

WORLD TRADE ORGANIZATION

RESTRICTED

S/C/W/129

15 October 1999

(99-4434)

Council for Trade in Services

RECENT TRADE-RELATED ACTIVITIES OF INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS IN THE FIELD OF AIR TRANSPORT

Note by the Secretariat

1. This note has been prepared at the request of the Council for Trade in Services. It contains information on the trade-related activities of international intergovernmental organizations (universal and regional) in the field of air transport. It is not to be regarded as exhaustive. For instance, it does not deal with non-directly trade-related matters such as the legislative activities of the ICAO (International Civil Aviation Organization) in the field of safety, noise, or air navigation systems or with the certification activities of the Joint Aviation Authorities (JAA). It could later on be complemented in those areas if Members wish so. It does not deal with the activities of non-governmental organization such as IATA (International Air Transport Association) or ACI (Airport Council International). It contains information only on developments that have occurred since the issuance of document S/C/W/59 dated 5 November 1998, which for various reasons were not reflected there but have occurred since the entry into force of the Air Transport Annex. The activities of each organization are presented as far as possible according to the structure of document S/C/W/59 and references to the relevant paragraphs of this document are made whenever a given question or subsector is evoked for the first time.

2. It will deal first with the universal organizations (I) and then with the activities of regional organizations (II).

I. RECENT TRADE-RELATED ACTIVITIES OF UNIVERSAL ORGANIZATIONS IN THE FIELD OF AIR TRANSPORT

A. INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)

1. Overall monitoring of economic and regulatory issues in the air transport sector

3. Since the publications mentioned in document S/C/W/59, ICAO has published "The world of civil aviation 1997–2000" (ICAO circular 273-AT/113) and is about to publish the 1998-2001 edition of this document. A notable part of the information contained in the present document is drawn from this ICAO document. ICAO also published the 1998 annual report of its Council and the document "Civil aviation statistics of the world 1997". ICAO has also revised and updated its basic document on "Policy and guidance material on the regulation of international transport"¹, but this new document is not yet published.

¹ ICAO document 9587, alluded to in document S/C/W/59 in footnote 17 to paragraph 74, footnote 28 to paragraph 96 and footnote 29 to paragraph 108, text available at the Secretariat.

4. Aside from those general publications, ICAO also provides to its Members on *ad hoc* basis or in the framework of technical cooperation, regulatory and economic analysis on specific issues. The table contained in Annex 8 which analyses in a detailed and harmonized manner the features of recent regional agreements in the field of air transport, is an example of this type of work.

2. Computer Reservation services (CRS)²

5. The number of countries having indicated that they were following the 1996 ICAO CRS code³ or that their regulation is consistent or compatible with it has moved up from the nine mentioned in document S/C/W/59 (paragraph 27) to 31 (of which 28 WTO Members), representing 55% of the international scheduled traffic. The list of those countries appears in Annex 1.

3. Leasing⁴

6. Article 83*bis* of the Convention on International Civil Aviation (Chicago Convention) entered into force on 20 June 1997. This amendment to the Chicago Convention is designed to facilitate leasing operations and oversight of their safety. It allows, in cases where an aircraft is operated pursuant to an agreement for the lease, charter or interchange of the aircraft by an operator, the transfer of all or part of the functions and duties of the State of registry (regarding the "rules of the air" - ie: ensuring the respect of the rules and regulations relating to the flight and manoeuvre of aircraft - the aircraft radio equipment licences, the certificates of air worthiness and the licences of personnel) to the State where this operator has its principal place of business or if this operator has no such place of business to the state where it has its permanent residence. This transfer requires an agreement between the two states concerned. As of 31 March 1999, 109 Members of ICAO (of which 68 WTO Members) had ratified the protocol relating to that amendment of the Chicago Convention. The text of this amendment and the list of States having ratified the protocol relating to it can be found in Annex 2.

7. ICAO also produced a detailed study on aircraft leasing (EC2/82,LE 4/55-99/54 dated 14 May 1999). The purpose of this study was to provide information and analysis on aircraft leasing in order to assist States through *inter alia* a checklist of factors which should be considered in formulating transparent and consistent policies on aircraft leasing. It focuses on regulatory and economic issues as well as on safety concerns. It includes guidelines on the implementation of Article 83*bis* as well as a model transfer agreement.

4. Slot allocation⁵

8. ICAO is undertaking a study of slot allocation that will assess alternatives as well as possible improvements to the existing system.

5. Airport service⁶

9. ICAO is organizing from 19 to 28 June 2000 a conference entitled "Air transport infrastructure for the 21st Century". The main items on the agenda are the economic situation of airports, air navigation services providers and their financial relationship with air carriers and users (ownership and control, financial and organizational structure), funding issues, the role of the State,

² See paragraphs 17 to 30, 39 and 51 to 55 of document S/C/W/59.

³ ICAO Council resolution of 25 June 1996 (text available at the Secretariat).

⁴ See paragraph 65 of document S/C/W/59.

⁵ See paragraph 120 to 125 of document S/C/W/59.

⁶ See paragraphs 126 to 136 of document S/C/W/59.

regulatory mechanisms, possible improvements to ICAO "policy statements"⁷ in that matter with a particular focus on airport charging principles and air navigation services charging principles. This conference will also address the question of slots allocation and its implications for market access.

6. Ground handling⁸

10. On 25 February 1999, the Air Navigation Commission of ICAO decided⁹ that a study should be undertaken by ICAO on the safety aspects of ground handling arrangements, whose results would be reported to the ICAO Council in due time.

B. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD)

11. UNCTAD organized on 21-23 June 1999 an expert meeting on air transport services under the aegis of its Commission on Trade in Goods, Services and Commodities. The object of this group was directly related to the preparation of the review of the GATS Air Transport Annex as its title was "Clarifying issues to define the elements of the positive agenda of developing countries as regards both to the GATS and specific sectors of interest to them". This meeting, which included government officials and airline experts (mainly from developing countries), examined a detailed report prepared by the UNCTAD Secretariat.¹⁰

12. The "agreed conclusions and recommendations" of that meeting, which are not binding, are reproduced in Annex 3. They suggest that GATS signatories review their commitments in the three sectors explicitly covered by the Agreement (CRS, maintenance, selling and marketing) with a view to identifying the possible benefits of further commitments. They suggest also that additional work should be undertaken with regard to classification¹¹ of air transport services in order to clarify the scope of existing obligations and that options for extending the actual coverage of the Annex should be considered notably, but not only, in terms of related services.

13. They suggest in particular to study an option by which landing rights¹² would be included in the scope of GATS, but where no commitment would be made under mode 1 and an MFN exemption systematically taken to cover bilateral agreements and where modes 2, 3 and 4 would be negotiated classically. It suggests also to address in this context the question of the definition of ownership and control¹³ and to take advantage of the work recently done by ICAO on this subject in order to enlarge that definition.

14. These conclusions suggest also that transitional preferential mechanisms in favour of developing countries inspired by those developed by ICAO¹⁴ should be studied and considered, to evaluate how Article IV of the GATS could concretely be applied to the sector of air transport. They recommend also to consider using an approach similar to the reference paper in telecoms to deal with regulatory issues specific to the air transport sector. They recognize that the process of regional integration in the field of air transport can constitute a first step or an alternative to the multilateral liberalization of the sector and that the consequences of Article V of the GATS should be studied.

⁷ ICAO document 9082/5 "Statements by the Council to the Contracting States on charges for airports and air navigation services", see paragraphs 128 to 130 and Annex 4 of document S/C/W/59.

⁸ See paragraphs 64 and 134 to 136 of document S/C/W/59.

⁹ ICAO document C-WP/1105 dated 3 March 1999, document available at the Secretariat.

¹⁰ UNCTAD document TD/B/COM.1/EM.9/2 dated 16 April "Air transport services: the positive agenda for developing countries", available at the Secretariat.

¹¹ See paragraphs 17 to 23, 31 to 34, 37 to 40 and 60 to 69 of document S/C/W/59.

¹² See paragraphs 73 to 95 of document S/C/W/59.

¹³ See paragraph 94 and ICAO resolution ATRP/9-4 in Annex 2 of document S/C/W/59.

¹⁴ That is ICAO Resolution ATRP/9-3, appearing in Annex 2 of document S/C/W/59.

II. REGIONAL ORGANIZATIONS OR AGREEMENTS

A. OECD

15. In addition to the work already mentioned in document S/C/W/59¹⁵, OECD produced in April 1999 an extensive study on "Regulatory reform in international air cargo".¹⁶ On the basis of this study OECD has organized on 5-6 July 1999 a workshop including government officials as well as airline experts coming from combi-carriers, all-cargo carriers and express carriers of OECD Members. The chairman's summary of this workshop is reproduced in Annex 4. Aside from a general description of the economic characteristics and trends of the air cargo industry, one may retain in particular from this summary the following points:

- (a) Participants agreed that pricing had been substantially liberalized and did not constitute a major issue. However, ownership and control questions were considered to be obstacles to new entries and competition in the sector, and were an area where additional investigation may be fruitful. The wet leasing of aircraft was still considered as important and should not be ignored in a continuing review of the regulatory frameworks. In respect of multimodal transport operation¹⁷, participants found that there were still significant barriers to the licensing of such activities, principally because separate licences are required for each transport mode. Some concerns were expressed that these barriers create undue constraints for the provision of services combining air transport with trucking, shipping and rail services. Participants considered however that an intermodal licence was not appropriate.
- (b) Customs procedures and documentation was considered to be a serious regulatory barrier. Participants noted that actions such as the Express Guidelines, established recently by the World Customs Organisation and incorporated into the draft revised Kyoto Convention, and consideration of the possibility of including a facilitation package in the next round of WTO negotiations represented a significant step forward. Ground handling services (as one of a range of "doing business" activities) was identified as a crucial element in the provision of quality services.
- (c) Participants noted the existing market access regulations and the still predominant bilateral system in the air cargo sector. While questions were raised as to whether this regime was still sustainable because of its potential drawbacks on the effective and efficient provision of air cargo services, there was general agreement that regulatory improvements, whether gained through bilateral or multilateral arrangements, were preferable to a standstill. It was observed that the growing prevalence of regional "open sky" agreements would eventually reach a critical mass that would force change.

16. The chairman's summary also notes a consensus on the idea that the regulatory structure of the sector may need review in order to improve services and respond to newly emerging commercial practices. Any changes resulting from this review should apply to all industry players (combi-carriers, all-cargo carriers and express carriers). The ultimate objective should be to develop a multilateral regime. Concerns were expressed that combi-carriers would not benefit from this process so much as all-cargo and integrated services, since they would continue to be constrained by

¹⁵ See footnotes 20 and 21 to paragraph 79 on air services agreement in general and footnote 34 to paragraph 125 on slot allocation.

¹⁶ OECD document DSTI/DOT(99)1 dated 6 April 1999, available at the Secretariat. This document will be published in a book form in the coming months.

¹⁷ See paragraph 61 of document S/C/W/59.

restrictions on routes and frequencies concerning passenger traffic, and would only benefit from the abolition of restrictions on prices and - within the limits of the frequencies allowed for passenger traffic - on capacities.

