

# WORLD TRADE ORGANIZATION

RESTRICTED

S/C/M/57

13 February 2002

(02-0724)

---

## Council for Trade in Services

### REPORT OF THE THIRD SESSION OF THE REVIEW MANDATED UNDER PARAGRAPH 5 OF THE AIR TRANSPORT ANNEX HELD ON 9 OCTOBER 2001

#### Note by the Secretariat

1. The Council for Trade in Services held a meeting on 9 October 2001 devoted to the Review of Air Transport. The agenda for the meeting is contained in document WTO/AIR/1452.
2. The Chairman proposed that the Council adopt the agenda as circulated.
3. The Council so agreed.

#### **I. EXAMINATION OF THE DEVELOPMENTS IN THE SECTOR**

4. The Chairman recalled that according to the rules of procedures of the Council, observers should normally be invited to speak at the end of the discussion of an agenda item. However he suggested giving the floor to the representative of the International Civil Aviation Organization as it would be useful for Members, as an introduction, to hear from ICAO about the effects of the dramatic events of 11 September on some regulatory issues which were relevant to the review. These effects concerned notably, security measures and their impact on the organization and conditions of operations of airports and airlines. These questions had, amongst others, just been discussed in the 33<sup>rd</sup> Session of the ICAO assembly held from 25 September to 5 October 2001. The Council agreed to the procedural suggestion of the Chairman.
5. The representative of ICAO indicated that the ICAO assembly strongly condemned the acts of terrorism as well as of the misuse of civil aircraft with passengers and crew on board as weapons of destruction. The downturn in air travel due to security concerns, and the traffic flow management difficulties generated by a higher level of security measures were noted. The assembly requested ICAO to develop, on an urgent basis, a detailed plan of action to address new and emerging forms of threats, with priority being given to a comprehensive review of the existing aviation security legal instruments, standards and recommended practices. The aim of this exercise was to consider the establishment of an ICAO security oversight audit programme and to establish special funding for urgent action in the field of aviation security. The assembly adopted two resolutions: one, containing the consolidated statement of continuing ICAO policies related to the safeguarding of international civil aviation against acts of unlawful interference; and the other, containing the declaration on the misuse of civil aircraft as weapons of destruction. The Council of ICAO was directed to convene, at the earliest date, an international high level ministerial conference on aviation security in order to quickly further these objectives.
6. Economic liberalization issues, including the impact of enhanced security requirements, were discussed at the Economic Commission. In the discussion, the view was expressed that in the field of

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

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

8. The Chairman requested that the two delegations which had presented new contributions, Brazil (S/C/W/201) and United States (S/C/W/198), introduce their papers.

9. The representative of Brazil indicated that the paper was divided in two parts: a description of the Brazilian developments in the sector, and the Brazilian position on the review itself. He indicated that Brazil had conducted a gradual opening process in the market in order to offer more services and a more competitive environment to users. In that context, the regulatory action of the state had been limited to the control mechanisms of the operational safety and quality of services. The growth of the sector had been higher than the rest of the economy and thus created a strong benefit for the economy as a whole. He underlined the importance that the Brazilian Government attributed to the question of the environmental impact of air transport services.

10. The review provided an excellent opportunity to share information about aviation of each country as well as about the latest developments in air transport as a whole. It gave Members the opportunity to assess the role of all services directly or indirectly related to traffic rights. As far as the possibility of a further application of the GATS to the sector was concerned, Brazil considered that traffic rights, and all the segments directly involving traffic rights, should remain excluded from the coverage of the GATS and continue to be discussed or negotiated within the parameters of ICAO bilateral or multilateral agreements. ICAO, which had the statutory responsibility of regulation and

---

<sup>1</sup> Details of the proceedings of the Assembly and of the convening of 5th Air Transport Conference are available at the ICAO website: [www.ICAO.int](http://www.ICAO.int).

safety of air transport, was the right forum for the liberalization of these services. Members should therefore strengthen its role. ICAO had devised regulatory measures that gave special treatment to developing countries. This was one more reason to maintain hard rights in the jurisdiction of ICAO. In addition, the application of the basic principles of the GATS to traffic rights and services directly related to traffic rights would imply changes in the operational structure of air services. The impact of those changes could not be assessed from the present standpoint.

