in the context of the next review, and to decide which of these recommendations made the most sense. Posting QUASAR and ASAP on the public website of the WTO was definitely a good suggestion. As to the rest, further works on QUASAR were clearly linked to how the next review would be structured and to what type of topics it would prioritize. Timing was also of the essence: the United States had to share the material gathered during this review, when fully derestricted, with stakeholders in order to identify what mattered most to them so that policy-makers in the United States could decide what were the best improvements to make and in what kind of time-frame.

96. The representative of New Zealand indicated that he too felt that some more time was needed to reflect further. He saluted the work of the Secretariat and suggested that, after the efforts made, the Secretariat work quietly without deadline on this issue, in the perspective of the next review. The suggested work on cargo was certainly useful, particularly in view of the debates held during the industry seminar of the preceding day. Similarly, the public posting of QUASAR/ASAP was useful and should be done with constant updating, rather than waiting for a new paper edition of QUASAR at the beginning of the next review. If priorities had to be established between QUASAR and ASAP, QUASAR should be chosen, as the visualization tool of ASAP was useful but not essential, whereas the key element was the database of QUASAR. He wondered, therefore, if it was absolutely necessary to publish QUASAR in a paper form as the Secretariat had been doing for the rest of the documentation so far. He noted the point made by the Secretariat on the need for a more robust

database software than Excel and indicated that he had met with similar difficulties in the conduct of a comparable project. He, therefore, sympathised with the suggestion of the Secretariat in that regard. Generally speaking, New Zealand welcomed the suggestion on QUASAR works but urged that works be undertaken at a slower and more considerate pace.

97. Another representative of the United States noted that paragraphs 17 and 18 of the Secretariat's note were alluding to possible budgetary implications of this work. The United States wanted to get a clearer picture of these implications in order to consult its Budget Committee representatives to see it was appropriate or not to support the posting of QUASAR on the internet. The same went for the IT support required. She wanted to know in particular if the funds required were coming from the Services Division's regular budget or, if extra funding was needed, if this could come from other divisions and, if so, whether on existing budgets or on new ones. If the Budget Committee had to be consulted, she also wondered under which budgetary item this work would appear, since it was not strictly speaking technical cooperation, how it would combine with the preparation of the next review, and what were the in-house procedural steps for the Services Division.

98. The representative of the European Communities underlined the great usefulness of the QUASAR instrument. In his view, accuracy should be privileged against urgency: time should be taken to work with WTO Members to check the accuracy and completeness of the information, if necessary through a more formal process. Only when this had been accomplished, it would time to think about how to make this information publicly available.

99. The representative of Australia indicated that he considered QUASAR very useful and therefore worthy of further work. Some of the priorities of this work would certainly emerge as Members worked their way to determine the priorities of the next review. Accuracy was of the essence and the existence of a "live", online document would help Members with the updating of their agreements and hence improve overall accuracy. This was preferable to having to wait for the publication of the paper version of the document every five years.

100. The representative of Canada indicated that he had no problem in seeing QUASAR posted on the WTO public website. He shared the view of New Zealand on the priority to be given to QUASAR versus ASAP, if choices had to be made in that regard. A final decision would have to await consideration of the budgetary implications. He finally indicated that his delegation needed to reflect further on the feasibility of a notification updating QUASAR.

101. A representative of the Secretariat indicated that the resources needed for the work suggested were not going to come from the existing regular budget of the Services Division and that the Secretariat would have to seek other resources within the house. The Secretariat could not yet provide numbers as to possible costs of this work but could undertake to do so at the next meeting. At any rate, the sums at stake were not important.

102. The representative of the United States indicated that, since the posting on the website of QUASAR would require additional funding, further cost-benefit analysis was needed, in particular in view of the fact that, in the absence of proposals to extend the Annex to hard rights, this work could be termed as academic and falling outside the scope of the present review. This question was also linked to the next item "further steps of the review" and should therefore be discussed in that context.

103. The representative of New Zealand stated that no objection had been made to make QUASAR public and that the question was rather whether this information should be made available in a raw form at no cost or in a more user-friendly, more easily accessible and searchable form which may require additional resources.

104. The Chairman noted that several delegations had stated that they needed more time to consider if and what further work should be done, therefore no decision could be reached at that meeting on that point. He stated also that there was no opposition to the idea of further transparency but only a debate on its modalities. The cost question was clearly raised but could not be solved at the meeting, since the Secretariat could not yet provide precise numbers.