17. In that context OECD was seen by the participants of the workshop as setting the stage for like minded countries to go ahead with their reform of the air cargo regime, possibly to prepare groundwork for an initiative in the WTO framework and to address multilaterally questions that may in the end remain outside the scope of GATS.

18. Hence the participants in the workshop recommended that the Secretary General of the OECD should examine how the OECD could provide momentum to the ongoing discussions on regulatory reform in international air cargo transport. OECD should study how to extend liberalization in scale and scope, in particular in respect to market access, including ownership and ancillary services, determining which aspects of facilitation should be pursued as a matter of priority. It should develop an outline of draft arrangements to achieve the above on a multilateral basis and considering in which forum such ideas can best be advanced. The follow up of these recommendations is still pending before the relevant organs of the OECD.

B. APEC

19. The APEC Air Services Group (ASG), one of the subsidiary bodies of APEC, while "recognizing that in the foreseeable future the bilateral system offered the best prospects for further development of more competitive air services while allowing fair and equitable opportunities for all APEC economies", identified in October 1995 eight options for more competitive air services. Those options have been endorsed in June 1997 by the second APEC Transportation Ministerial Meeting. This ministerial meeting mandated the air services group to prioritise the options and to prepare, on a consensus basis, a recommendation on the options to be developed and on how they should be implemented. The ASG has done so and has assigned high, medium or low priority to each of the options during two meetings held in October 1997 and February 1998. These priorities appear in a document entitled "Guiding principles for developing and implementing options for competitive air services with fair and equitable opportunities" which is reproduced in Annex 5.¹⁸ One may note in particular the following points:

- (a) Doing business matters: Under this heading the ASG includes access to Computer Reservation Systems, currency conversion and remittances of earnings (which fall partially under selling and marketing in the sense of the GATS Air Transport Annex¹⁹), employment of non-national personnel and ground handling arrangements. In all these areas the ASG recommends that restrictions and discriminatory practices should be minimized and finally removed, whether in bilateral agreements or in domestic laws and by-laws, using as guidance the model clauses developed by the ICAO air transport panel.²⁰ This recommendation has been granted high priority.
- (b) Ownership and control: The ASG, stating that most APEC Members use the traditional criterion according to which national airlines should be substantially owned and effectively controlled by their own nationals, recommends to relax this criterion on a case-by-case basis when considering designation made by partners under bilateral air services arrangements, using as a guide or an option the ICAO air

¹⁸ This document as well as the reports by individual APEC Members on the implementation of these recommendations can be found at the following website address: <http://www.apectptwg.org.au>.

¹⁹ See paragraphs 31 to 36, 40 and 46 to 50 of document S/C/W/59.

²⁰ See Annex 2 of document S/C/W/59.

transport panel regulation formulation. This recommendation was given medium priority.

(c) Landing rights in general:

- Market access: The ASG recommends, with medium priority, that APEC economies should aim to progressively achieve more liberalised market access under their bilateral air services arrangements, while ensuring fair and equitable opportunity for the economies involved.
- Tariffs: The ASG recommends the adoption of a double-disapproval regime as well as the elimination of formal filing requirements or by default the institution of electronic filing. This recommendation was given medium priority
- Designation: The ASG recommends, with high priority, that its Members adopt as appropriate, multiple designation in their bilateral air services agreements as a way to increase competition and choice for the consumer.
- Cooperative arrangements: The ASG recommends, with high priority, that APEC Members facilitate cooperative arrangements between airlines such as code sharing, including third country code share and code share over domestic sectors, joint operation and blocked space arrangements where it can be shown to produce benefits to consumers and airlines and where fair competition and equitable opportunity for the economies involved can be ensured.

(d) Freight services: The ASG recommends that APEC economies progressively remove restrictions on the operation of airfreight services while ensuring fair and equitable opportunity for the economies involved. It suggests as one of the means to achieve that goal to include, where appropriate provisions for additional flexibility and capacity for air freight services in air services arrangements between APEC economies. It also stresses the importance for air freight services of adequate physical infrastructure, flexibility in intermodal operations and implementation of business-friendly procedures. This recommendation is given high priority for the doing business aspects and medium for the market access aspects.

(e) Charter services: The ASG recommends, with medium priority, that APEC economies allow and facilitate the operation of both passenger and freight charter services which supplement or complement scheduled services having regard to the principle of reciprocity, as appropriate.

C. EUROPEAN CIVIL AVIATION CONFERENCE (ECAC)²¹

(a) Computer Reservation Services: The ECAC has begun a process of review of its existing CRS code. The proposals for revision include: making provision for inclusion (on an optional basis) of railway services; inclusion of information

²¹ ECAC Members are: Albania, Armenia, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, United Kingdom.

systems; imposing direct obligations on subscribers, both with respect to the provision of accurate and comprehensive information and the avoidance of unnecessary "passive" bookings; and strengthening the data protection provisions.