11. The representative of the United States underlined the tremendous importance of the sector as one of the most important instruments for international trade. The liberalization of the sector should be one of the main objectives of all WTO members. This was precisely why the WTO members had agreed to a deliberate and purposely broad exclusion of the entire air transport sector from the scope of the GATS, as liberalization was already being accomplished outside the WTO. To date, experience has pointed overwhelmingly to the relevance and success of an approach outside the WTO. If Members of the WTO wanted to promote liberalization in this important sector they should maintain the current broad exclusion which has well served its purpose. The priorities of the United States in this sector had not changed. Safety and security had been, and continued to be, the highest priority, but this did not imply a reduced commitment to liberalization of this sector.

12. By way of preliminary comment, the representative of Australia thanked the United States for the clear distinction they had made between the GATS and the current regulatory system. A lot of confusion had surrounded the role of ICAO regarding liberalization. For instance, ICAO had not been involved in most of the liberalization processes in which Australia had been involved in recent years, be it multilaterally, regionally, bilaterally or in organizations such as APEC or OECD. The term "reciprocity-based system" used by the United States was much clearer in that respect. However, the paper by the United States seemed to have been based on a "beauty contest" between the reciprocity-based system and the MFN-based system of the WTO. The conclusion that the reciprocity-based system was more efficient to deliver liberalization was based on the achievements of the reciprocity-based system and on the judgement that the coverage of three subsectors by the Annex had produced no discernable trade effects on these subsectors. Those two assertions were disputable. Firstly since, like in most other sectors, Members simply intended to bind their existing level of access in CRS, selling and marketing and maintenance and repair, it was normal that there had been no discernable effect on trade. The same went for other sectors. The issue was not a choice between two systems but rather that the current coverage of the Annex should be extended, which implied the consideration of a range of individual options more or less directly related to the exercise of traffic rights. The United States paper indicated a functional definition of services related to traffic rights in order to avoid confusion or overlaps between the GATS and existing bilateral and multilateral agreements. However this did not appear to be the intent of the draft of the Annex based on what the Annex actually said. Even if one would accept this interpretation, a point on which Australia reserved its opinion, it was clear that the draft of the Annex had always envisaged the consideration of an extension of the GATS in areas that had been the preserve of the reciprocity based system in 1992.

13. The representative of Australia also drew the attention of the Members to the attachments to the secretariat document S/C/W/200, which constituted a virtual "shopping list" of classifications affecting the air transport sector that Members might wish to take commitments on. Some Members believed that at least part of this list was already available for commitments. Others believed that most, if not all, of this list was excluded from the GATS by the air transport Annex. For this reason Australia had always supported calls for clarification of the coverage of the Annex. Australia considered this was a fundamental issue for the review. The functional definition suggested by the United States paper did not really help in that regard. It had neither indicated where the line was drawn in 1993 between the reciprocity-based system and the GATS, nor had it indicated which of the classifications, covered by the GATS secretariat "shopping list", were covered or not covered or could be covered by the Annex.

14. In addition, Australia did not support the view that the reciprocity-based system was adequate for everybody and that an MFN-based system was not worthy of further investigation. The pace of liberalization had accelerated in recent years and had made Members aware of the existence of alternatives to the bilateral system. Calls for a reappraisal of ownership and control provisions, the cornerstone of the bilateral system, had gained a new sense of urgency after 11 September. The reciprocity-based system had led to glaring inequities which were identified at the recent ICAO assembly by the United Kingdom, Egypt, the Latin American Commission for Civil Aviation, and Australia. Of the 3000 or so bilateral agreements notified to ICAO only 4 per cent were open skies in any form and only 2 per cent open skies in a form acceptable to the United States. This meant that in 96 per cent of the cases countries thought that the open skies formula was not a solution to the inequities. Recent events had shown up some universal problems, and the need for universal solutions. The GATS was an important forum for discussing these problems and possible solutions.