105. The representative of the United States agreed that there was a meeting of minds on transparency, but views diverged as to what, how and how much. The posting of QUASAR at no cost in its raw form was not a problem, while a more complex and costly project would need more consideration. Still, the question was minor in comparison with the discussion of further steps for the review.

106. The representative of the European Communities indicated that QUASAR was a longer-term undertaking which spanned beyond the present review. If the document was to be a "live" document, as proposed by some delegations, it would have to take into account the changes that were occurring in the aviation world on a daily basis and it would have to be updated in the interval between two reviews so that Members could get an already prepared document to discuss at the beginning of the next review. The fate of QUASAR had therefore to be somehow separated from the present review.

107. The Chairman suggested giving the floor to the representative of the International Civil Aviation Organization (ICAO) for a statement informing Members of the main topics discussed at the recently held Thirty-Fifth Session of the ICAO Assembly.

108. The representative of the United States asked if the statement from ICAO was relevant to the agenda item dealing with developments in the sector that was being discussed. The representative of the ICAO Secretariat indicated that she would tailor her intervention to the structure of the agenda. The representative of the United States said that she preferred to have all the discussions on agenda items A and B amongst WTO Members in one go and only thereafter entertain comments from the ICAO Secretariat, under the "Other business" agenda item. The representative of New Zealand expressed a preference for hearing the ICAO statement before Members discussed agenda item B.

109. After a short suspension of the meeting, the representative of the United States indicated that she had agreed, under the aegis of the Chairman, with the New Zealand representative, that ICAO would present a short statement under the present agenda item and would come back under the next agenda item.

110. The representative of the ICAO Secretariat indicated that one of the main topics discussed at the ICAO Assembly regarding economic regulation had been the question of transparency. Following the presentation of a paper by the delegation of Australia, there had been broad support for the need for information-sharing on transparency of Air Service Agreements. States' notification obligations under Articles 81 and 83 of the Chicago Convention had been recalled and acknowledged. It was also felt that more widespread domestic publication of Air Service Agreements could also promote transparency. ICAO would continue to work in this area. With regard to the information-sharing between ICAO and the WTO, the ICAO representative noted with satisfaction that the ICAO Secretariat's work had been fully acknowledged and hailed in the documentation produced by the WTO Secretariat. The WTO work heavily relied on ICAO 's databases, Template Air Services Agreements, guidance material, manuals and studies. She commended the work done by the WTO Secretariat on QUASAR. She, however, put a note of caution on the interpretation of its results as the level of openness of bilaterals could not only be judged on the basis of the criteria and assumptions retained by QUASAR, nor on the basis of the information on regional agreements that had not always entered into force and were, in certain instances, not even binding. With regard to document S/C/W/284, she noted that QUASAR was already available to the general public in a limited way and that the WTO Secretariat envisaged enhancing that dissemination. It was ICAO's understanding that

the WASA database had been provided to the WTO Secretariat for internal use. Further use would touch upon ICAO's intellectual property policies, an issue which required careful consideration. ICAO had just created a mechanism to look into how best to market and promote its own documentation. ICAO was presently exploring ways and means of enhancing the use of its information through appropriate arrangements, including cooperation with partner organizations. By 2008, ICAO intended to place both the WASA and the DAGMAR databases online.

111. The Chairman suggested that the Council suspend the discussion on this item and re-examine the questions raised in the light of the debate under the next agenda items, i.e. item B on the operation of the Annex and item C on further steps for the review. The Council so agreed.

ITEM B OPERATION OF THE ANNEX

112. The Chairman recalled that, at its last dedicated meeting held on 1 March 2007, the Council had addressed the submission contained in JOB(06)/237, dated 13 September 2006, jointly sponsored by Australia, the European Communities, New Zealand, Norway and Switzerland and titled "Review of the Annex on Air Transport Services – Ground Handling and Airport Operation Services". In addition, since the last meeting, a new communication had been tabled by the delegations of Canada and the United States and circulated as JOB(07)/143, dated 28 September 2007 (and Corrigendum 1, dated 2 October) and titled "Second Air Transport Review".