- (b) Leasing: On 3 July 1997 ECAC, after considering a very detailed study, adopted resolution ECAC /21-1 on leasing of aircraft, which has non-binding status. The text of this resolution can be found in Annex 6. This resolution, considering the economic benefits and growing importance of leasing as well as the safety concerns raised by that practice and the need for harmonizing the conditions applicable to those operations, recognizes the right of ECAC Members to apply different rules to leases between air carriers registered by them of aircraft in their national register or within the European economic area. It foresees that in order to ensure safety, liability standards and compliance with any economic conditions, all leasing arrangements should receive prior approval. It details the type of information required to grant that approval. For all leases (wet and dry), it foresees the transfer of all or part of the functions and duties of the state of registry to the authorities of the lessee. In addition, for wet lease, it foresees additional safety and procedural conditions including an anticircumvention clause. It also recommends prompt communications between aeronautical authorities concerned and the information of consumers as soon as practicable and in any case before boarding.
- (c) Code-sharing²²: An ECAC Recommendation on Consumer Information/Protection Needs in connection with Code-Shared Air Services was adopted on 26 June 1996. The Recommendation addressed the information needs of the consumer through all phases of a journey beginning from the time that a first enquiry is made to a travel agency or airline ticket office. The Recommendation targets not only airlines but also information data providers, including computer reservation system providers, as well as travel agencies and airport authorities. Monitoring of progress made in implementing the Recommendation is part of the on-going work programme of ECAC.
- (d) Non-scheduled flights²³: ECAC, basing itself on a detailed study, completed in September 1998 a review of its 1956 Multilateral Agreement on Commercial Rights of Non -Scheduled Air transport in Europe²⁴ which liberalized almost completely the charter activities between those countries. This review concluded that half of the ECAC Member states adhered to the terms of the Agreement, that although the 1956 Agreement had been superseded in many instances for EC Member states by EC Regulation 2408/92 it still applied to areas not subject to this regulation and notably to relations with third parties, and that no inconsistency with the EU Regulation had been found.

D. ARAB CIVIL AVIATION COMMISSION(ACAC)²⁵

- (a) Computer Reservation Services: On 5 May 1999, the ACAC adopted a CRS Code (Resolution 3-GA/9). Its Members are invited either to include an appropriate text in

²² See document S/C/W/59, paragraph 104 and ICAO Recommendations ATRP/9-3 and ATRP/9-6 in Annex 2 of that document.

²³ See document S/C/W/59, paragraph 112.

²⁴ Respectively documents ECA 7695 dated 30 April 1956 and ECAC LEGTF/9 - report dated 18 September 1998. Available at the Secretariat.

²⁵ ACAC has 16 Members: Bahrain, Egypt, Iraq, Jordan, Lebanon, Libya, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates and Yemen.

the relevant bilateral agreements or to adopt any other appropriate course of action to implement this code in accordance with their national regulations. The text of this resolution is not yet available in any of the WTO languages, therefore its provisions cannot be summed up in the present paper.

- (b) Landing rights: A working group of the Arab Civil Aviation Commission produced in December 1998 a six-year program for progressively exchanging freedoms of the air, beginning with air cargo and non-scheduled flights in 1999 and including a dispute settlement mechanism. This report²⁶ is to be considered successively by the Executive Council of ACAC, and by its General Assembly before being transmitted for final decision to the Council of Arab Transport Ministers.

E. LATIN AMERICAN CIVIL AVIATION COMMISSION (LACAC)²⁷

20. At its XIIth General Assembly, held on 5-8 November 1996, LACAC adopted a non-binding resolution "on criteria and directives for air transport policy matters" (A12-1) covering nearly all aspects of air transport. The text of this resolution appears in Annex 7. Among various provisions one may note in particular the following points:

- (a) Computer Reservation Services: Resolution A12-1 recommends the use of a standard clause in bilateral or multilateral agreements and calls for adherence to the ICAO code.
- (b) Sales and commercial aspect²⁸: Resolution A12-1 recognizes the right of air carriers to bring and maintain their own employees of any nationality subject to compliance with the legislation of the host state. It recognizes also the right of carriers to convert and remit abroad (in any other country) without any restrictions the excess local earnings registered after local expenditures. It recommends that airport charges established in strong currencies obey the principle of non-discrimination established by Article 15 of the Chicago Convention. This resolution also formulates the wish that ICAO continues to assign high priority to the commercial aspects of air transport while developing continuous and efficient cooperation with the World Trade Organization in particular as well as with other United Nations organizations which participate in commercial aspects affecting international transport.
- (c) Ownership and control: Resolution A12-1 recommends that the concept of "Air carriers ownership and control" should be re-analysed within ICAO in order to take into account the regional and subregional community of interest and to ensure that the nationality of the carrier designated is controlled by the legislation of the country that made the designation.
- (d) Landing rights: Resolution A 12-1, while stating the attachment of LACAC to bilateralism as an adequate means to reach agreement that guarantees real and effective participation of the parties, considers that the process of integration and economic cooperation of the Latin American region is a starting point for

²⁶ Document available at the Secretariat.

²⁷ LACAC has 20 Members: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

²⁸ See paragraphs 31 to 36, 40 and 46 to 50 of document S/C/W/59.

multilateralism and calls the attention of its Members to the Andean group experience.²⁹

- (e) Ground handling: LACAC Resolution A12-1 considers that air carriers should be permitted to choose freely among different alternatives of ground handling and to combine or change their options, the only legitimate limitations being those related to safety, protection or the fact that the level of activity of the airport does not reach the minimum necessary to sustain economically several providers. Prices of those services should be based, according to the resolution, on costs and non-discrimination.

F. COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA (COMESA)³⁰

21. COMESA began preparatory work on the phased liberalization of air transport with the first phase in 1999 to be marked by the authorization of intra-COMESA scheduled passenger services which do not exceed two daily flights, multiple designation and elimination of capacity restrictions.

G. ECONOMIC AND MONETARY COMMUNITY OF CENTRAL AFRICA (EMCCA)³¹

22. In June 1998, EMCCA made a proposal for a sub-regional agreement on liberalization and cooperation. The proposal included a two-year program for progressively exchanging freedoms of the air beginning with non-scheduled cargo flights.