15. The representative of Chile noted that Brazil's paper indicated a positive experience of airline privatization and of opening of the sector to competition. The paper also underlined the concrete benefits of liberalization for developing countries, notably those facing communications difficulties. Referring to paragraph 7 of the Brazilian paper, where it had mentioned the adoption of measures granting access to new entrepreneurs into the airline business, Chile inquired if those measures also covered foreign entrepreneurs and the sectors of ground handling and specialized aviation services. Chile also inquired about the possible intention of Brazil to negotiate open skies agreements within the region. Chile requested more information on the open skies agreement between Brazil and Peru, and finally inquired about the liberalization process within MERCOSUR for air transport services, such as specialized air services, ground handling and airport services.

16. Turning to the United States paper, Chile underlined that it had followed a liberalization policy very similar to the one of the United States. It had concluded several open skies agreements notably one with the United States, and that it had recently signed, together with the United States and three other countries from the Pacific basin, a far reaching open skies multilateral agreement. However, as Australia had stated, open skies agreements remained rare. For instance Chile had fourteen agreements in the Latin American region and only one of those was an open skies agreement and with a country not served by Chilean airlines. Chile took the example of one free trade agreement signed with one Latin American counterpart. After eight years of implementation of the agreement almost 100 per cent of the bilateral trade in goods between the two countries were duty free. However, the frequencies were still limited by the bilateral air services agreement to two flights a week, which showed how the air transport sector liberalization was lagging behind trade liberalization. Chile challenged the view expressed in paragraph 20 of the United States paper that the bilateral system was the only available one. To the contrary, regional, plurilateral and multilateral agreements (as well as commercial agreements between airlines such as code shares and global alliances), were all trying to bypass the bilateral system thereby showing the limits of this system. With regards to further liberalization, alternative ways should be considered, as ICAO was now studying. Finally, Chile requested more information from the United States on its definition of services related to traffic rights. Chile could not see how the United States could consider ground handling as related to traffic rights when they stated in paragraph 35 that ground handling could be provided by third airlines - that is to say, companies who might not have traffic rights with regard to the country where the air transport originates, for example a domestic airline. Chile also wondered how this definition could apply to third party handlers such as the United States company Ogden, which operated handling services abroad, but did not have and not having traffic rights since it was not an airline.

17. The representative of New Zealand, thanked Brazil and the United States for their valuable contributions. He noted with interest that the Brazilian paper stated that the review not only considered the possible extension of the Annex, but also clarified what was covered by the Annex, for example services not directly related to traffic rights. Turning to the paper by the United States, New

Zealand noted that it was based on the view that the institutional structure of air transport worked in a satisfactory manner, and that it allowed liberalization to occur at a pace and in a direction with which WTO members felt comfortable. The paper considered that any changes to this regulatory environment would not only halt this progress but in fact threaten to set it back. In New Zealand's opinion the facts no longer supported these views, if in fact they ever did, and that the industry was in crisis even before the recent events. The government of New Zealand, like many others, had to respond to the difficulties faced by its national carrier. The GATS was certainly not a panacea to cure all aviation ills, but arguments in favour of the regulatory *status quo* rested on increasingly shaky grounds. The need to give to air transport services, defined broadly to cover a whole list of related services, a special status different from other services, for example education services, postal services, health services, telecommunication services or financial services, did not seem to correspond to the reality of the situation.