113. The representative of the United States recalled that the United States, like Canada and other WTO Members, considered that ground handling and airport services were excluded from the scope of the GATS. They nevertheless welcomed the opportunity to discuss the proposal contained in JOB(06)/237. In studying this proposal, the United States and Canada had decided to put forward a certain number of questions. Without prejudice to their final position, it was the United States' view that an amendment of the GATS was required for Members to schedule legitimately commitments in those sub-sectors as well as any other sector not explicitly listed by paragraph 3 of the Annex. Preserving the legal certainty embodied in the Annex was a key concern for the United States, who wanted to avoid a situation where Members were encouraged independently and variously to interpret the scope of the Annex and of the relative commitments. The compromise stemming from the Uruguay Round negotiations was very clear: only three air transport services were covered by the GATS. Virtually all Members drafted their commitments accordingly and even the co-sponsors themselves avoided scheduling commitments on ground handling and airport management services. Hence, having that understanding, Members did not list MFN exemptions in those two sectors. She recalled finally that the present US-Canada proposal followed on substance the submission in document TN/S/W/33 tabled previously by the United States, Canada and Japan.

114. The representative of Canada indicated that Canada's objective as a co-sponsor was to draw Members' attention to the fact that if the GATS Air Transport Annex provided for the possible further application of the Annex it was silent on the process by which this could be achieved. Members had before them a proposal to amend paragraph 3 of the Annex in order to include ground handling and airport-management services. In Canada's view it was necessary that, before thinking of amending the Annex, Members should be informed precisely of the process by which this could be achieved.

115. Another representative of the United States introduced the questions contained in paragraph 4 of the proposal by the United States and Canada. The proposal to amend the Annex had a potential effect not only on the ability of Members to schedule commitments but affected also their general obligations under the Agreement, including MFN obligations. The regulatory universe of the GATS and of aviation were very different and their compatibility was an open question that needed a careful assessment at a national level. The first question requested of the proponents a description of the legal process through which the Annex would be amended and of its various steps – should there be a recommendation by the regular Council for Trade in Services, or were co-sponsors envisaging

alternative ways? The second question was about the implication of the proposal on current MFN exemptions and on the possibility to lodge new MFN exemptions based on an extended list of services in paragraph 3. Third, would Members have a similar opportunity to make technical corrections to their schedules to clarify the scope of the commitments already made when the expanded scope of the Annex could have the effect of extending the scope of those previous commitments? Lastly, would there be an opportunity to revisit the definition of ground handling services and airport-operation services currently contained in the co-sponsors' proposal to ensure that those definitions accurately reflected the regulatory environment in which those services were provided?

116. The representative of Australia thanked the United States and Canada for their paper, which constituted a very useful contribution to the debate. He had some preliminary, purely Australian, answers to the questions raised. As to the first question, Article X of the Marrakech Agreement provided a mechanism for taking forward proposals to amend the provisions of the WTO Agreements. Such an amendment could fruitfully be adopted at a Ministerial Conference level but also, legally speaking, at the level of the General Council. Politically speaking, Australia would see that happening most likely in the context of the conclusion of the Round, but of course there would be preliminary stages to ensure that there was a consensus to do so, and that Members having concerns could be sure that these would be addressed and would therefore be in a position to make offers on ground handling and airport-management services. A recommendation of the regular Council for Trade in Services stemming from the review process was not necessary but it was preferable, precisely to give certainty to all Members on how to best make their offers and clarifying concerns, if any, on the scope of the Annex. Suggestions were welcome in that regard.

117. As to MFN exemptions, Australia recalled that those two sectors were in its view already covered by the GATS and that, therefore, there was no particular need for new MFN exemptions. In addition, Australia was not convinced that there was a practical need for new MFN exemptions as most air agreements were dealing with the rights of airlines to self-handle and not with the rights of independent handlers to provide services. However, Australia was willing to engage with any Member that did have a problem to envisage ways to address it. As to technical corrections, these could be considered. Australia recalled, in that respect, that Members always had the opportunity to make technical corrections to their schedules since a specific procedure had been devised to that effect. Australia was finally open to the idea of revisiting the definitions of the sectors in the proposal but noted that in a GATS, positive listing context Members were always free to define sectors as they saw fit.

118. The representative of the European Communities also welcomed the US-Canada paper and indicated that he shared broadly the remarks made by Australia at that preliminary stage. He wanted to know more about the concerns underlying the issues raised by United States and Canada.