H. OTHER REGIONAL ORGANIZATIONS OR REGIONAL AIR SERVICES AGREEMENTS

23. Recent years have seen a multiplication of regional initiatives aimed at the establishment of common aviation markets based on liberalization of traffic rights. Those agreements which were sometimes drafted by preexisting regional organizations and sometimes were the results of *sui generis* decisions are listed below with their Members. Their provisions have been analysed in a detailed and comparative manner in a table drawn by ICAO and which is contained in Annex 8.

(a) Andean Pact

Decision 297 of the Commission of the Cartagena Agreement formally established an “open skies” air transport regime in June 1991 for Member States of the Andean Pact (Bolivia, Colombia, Ecuador, Peru, Venezuela).³²

(b) Caribbean Community (CARICOM)

The Multilateral Agreement Concerning the Operation of Air Services Within the Caribbean Community was concluded on 6 July 1996 by 14 Caribbean States (Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago).

²⁹ On this experience, see below point H a) and first column of the table contained in Annex 8.

³⁰ COMESA has 22 Members: Angola, Burundi, Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, Somalia, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.

³¹ EMCCA has six Members: Cameroon, Central African Republic, Chad, Congo, Equatorial Guinea and Gabon.

³² This agreement is anterior to the entry into force of the Air Transport Annex but is mentioned here because it is quoted as a model by the Latin American Commission of civil Aviation (LACAC).

(c) Fortaleza Agreement

The Agreement on Sub-regional Air Services between Argentina, Bolivia, Brazil, Chile, Paraguay and Uruguay was concluded on 19 December 1997, in Fortaleza, Brazil.

(d) Banjul Accord

This Memorandum of Understanding was concluded on 4 April 1997 to implement the Yamoussoukro Declaration for six African States (Cape Verde, Ghana, Guinea Bissau, Sierra Leone, Nigeria and the Gambia).

(e) CLMV Agreement

This agreement was concluded 14 January 1998 by Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam for sub-regional air transport cooperation.

ANNEX 1

LIST OF STATES FOLLOWING THE ICAO CRS CODE OR HAVING REGULATIONS/OPERATIONS COMPATIBLE/ CONSISTENT WITH IT (source: ICAO)

As of 14 September 1999, 31 States either follow the ICAO CRS Code or have regulations/operations which are compatible/consistent with it:

Antigua and Barbuda	Ireland
Austria	Italy
Belgium	Jordan
Botswana	Kuwait
Cameroon (invokes 12 c) dev. country exemption)	Luxembourg
Canada	Netherlands, Kingdom of
Cuba	Portugal
Denmark	Romania
Ecuador (invokes 12 c) dev. country exemption)	Russian Federation (except for Art. 6g), sub-paragraph i): no time limit on subscriber contracts)
Eritrea	Slovak Republic
Fiji	Spain
Finland	Sweden
France	Thailand
Germany	United Kingdom
Greece	United States
Guatemala	

ANNEX 2

ARTICLE 83BIS OF THE CHICAGO CONVENTION AND LIST OF STATES WHICH HAVE RATIFIED THE PROTOCOL RELATING TO ARTICLE 83BIS

ARTICLE 83BIS, AN AMENDMENT TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

(In force 20 June 1997)

Transfer of certain functions and duties

a) Notwithstanding the provisions of Articles 12, 30, 31 and 32(a), when an aircraft registered in a Contracting State is operated pursuant to an agreement for the lease, charter or interchange of the aircraft or any similar arrangement by an operator who has his principal place of business or, if he has no such place of business, his permanent residence in another Contracting State, the State of registry may, by agreement with such other State, transfer to it all or part of its functions and duties as State of registry in respect of that aircraft under Articles 12, 30, 31 and 32(a). The State of registry shall be relieved of responsibility in respect of the functions and duties transferred.

b) The transfer shall not have effect in respect of other Contracting States before either the agreement between States in which it is embodied has been registered with the Council and made public pursuant to Article 83 or the existence and scope of the agreement have been directly communicated to the authorities of the other Contracting State or States concerned by a State party to the agreement.

c) The provisions of paragraphs (a) and (b) above shall also be applicable to cases covered by Article 77.

STATES WHICH HAVE RATIFIED THE PROTOCOL RELATING TO ARTICLE 83 BIS

(Status as of 31 March 1999)

Antigua and Barbuda	17 October 1988	Canada	23 October 1985
Argentina	12 August 1987	Chile	28 June 1982
Australia	2 December 1994	China	23 July 1997
Austria	25 April 1983	Colombia	19 December 1995
Bahrain	7 February 1990	Croatia	6 May 1994
Bangladesh	2 September 1988	Cuba	17 May 1984
Barbados	5 October 1981	Cyprus	5 July 1989
Belarus	24 July 1996	Czech Republic	15 April 1993
Belgium	23 September 1983	Denmark	22 December 1983
Belize	24 September 1997	Ecuador	20 June 1991
Bosnia and Herzegovina	9 May 1997	Egypt	11 September 1981
Brazil	30 October 1990	El Salvador	8 April 1998
Bulgaria	7 July 1981	Eritrea	27 May 1994
Burkina Faso	15 June 1992	Estonia	21 August 1992
Burundi	10 October 1991	Ethiopia	25 June 1981