18. New Zealand was concerned by the systemic implications of the position expressed in the paper by the United States that the cause of liberalization might be better served by leaving this sector, or any sector by extension, outside the scope of WTO disciplines. New Zealand also differed with the position expressed in paragraph 25 of the United States paper that the coverage of computer reservation services, selling, marketing, and aircraft repair and maintenance services, had not been translated into any appreciable liberalization gains. They considered those standards were not reasonable. If they were applied to sectors other than air transport the United States would find that most GATS commitments were also an effective consolidation of the existing state of liberalization.

19. Regarding the interpretation of the coverage of the Annex, New Zealand considered that the wording of the Annex, as well as the rules of the Vienna Convention on the Law of Treaties, lent no support to the United States thesis. Looking forward, New Zealand had no doubt that the process of liberalization would continue, and that the ability of WTO Members to submit request and offer commitments in these areas would reinforce and support liberalization in the sector. New Zealand finally reiterated that an extension of the Annex would not, in any way, threaten or impinge upon the role of the ICAO regarding safety and security.

20. The representative of Japan considered that the purpose of the review was to examine developments in the air transport sector and the operation of the Annex, in an objective manner, and on an equal basis. In that regard, he recalled that the Chicago regime had been in place long before the Uruguay Round. Hence, Members should reflect carefully on the influence of the Chicago regime on a possible extension of the GATS coverage. The Secretariat paper (part 4, paragraph 109) itself acknowledged that the built-in flexibility of the bilateral system had allowed substantial liberalization to take place in recent years.

21. The representative of the European Communities thanked Brazil and the United States for their contributions and indicated that his comments would be of a preliminary nature. He shared the views expressed by Australia on the functional definition of services related directly to traffic rights, proposed in the paper of the United States. He also agreed with New Zealand that the question was not just a choice between WTO and ICAO, but was a much more complex one issue. The safety role of ICAO should be taken into account, as well as the economic changes that had occurred in the sector. The question was not to spearhead liberalization through the GATS, but to ensure the binding of the existing degree of liberalization. GATS mechanisms were the only ones allowing such bindings to take place. The question of services that were not directly related to traffic rights obviously deserved further consideration, as stated earlier several times by the European Communities. The European Communities shared views expressed by Chile regarding the limits of the bilateral system. This was particularly true of ownership limitations contained in the bilateral system that prevented mergers and consolidation to occur. The European Communities indicated also that it would come back to the "grey areas" sectors.

22. The representative of Cuba reiterated position expressed at the last meeting. In general terms, there were uncertainties on the definitions and classifications of the three services covered by the Annex. He therefore felt that these need to be clarified before envisaging any revision of the Annex. The documentation provided by the Secretariat showed the evolution of the industry and the changes in its regulatory and economic environment, but it did not demonstrate the need to change the traditional approach. Services directly related to traffic rights were under the strict responsibility of Member States, and were closely related to the principles of sovereignty and safety. In addition, the delegation of Cuba felt that overflight transit rights were regulated by an ICAO agreement whose membership was expanding and whose implementation had been very effective. The fifth ICAO air transport conference, to be held in 2003, would be the perfect forum to address the challenges of liberalization in a fair and equal manner. Existing bilateral and regional agreements had not exhausted their possibilities and benefits.

23. The representative of Canada considered that there was a need to discuss the possibilities of further liberalization under the GATS. Hence, he acknowledged that this meeting could not be the last one of the review, and considered one further meeting was needed. In his view, there should be an "open door" policy for further liberalization under the GATS. However, he felt that the review of developments and the review of the operation of the Annex should be concluded before addressing further issues. The "shopping list" referred to by Australia did contain suggestions for further liberalization.