119. The representative of the United States thanked Australia for the precisions it had brought on how it saw the procedural aspects. Another representative of the United States noted that many non-open skies US bilateral ASAs and all US open skies agreements had provisions that addressed both self-handling for airlines and access to competitive markets for ground handling at the airports that they served. He noted that the co-sponsors' proposal did not distinguish between the nature of the services supplier (e.g. an airline, an airport or an independent handler). He reminded Members that, as often recalled by the co-sponsors, the GATS applied to measures, and that in most instances ground handling access regulations were not making distinctions based on the type of handlers. Ground handling was addressed through reciprocity provisions in many agreements, including some between the United States and the co-sponsors.

120. The representative of Canada considered that Members, when taking MFN exemptions at the end of the Uruguay Round, had done so on the basis of what they thought was the scope of the Agreement. Canada, for instance, had done it on the basis of the three sectors listed in paragraph 3 of

the Annex. It was for each Member to determine if the hypothetical extension of the scope of the GATS would require them to lodge or not new MFN exemptions, but the point was whether Members had the right to take MFN exemptions when new sectors were added to the Agreement. As to technical rectifications, Article XXI was not providing the legal comfort needed. For instance, Canada had scheduled its commitments on services auxiliary to all modes of transport on the basis that only three ancillary services were covered by the Annex. For Canada and for many other Members, those existing commitments on auxiliary services would, in the absence of a corrective action, be automatically expanded by an extension of the scope and therefore would need to be clarified without going through the Article XXI process.

121. The representative of China indicated that China had a positive appreciation of the review process. It shared certain of the concerns and points of view expressed in the US–Canada paper. For instance, for China the scope of the Annex was limited to the three services listed in paragraph 3 and therefore any extension of the Annex would have to follow a formal amendment procedure. For China, legal certainty was also very important.

122. The representative of Australia recalled that, for his delegation, the GATS already included these services and that therefore the legal certainty of its own offer on these services was sufficient. However, he acknowledged that this was not the position of some Members and that therefore efforts should be made to address their concerns. Still, since there was no addition of sectors he could not agree with the idea of an automatic entitlement to add new MFN exemptions. In Australia's view, the only way to open up that possibility, not this so-called "right", was to demonstrate the existence of a problem of a magnitude big enough to require that type of solution. More information was therefore needed on the provisions for which some Members wanted new MFN exemptions to be lodged. The same applied for technical rectifications. If the clarification inscribed itself in a forward movement in the context of an Article XIX offer, then Article XXI was not needed, but if the clarification had the effect of a backward move, then Article XXI was needed.

123. The representative of China asked the co-sponsors which were in their view the sectors liable of "further application of the Agreement" according to paragraph 5 of the Annex. She also sought clarification from the Secretariat on the negotiating history of the Annex and its coverage.

124. The representative of Australia indicated that the entire aviation sector was subject to review which explained why the documentation covered all aviation sectors including traffic rights. He recalled that, in the view of the co-sponsors, ground handling and airport-management services were not directly related to traffic rights.

125. The representative of the United States indicated that indeed there was a problem with regard to ground handling and MFN. Various US statutes within aeronautical codes and notably the International Air Transportation Fair Competitive Practices Act required that the DOT implement reciprocal treatment and retaliate against unfair anti-competitive practices by foreign entities. This required the protection of an MFN exemption. The same law applied to CRS and selling and marketing and was covered by an MFN exemption for those two sectors and, had the US back in 1993 had the impression that ground handling was covered by the Annex, this MFN exemption would have been extended to ground handling.

126. A representative of the Secretariat indicated that it was decided at the end of the Uruguay Round that air transport would be excluded from the GATS. The Annex was not drafted in the most helpful way, however: the simultaneous definition of what was included and what was excluded was bound to create ambiguities and grey areas. A clarification of these provisions was in the hands of the Members. The same applied for new MFN exemptions. It was up to Members to decide if they wanted to allow new MFN exemptions to be listed and this was linked to the question of the amendment procedure. If Members chose to follow the amendment way, they would have to follow

Article X of the WTO Agreement, which distinguished between three types of majority. For MFN obligations, Article X.2 required an agreement by all WTO Members. For parts I, II and III of the GATS and its Annexes, Article X required a two-third majority and the amendment would enter into force for two-thirds of the Members and then for each Member at the time of the deposition of its instrument of acceptance, the assumption being still that all Members adopt the amendment, though with different calendars. Finally, for the procedural and institutional provisions under parts IV, V and VI, Article X foresaw entry into force of the amendment for all Members after acceptance by two-thirds of the Members.