Fiji	21 September 1992	Oman	11 March 1981
Finland	18 December 1991	Pakistan	27 May 1987
France	27 August 1982	Panama	3 August 1982
Germany	19 October 1983	Papua New Guinea	5 October 1992
Ghana	15 July 1997	Philippines	31 January 1984
Greece	25 September 1984	Portugal	3 March 1998
Grenada	8 November 1990	Qatar	8 March 1990
Guatemala	26 April 1983	Republic of Korea	23 April 1981
Guinea	1 October 1998	Republic of Moldova	20 June 1997
Guyana	2 May 1988	Romania	29 August 1996
Haiti	21 September 1984	Russian Federation	3 February 1988
Hungary	27 May 1981	Samoa	9 July 1998
Iceland	9 May 1990	San Marino	3 February 1995
India	5 August 1994	Saudi Arabia	25 June 1991
Indonesia	29 July 1987	Seychelles	23 September 1983
Iran, Islamic Republic of	17 June 1994	Singapore	7 May 1991
Iraq	4 March 1982	Slovakia	20 March 1995
Ireland	29 March 1990	South Africa	21 September 1998
Israel	25 February 1983	Spain	11 July 1983
Italy	29 November 1985	Sweden	13 July 1987
Japan	26 June 1998	Switzerland	21 February 1985
Jordan	30 June 1993	Tajikistan	23 July 1996
Kenya	13 October 1982	The former Yugoslav	
Kuwait	24 May 1995	Republic of Macedonia	23 March 1998
Lebanon	14 April 1983	Togo	24 April 1987
Libyan Arab Jamahiriya	28 October 1996	Trinidad and Tobago	31 January 1991
Luxembourg	1 October 1986	Turkey	13 November 1992
Malawi	13 December 1990	Turkmenistan	14 April 1993
Maldives	30 October 1997	Tunisia	29 April 1985
Mali	11 January 1984	Uganda	10 March 1982
Marshall Islands	6 April 1994	Ukraine	11 August 1995
Mauritius	6 August 1990	United Arab Emirates	18 February 1987
Mexico	20 June 1990	United Kingdom	16 March 1981
Monaco	9 May 1991	United States	15 February 1982
Morocco	29 January 1987	Uruguay	7 January 1982
Nauru	28 July 1994	Uzbekistan	24 February 1994
Nepal	9 June 1997	Vanuatu	31 January 1989
Netherlands	5 November 1981	Viet Nam, Socialist	
New Zealand	17 March 1993	Republic of	7 February 1996
Niger	8 April 1988	Zambia	28 January 1993
Norway	20 September 1995		

ANNEX 3

AGREED CONCLUSIONS AND RECOMMENDATIONS OF THE UNCTAD EXPERT MEETING ON AIR TRANSPORT SERVICES HELD ON 21-23 JUNE 1999

TRADE AND DEVELOPMENT BOARD

23 June 1999

Commission on Trade in Goods and Services, and Commodities

Expert Meeting on Air Transport Services: Clarifying issues to Define the Elements of the Positive Agenda of Developing Countries as regards both the GATS and Specific Sector Negotiations of Interest to Them

Geneva, 21-23 June 1999

Agreed conclusions and recommendations on agenda item 3

The Expert Meeting reached the following conclusions on issues which should be taken into account in building the positive agenda for developing countries in the air transport sector:

Progressive liberalization under current arrangements

1. The current Annex on Air Transport in the GATS rules out its application to traffic rights and services related to traffic rights. The Annex does, however, list three services related to air transport to which the rules of the GATS do apply. Commitments so far in these three sectors are limited.
2. With a view to identifying possible benefits from further commitments in the areas already listed in para. 3 of the Annex, GATS signatories are urged to review their commitments and to consider the options for including these sectors in their packages of offers and requests.
3. In a number of other areas, the application of the GATS may be unclear. There is a need to clarify the coverage under the existing wording by considering a more detailed classification of the air transport sector, including related activities. The coverage of the agreement can then be tested more easily.
4. Options for extending the coverage of items similar to those now listed in para. 3 of the Annex could then also be considered.
5. This work, involving cooperation among IATA, ICAO and WTO, should include the comparison of the sectoral classifications now used in the GATS with those in common use in the industry.

Considering ways of extending the coverage

6. Options for the inclusion of air transport in the GATS should continue to be explored in order to understand more completely the role that the GATS can play in resolving the issues outlined above. In order to have an impact on the debate on air transport in the WTO Council for Trade in Services, participants must have an appreciation of the options and their implications.
7. Under the GATS, WTO members may claim exemptions from MFN for some parts of the sector. Commitments on market access and national treatment apply only to those parts of the sector that are bound in each country's schedules.
8. In preparing for the review of the Annex, members might wish to explore, among others, the following options:

- (a) It may be the case that a large number of economies wish to exclude, in particular, mode 1 (that is, supply across a national border, which means that the airline provides the service from its home base). If so, the current Annex could be amended to:
 - (i) specify that the exemption applies only to this mode; and
 - (ii) make clear which elements of the activity are included (related only to traffic rights, but to be defined more precisely as a consequence of the work done on the definition of the sector);
- (b) Mode 2, which refers to consumption abroad, may be less controversial, but its scope has to be tested in the negotiation process;
- (c) Mode 3, which refers to commercial presence, is increasingly common. Coverage of this mode by the GATS adds to the adjustment options of airlines based in developed economies and adds to the modes of participation by developing economies. There is evidence that rules on establishment that are applied in the bilateral system are becoming more flexible and more open. Scheduling this mode of delivery would recognize this fact and provide the benefits of the GATS, in terms of MFN, market access and national treatment;
- (d) Commitments with respect to the movement of persons under mode 4 would also be relevant;
- (e) This approach to treatment of air transport would have to consider the consistency between the GATS approach to defining national identity and that applied in the bilateral air transport system. Dealing with competition policy issues also requires the identification of the home base of the airline, since it will be important to be able to identify a jurisdiction in which to take a complaint. The flexibility already evident in the definition of carrier identity in the bilateral agreements indicates that this issue need not be a significant constraint.