24. However, Canada had some concerns with the idea that the first and second freedoms could be included within the disciplines of the GATS. First and second freedoms were, in Canada's view, traffic rights and should be excluded from the GATS and should remain so. Canada was not currently a participant in the ICAO International Air Services Transit Agreement (IATA). Canada withdrew from this agreement in 1988 for reasons related to the ability to control its vast airspace and to obtain obligations from its bilateral partners. Canada was prepared to guarantee those overflight rights through bilateral agreements. When such agreements did not exist, Canada had continued to approve overflight on the basis of reciprocity. Canada agreed with the position expressed in the United States paper that the definition of traffic rights in the Annex was meant to cover first and second freedoms, as well as other freedoms of air control. Canada also agreed that the words: "operate" and "carry" were added to include technical stops and pre-positioning or ferry flights without revenue traffic; that the words "from and to" cover second, third and fourth freedoms; and "within" refers to cabotage and "over" to the first freedom.

25. The representative of Jordan recalled that ICAO was the specialized UN agency for civil aviation with constitutional responsibility for this sector. ICAO had already undertaken many initiatives to assist members to move towards liberalization, such as the 1994 Air Transport Conference. Many countries had undertaken steps towards liberalization and a greater participation of the private sector. Jordan felt that joint cooperation between ICAO and WTO was essential. However, expanding the scope of the Annex might not necessarily lead to effective liberalization of air transport.

26. The representative of Uruguay indicated that the approach followed in the WTO for air transport should be maintained and that the role of ICAO, in all matters relating to commercial aviation, should be strengthened and maintained.

27. Answering an earlier question by Chile on the Fortaleza agreement, the representative of Brazil indicated that the Members of this agreement (Argentina, Paraguay, Uruguay, Chile, Bolivia and Peru) had signed a memorandum of understanding, in March 2001 in Santiago. The Memorandum, to take effect in 2003, relaxed restrictions on routes, capacity and traffic rights among its signatories. The representative of Brazil undertook to reply in a written form to the other questions.

28. The representative of the United States stressed that its paper did not call for the immediate end of the review. On the contrary, the delegation would be very interested in any additional comments on their paper at a later stage. He challenged the view expressed by Australia that the WTO could be an alternative forum for countries that had not concluded open skies agreements. There was no such thing in its paper as a "beauty contest" between GATS and the current regime; the aim was to maintain the clear advantages of the current system of negotiating and concluding air traffic rights which created more liberalization opportunities. Finally, on the question of the scope of the Annex, the representative of the United States reiterated that the meaning and scope of the Annex was clear as was the intent of the drafters of the Annex. The negotiating history supported the views of the United States and they welcomed comments by other members on this subject.

29. The Chairman then invited the ICAO to present its paper on ICAO's policies on charges for airports and air navigation services (SC/W/W/188). The representative of ICAO introduced this document by indicating that the conclusions and recommendations of the Council of ICAO, regarding airports and air navigation charges, were intended for the guidance of the contracting states. They had taken into account the recommendations of the conference on the economics of airports and air navigation services held in Montreal in June 2000 (ANS/CONF 2000). A central point was the distinction between charges and taxes. The Council of ICAO considered that charges were levies, designed and applied to truly defray the costs of providing facilities and services for aviation, whereas taxes were levied for general revenue purposes and not spent entirely for aviation purposes. Its recommendations dealt only with charges. The document dealt with the following issues: the cost basis of those services; the allocation of costs among aeronautical users; the charging system; pre-funding of projects; currency issues; approach and aerodrome control charges; and charges related to route air navigation services and consultation with users. In order to avoid the proliferation of charges, it recommended to States to permit the operation of charges only for services and functions that were provided for and related to, or were ultimately beneficial to, civil aviation operations. The ICAO council noted, with concern, the difficulties faced by less developed economies in providing and maintaining airport and air navigation facilities and services. It urged ICAO to take appropriate steps towards obtaining more assistance for the states concerned in planning and financing air navigation services

30. The Chairman then opened the floor for comments on the Executive Summary, prepared by the Secretariat, for the first two sessions of the review (S/C/W/200), and on the four documents prepared by the Secretariat for this third session (S/C/W/163 add 3, 4, 5 and 6).