127. For the amendment of the Annex, the procedure foreseen for parts I, II and III of the GATS and its Annexes would apply, but it might not be a right assumption from a legal point of view to think that such an amended Annex by a two-third majority would allow the listing of new MFN exemptions. This is because the Annex on MFN exemptions indicates that any new exemption applied for after the date of entry into force of the Agreement shall be dealt with under Article IX.3 of the WTO Agreement (waiver procedure). Indeed there existed examples of MFN exemptions posterior to the entry into force of the WTO Agreement (telecom, financial services and the possibility to list exemptions at the end of the ongoing suspension of MFN for maritime transport services) but they were all specifically stipulated under the GATS and its Annexes (or of a subsequent decision in the case of maritime transport). So for MFN exemptions, Members might have to think of a proper and specific way to deal with that case.

128. The representative of China reformulated her question on the sectors candidate for further application of the GATS saying that it was a distinct issue from that of the scope of the review.

129. Replying to China's question, the representative of Australia said that were many ancillary services that were not related to traffic rights and were therefore included, the rationale for exclusion being the presently bilateral nature of traffic rights. The proposal of the co-sponsors was focused on two of these ancillary services, the most significant ones commercially speaking: ground handling and airport-management services. As to the US remarks, Australia noted that were there was an additional possibility, distinct from new MFN exemptions, namely that of amending the description of a measure indicating its inconsistency with Article II in a current MFN exemption. For instance, if the US wanted to make clear in the description of the CRS/selling and marketing measure that it applied also to ground handling it would probably not be a new MFN exemption. The Secretariat could shed some light in that respect, for instance on whether Article XXI could be used to clarify or modify MFN exemptions.

130. The representative of the United States recalled that only the Members and the panels could interpret the Agreement. The representative of Canada, commenting on a point made by Australia earlier, noted that one of the three services listed in paragraph 2, aircraft repair and maintenance was in no way linked to the exercise of traffic rights. Secondly, he reminded Members that ground handling was among the services that had been considered for a long time in the Annex but that had disappeared from the list in the last days of the Uruguay Round. Thirdly, he called on Members to leave behind them the legal debates and to focus on the question of legal certainty. Canada had no export interests in those two sectors and had an open market for both services. It did not want to stand in the way of Members willing to make commitments in this area, what it wanted to achieve was legal certainty.

131. The representative of Chinese Taipei noted that Chinese Taipei was one of the rare Members that had listed an MFN exemption of ground handling because it considered that the GATS covered already ground handling as well as some supporting services. Chinese Taipei had undertaken commitments on services auxiliary to all modes of transport such as of storage and warehousing and freight transport agency services and other auxiliary services and wondered if those commitments would be automatically extended to air transport in the case of an extension of the Annex.

132. The representative of New Zealand also welcomed the US-Canada paper. He joined Canada's call for Members to move away from the legal debate, and noted that some Members had export interests in those sectors. He also noted that the co-sponsors were not asking all Members to commit in these areas but simply to make clear that the scope of the Annex extended to those services and stressed that their main aim was legal certainty. There was international trade in these areas, e.g. between the EC and New Zealand, both ways. These sectors had changed with the emergence of independent ground handlers and the privatization and concession of airports, and the commercial value of bringing those sectors clearly under the ambit of the GATS was real. The proposal to amend the Annex had been made to bring legal certainty and to allow for commitments.

133. The representative of the United States considered that legal questions were key. The questions raised by the US-Canada paper had to be discussed in depth in order to give legal certainties to the stakeholders, else no negotiations on an amendment could ever take place. The US acknowledged the export interests of other Members, but legal questions had to be answered first. It was not only a question between the US and Canada on the one hand and the co-sponsors on the other, all other Members, and in particular those that had scheduled commitments in auxiliary services, should take an interest in this question.

134. The representative of Australia renewed its call to Members, and in particular to the United States and Canada, to indicate precisely their difficulties and needs so that these could be addressed.