9. Members may also wish to consider inclusion under paragraph 3 of the Annex of additional specific air transport services and activities as well as reducing the list of specific services, activities and/or traffic rights under paragraph 2 of the Annex taking into account the results of work set out in paragraphs 2 to 5 above.

Treatment of developing countries

10. In recognition of the concern expressed by developing countries on the need to improve their participation in air transport markets on a level playing field, a number of suggestions have been developed by ICAO, IATA and specialised regional organizations and member States for mechanisms to achieve that goal. These are transitional measures. It is recommended that these mechanisms be studied and considered. The specialized agencies and organizations responsible for air transport should be invited to take part in the development and management of these options.

11. The ICAO secretariat has developed a number of recommendations for mechanisms in which this support could be provided. These refer to the terms of market access, the application of criteria on ownership and control, processes of slot allocation, and doing business matters. These recommendations should be re-examined. Implementation of these options is a matter for individual economies.

12. There are in addition important contributions to capacity-building, for example, with respect to competition policy, standards (including those related to environmental issues, such as noise and industry doing-business standards) and human resource development. It is recommended that cooperation for these purposes can be pursued in a number of modes, including under the auspices of ICAO and IATA where relevant.

13. Consideration of the application of the GATS to air transport should also examine its implications for special provision for developing country participation. Article IV obliges members to facilitate the increasing participation of developing countries in world trade in services through negotiated specific commitments, such as those relating to access to technology on a commercial basis and improvement of access to distribution channels and to information networks. It would be useful to evaluate how Article IV has worked in general and its possible application to the air transport sector.

14. Article XXV also refers to the scope for the WTO Council for Trade in Services to provide technical assistance from the WTO secretariat. This will be valuable in the context of making choices about documenting commitments if and when the air transport exemption is removed.

Dealing with competition policy and other regulatory issues

15. It is important to deal with competition policy problems and with the application of domestic regulation which can lead to demands for conflict resolution. Difficulties have been experienced in conflict resolution in the bilateral system. Conflicts could arise from commercial decisions by airlines or by government practices which have a direct effect on access, for example, or which have an indirect effect, for example, as a result of sanctioning some form of airline behaviour in the marketplace. While a multilateral consensus on competition policy issues is being pursued, other options for arrangements which are specific to air transport could be pursued while safeguarding the industry cooperation needed to set standards and maintain interlining world-wide so as to preserve the integrity of the global network.

16. GATS has provisions which can be used to deal with competition and regulatory issues. Various article s are relevant, but especially those on domestic regulation (VI), monopolies and exclusive service suppliers (VIII), business practices (IX), safeguard measures (X) and subsidies (XV). These provisions however can only be invoked by States and in situations where States are involved, be it directly through their action (subsidies, safeguards, domestic regulation) or indirectly through their jurisdiction over services suppliers, monopolies or exclusive services suppliers. These provisions, furthermore, have generally not been tested or developed, and further attention could be given to ways of strengthening the contribution of the GATS through these articles.

17. The Reference Paper on Basic Telecommunications can also be examined as a model for how competition policy issues in particular could be dealt with in air transport. This paper refers to competitive safeguards (eg anti-competitive cross-subsidies, denial of access to services), rules on interconnection (in air transport, access to infrastructure), treatment of universal service obligations, transparency, rules on the allocation of scarce resources such as frequencies (in the air transport case, landing slots or gates) and the value of having regulators who are independent of service providers. Similar work on other transport modes should also be examined.

18. An important suggestion by ICAO, based on its earlier work, was for States to use a safeguard mechanism on anti-competitive practices, including a dispute settlement and conciliation process which could also be applied at enterprise level.

19. ICAO can work with the WTO on clarifying various regulatory practices.

20. States are invited to implement expeditiously their National Communication Navigation Surveillance and Air Traffic Management Systems (CNS/ATM), which have been included in their regional air navigation plans, so as to alleviate airport and airspace congestion and to facilitate reform of regulatory policy.

The regional route to reform

21. The number of active regional arrangements is increasing. There are at least 11 such arrangements in various stages of development.

22. A regional approach to reform has a number of advantages, such as developing cooperation among participants, competition within the region, the development of service to subregions, the consolidation and restructuring of airlines, greater efficiency within the region, contribution to competitiveness on routes outside the region and so on. A regional approach can also affect market access.

23. The GATS provisions in Article V apply to regional arrangements only when they are part of a larger structure which has substantial sectoral coverage. Developing countries do have some flexibility in the application of regional arrangements, but it may not be sufficient to support arrangements which apply to one sector. Some of the existing air transport arrangements are part of larger economic integration arrangements which are covered by Article V. In such cases the application of the GATS to air transport would impose disciplines on these arrangements.

24. There is not yet sufficient information to make a judgement about the effects of these arrangements. It is recommended that further work be completed on the costs and benefits of the regional approach to reform. Regional arrangements can be characterized by their rules (eg transparency, accession, terms of market access for non-members, human resource development, etc), and the links between these rules and economic outcomes can be analysed. The results could be used to design some principles for this route to reform in the absence of GATS rules, or to facilitate the reporting of such arrangements to the WTO Council for Trade in Services if GATS does apply.

Preparation for negotiations

25. UNCTAD in collaboration with ICAO, its regional agencies and other relevant international and regional bodies should work with developing countries on the development of these options and the construction of the positive agenda.

ANNEX 4

CHAIRMAN'S SUMMARY OF THE OECD WORKSHOP ON REGULATORY REFORM IN INTERNATIONAL AIR CARGO

(Paris, 5-6 July 1999)

1. Discussions on Regulatory Reform in International Air Cargo Transportation took place in Paris on 5-6th July 1999. Participants agreed that an open international air cargo market would be beneficial to both users and providers of air cargo transport services and that continued efforts should be made to achieve this goal.