31. The representative of New Zealand requested that a second executive summary, based on the documentation submitted for the present meeting, be prepared. It was so agreed. The representative of New Zealand noted that the documentation prepared by the secretariat mentioned that the ownership and control criteria retained by the International Air Service Transit Agreement (IASTA) for exercising first and second freedom were the traditional ones of substantial ownership and effective control. There were now a number of agreements that were moving beyond these traditional criteria, thus the provisions were becoming outdated. The traditional criteria of substantial ownership and control did amount to a significant restriction, in view of the narrowness of most financial markets, and they created a lack of flexibility and a further constraint on airlines ability to gain an adequate equity basis.

32. The representative of New Zealand also expressed concern that the increase in regional agreements, noted in the Secretariat papers as well as in the recent ICAO works, would hamper the possibility of a global approach by creating regional blocks whose rules would not be compatible. ICAO had attempted in the late forties to devise a multilateral mechanism of exchange of rights, but failed. The WTO might be an appropriate forum to investigate that possibility again. The representative of New Zealand also noted that cabotage rights had been exchanged between Australia and New Zealand and inside the European Communities both in terms of eighth freedom (consecutive

cabotage ) and ninth freedom (foreign investment in domestic airlines). There was scope for progress in this matter, which should not be seen as a matter of exchange of traffic rights but simply as a matter of investment policy. This was potentially an area open for coverage.

33. New Zealand also noted that the ownership and control concept covered two different types of legislation. On the one hand, there was investment legislation limiting the control of foreigners of a national airline. On the other hand, there were designation issues concerning the right of a State to refuse to grant operating authorization to an airlines on the grounds that this airline is not substantially owned and effectively controlled by nationals of its bilateral partner. The rationale of those two sets of regulations was different. However, when one state wanted to secure additional equity from an outside source by relaxing its national legislation, it was still faced with the constraint generated by the bilateral system to negotiate with all its key partners for the removal of the restriction on substantial ownership and effective control. This removal had sometimes been refused by the bilateral partner which, in turn, had prevented additional equity infusion or mergers, as shown by the BA-KLM case.

34. On the subject of tariffs, New Zealand noted that, while it had moved away from the regulation of tariffs, there were competition policy issues and implications for the IATA multilateral system. The representative of New Zealand noted that slot allocation had become a real operational constraint in some parts of the world, such as North East Asia and Europe, and that air rights liberalization, without slot access, would be meaningless. Finally, he noted that environmental curfew or slot problems in one airport had an impact on the originating airport, a situation that could create difficulties for developing countries, in particular.

35. The representative of Australia echoed the views expressed by New Zealand that the substantial ownership and effective control criteria was creating an unfair advantage for countries with large capital markets. Other airlines were forced, by lack of a large enough domestic capital market, to have recourse to high level of debts or subsidies to fund their operations and their equipments. The recent crisis situation made this problem even more acute. Australia had already suffered in this regard with the recent loss of its major domestic carrier. This restriction had had effects that contradicted the principles of the preamble of the Chicago convention, that is the equality of opportunity, and the principle that all air transport must be operated soundly and economically. It was only through outside investment that under-capitalized airlines could gain the opportunity to become safe, efficient and effective in the market place. Australia supported the request, addressed by the United Kingdom to all Member States at the recent ICAO assembly, to take the most liberal view possible on the current ownership and control clause. Bilateral progress in that respect was welcomed but the problem was universal and called for a universal and permanent solution. GATS was an important option to be considered in reaching that solution.

36. On airfreight, the representative of Australia noted that, as stated in the Secretariat papers, the air cargo sector was less affected by national sensitivities such as the nationality of carriers, the recognition of the brand name, and the share of traffic between the two countries. Australia saw airfreight as a sector in its own right, separate from the provision of passenger services. For example, there were no restrictions on airfreight operations between Australia and twenty of its bilateral partners. The OECD were also inclined to consider more liberalization for dedicated freight, both inside and outside the bilateral system. In view of the recent innovations in the organization of the logistic chain it was important to consider the extension of the Annex to this sector.