135. The Chairman suggested that the Council take note of the statements made. The Council so agreed.

ITEM C POSSIBLE FURTHER STEPS FOR THE REVIEW

136. The Chairman opened the floor on this agenda item and asked Members if there was a need for a further dedicated meeting of the review and, if so, when this should be held.

137. The representative of the European Communities expressed his delegation's surprise: how could the idea of closing the review be even evoked? In his view, the review was "in full swing" as the debates of the afternoon and the industry seminar had shown. Members needed to go back to their stakeholders, and the contribution by Canada and the United States did imply numerous consultations and discussions in order to come back in February, for instance, to move the discussion forward. There was also a need to hear from the Secretariat about future works on QUASAR and its implications. The representative of Australia supported the statement made by the European Communities.

138. The representative of the United States disagreed with the European Communities' point of view. The United States was not sure that a further meeting would be needed. Answers given to the US-Canada proposal were indeed preliminary but another meeting would probably not add clarity to them. Her delegation was also not sure that the venue for the proponents' proposal was a critical issue for the Review. Indeed QUASAR could be a subject for the next review and issues concerning QUASAR should be dealt with in the context of the preparations for the next review rather than in the course of the current one. The United States felt that the discussion had been exhausted and was sceptical about the additional impetus that stakeholders could give.

139. The representative of Canada considered that it was premature to determine if Members could finalize the review since there remained outstanding issues, such as those raised in the paper submitted by the United States and Canada, the preliminary answers given and how those answers could relate to the co-sponsors' proposal. Canada therefore suggested that the Chairman hold consultations on the need and timing of a further meeting of the second review.

140. The representative of New Zealand also expressed his delegation's surprise at the idea that the review could be stopped. Only half of the job had been done. For instance, the Swiss proposal to abolish the Annex had not been addressed. Similarly, the Secretariat needed more guidance from Members on the preparation of the next review in order to spread its workload over a longer timeframe. The scenario of the first review, that of prolonged meetings purely devoted to procedural issues, should be avoided, but the situation was not similar, there were many questions of substance to be dealt with at least in one further meeting.

141. The representative of China noted that the US-Canada paper was too recent to have attracted as many comments as it deserved, hence a further meeting was probably needed and its timing would stem from consultations.

142. The representative of the United States agreed with the idea that the Chairman should hold consultations. She nevertheless disagreed with the point of view expressed by EC and New Zealand. Instructions to be given by Members to the Secretariat for the preparation of the next review did not require a dedicated meeting of the review but could be handled in other meetings, for instance consultations or meetings of regular bodies. Following on the Chinese comments, she considered that if Members were to have another meeting to allow them to reflect on the exchange that took place on the basis of the US-Canada paper, the US could perhaps consider that to be an appropriate purpose to have another meeting. That too required consultations by the Chairman on when such a meeting would be held and on what basis.

143. The Chairman noted the consensus for consultations both on the issue of the continuation of the review and on further work on QUASAR and its budgetary implications. He thus closed the agenda item dealing with further work on QUASAR that had been suspended until then. He then asked if the review could be concluded now on the ground that consultations would take place.

144. The representative of Australia totally rejected the suggestion. The review was ongoing. Australia welcomed consultations to decide on the date of the next meeting, it could accept discussing the agenda items of such a meeting, but there was a need for a further meeting to pursue the discussions on the operation of the Annex. The problem was the same as for the first review. After completing the examination of the documentation produced by the Secretariat, some delegations tried to shut down the review, but Members needed to complete the examination of the operation of the Annex and that could take some time.

145. The representative of the European Communities also rejected adamantly the idea of a closure of the review at that meeting. He welcomed the constructive ideas put forward by some Members on how to move the process forward. He noted the high-level character of the industry seminar and the wealth of information it had brought to Members. It would be extremely disappointing that these efforts remained vain when this information had not even been considered and when consultations with stake-holders had just begun.

146. The representative of the United States also regretted the repetition of the scenario of the last review, when the process was uselessly prolonged. She underlined the purely informal character of the industry seminar, which should therefore have no bearing on the review process and its agenda. She recalled her agreement to consultations by the Chairman to discuss whether another meeting should be held and, if so, to decide on its agenda. Those consultation could also address the question of when to close the review and when the next review would take place.

147. The Chairman indicated that he would hold consultations on those issues and adjourned the meeting.