37. Finally, on charters and non schedules services, the representative of Australia noted that those services were not regulated by the bilateral system, and that they were generally approved unilaterally. Therefore charter services tended to lend themselves to coverage under the GATS. Australia had liberalized those services in 1996. The extension of the Annex, to charter service would



require an amendment to the Annex but this would not go against the intent of the Annex since the Annex was meant to protect the reciprocal exchange of traffic rights.

38. The representative of the United States requested that the papers by the Secretariat should be derestricted in accordance with the previous documents produced for the review. The Council so agreed. Brazil also requested that its own submission be derestricted.

39. Commenting first on the Secretariat paper, S/C/W/200 particularly paragraphs 26 and 36, the representative of the European Communities considered freight forwarding services, warehousing services and fuelling services as fully covered by the GATS. Regarding ground handling, the executive summary made clear that the classical interpretation of paragraph 2 of the Annex no longer corresponded to economic reality in Europe. Independent ground handlers were undertaking most of the activities and were operating in a manner totally unrelated to traffic rights. Outsourcing and consolidation since 1990s had created a strong industry of its own. Airport services provision had also considerably evolved, in particular in Europe. European airports were engaged in airport operations in a number of overseas destinations and internally in Europe. This was a growing and independent business. The existence of CPC item 74610 "airport operation services" allowed a broad interpretation of paragraph 2 of the Annex in that regard.

40. On transit and overflight, the European Communities could echo most of the comments made by Australia and New Zealand. Although transit was mentioned in the Annex, it was clearly more an operational right than a commercial one. It also had a relationship with the ownership and control issue, as the narrow definition of ownership in IASTA had created problems in establishing links between Europe and Asia. Finally, limitations on ownership and control were preventing mergers and consolidation from taking place, whereas they were a sound economic process and a major and integral part of the business strategies of major airlines. This problem was even more acute now since the ongoing crisis was forcing airlines to restructure.

41. The representative of Japan noted that the criterion of ownership was explicitly included in the definition of traffic rights in the Annex. Japan, for its part, had adopted the substantial ownership and effective control criteria. The concrete percentage to be owned by its nationals was determined on a case-by-case basis. On commercial operations, Japan shared the Secretariat's view that there was little doubt that code sharing was excluded from the scope of the GATS. Under the Japanese air services arrangements, code sharing was permitted on the condition that relevant rights were exchanged between both aeronautical authorities, for the clarification of the relationship between operating and marketing carriers.

42. An IATA coordinator managed the slot allocation for the two congested airports of Narita and Kansai in a transparent and objective manner, and there was no governmental regulation of this matter. For the second runway of Narita, which was scheduled to be opened for international operation in April 2002, an IATA slot coordinator would allocate slots in accordance with the IATA world-wide Scheduling Guideline, supplemented by the Narita local guidelines, approved by IATA. As far as non-scheduled services were concerned, charter flights were considered in Japan as supplemental to scheduled flights and were permitted to operate on an *ad hoc* basis with conditions regarding operators and routes more flexible than for scheduled flights. Finally, regarding air cargo, Japan considered that the fact that passenger/cargo combination aircraft carried more than half of the total amount of air cargo had to be taken into account. Hence it seemed unrealistic to examine an independent regulatory system focused on all-cargo services.

## **II. EXAMINATION OF THE OPERATION OF THE ANNEX**

43. The Chairman opened the floor for discussion of the second item of the agenda "examination of the operation of the Annex". There were no specific comments by Members on this item. The

Chairman said that the minutes would duly reflect the comments made by Members on the operation of the Annex, when commenting on the Brazilian and the United States contributions as well as on Secretariat documentation.

### **III. FURTHER STEPS FOR THE REVIEW**

44. The Chairman indicated that he understood from the interventions that there would be no opposition to the continuation of the review and that a further meeting should be scheduled. He suggested that, subject to consultation, a meeting would be held in March 2002. The Council so agreed.

---