2. Participants in the workshop were air transport policy makers from OECD Member countries, representatives of the air cargo industry, air shippers, and international governmental and non-governmental organisations involved in air transportation. Mr. Hans de Jong (Netherlands) chaired the meeting, assisted by Mr. F. Bachelet (France) Mr. J. Kerr (Australia) and Mr. J. Shane (United States).

3. The Workshop provided a timely opportunity to review the functioning of the air cargo market and its surrounding web of regulatory measures in view of the forthcoming GATS 2000 discussions. The Workshop participants also noted that the OECD Secretariat report (Regulatory Reform in International Air Cargo Transportation) was very comprehensive.

4. The Delegation of Japan noted that there was no clear mandate for this report nor for any further work that may be recommended at the end of this meeting. This point was recognised by other Delegations, and there was a clear understanding that this was an informal meeting and that any recommendations for further work that may be arrived at would eventually have to be considered by the relevant bodies of the Organisation.

5. Participants discussed the structure, performance and long-term outlook of the air cargo industry. They drew upon OECD economies' experience of the existing legal, economic and technical regulations as they apply to air cargo transportation, and examined their effects on performance. Delegates also explored governmental policy options to improve economic performance and to enhance consumer benefits through further reform efforts.

A. THE AIR CARGO INDUSTRY: CURRENT SITUATION AND LONG TERM OUTLOOK

6. Participants agreed that the air cargo industry is now more akin to logistical services, driven more by the needs of shippers and cargo owners than those of the service providers and a need to be able to move with the market. This implied that service providers face increased demand for door-to-door transportation services which ensure timely delivery.

7. Participants stressed that air cargo transportation was an integral part of the transport chain and should therefore not be viewed in isolation. While the differentiation between the types of air cargo service providers (combined carriers, all-cargo and integrated carriers) was appropriate in general discussion of the industry, all competed for the same market and were all similarly affected by access issues, including access to the principal airports.

8. However, it was pointed out that the three categories of service providers operated under different regulatory mechanisms. Any regulatory reform should take into account the need to

establish a regime which enables all categories of service providers to respond to the needs of the market, which is increasingly driven by shippers and cargo owners.

9. Traffic forecasts highlighted that air cargo carried in dedicated aircraft was growing faster than that carried in combined cargo/passenger aircraft. The growth in the total air cargo market is expected to be around 5 to 7%, with the highest growth likely to be in Latin America and to a lesser degree in the Pacific, Asia and Europe/North America.

10. The trend towards alliances in the aviation sector was at least in part attributed to the lack of freedom for carriers to provide services of their choice to meet the needs of their customers. This was one area of regulation which would benefit from attention in order to facilitate the provision of seamless, one-stop, door-to-door services. Participants noted the usefulness of eventual convergence of competition policy in this area.

11. In addressing multimodal transport issues, shippers voiced the need for carriers to be able to provide a broad choice of transport services designed to meet their needs, and without encumbrance from unnecessary regulations.

B. LEGAL, ECONOMIC AND TECHNICAL REGULATIONS APPLIED TO AIR CARGO SERVICE PROVIDERS

12. The meeting reviewed *inter alia* the effects of market/infrastructure access, pricing, and customs/documentation issues and safety aspects on performance and competition in the sector.

13. There was agreement that pricing had been substantially liberalised, and therefore did not constitute a major issue. However, ownership and control questions were considered to be obstacles to new entries and competition in the sector, and was an area where additional investigation may be fruitful.

14. The wet leasing of aircraft was still considered as important and should not be ignored in a continuing review of the regulatory frameworks.

15. In respect of multimodal transport operations, there were still significant barriers to the licensing of such activities, principally because separate licences are required for each transport mode. Some concerns were expressed that these barriers create undue constraints for the provision of services combining air transport with trucking, shipping and rail services. Participants considered that an intermodal licence was not appropriate.

16. Customs procedures and documentation was considered to be a serious regulatory barrier. Participants noted that actions such as the Express Guidelines, established recently by the World Customs Organisation and incorporated into the draft revised Kyoto Convention, and consideration of the possibility of including a facilitation package in the next round of WTO negotiations represented a significant step forward.

17. Ground handling services (as one of a range of “doing business” activities) was identified as a crucial element to the provision of quality services. One Delegation noted that in various investigations on barriers to the provision of ground handling services no arguments had ever been found to support those restrictions, and this appeared to be one area which could be addressed by the OECD.

18. Safety, security and environmental standards are clearly issues which were the province of ICAO and duplication of work on these aspects has to be avoided. Participants strongly supported ICAO to further strengthen its successful work in these areas.

19. Participants noted the existing market access regulations and the still predominant bilateral system in the air cargo sector. While questions were raised as to whether this regime was still sustainable because of its potential drawbacks on the effective and efficient provision of air cargo services, there was general agreement that regulatory improvements, whether gained through bilateral or multilateral arrangements were preferable to a standstill. It was observed that the growing prevalence of regional “open sky” agreements would eventually reach a critical mass that would force change.

20. While some concerns were expressed regarding the differentiation of regulatory frameworks for the three types of service providers, a number of delegations noted that recent reviews of aviation policy had resulted in simple and effective differentiated policies to cover all-cargo, combined and integrated operations.

C. A POSSIBLE WAY FORWARD FOR GOVERNMENT POLICIES

21. Participants took note of the web of legal, economic and technical regulations applied to air service providers described in the OECD Secretariat report on Regulatory Reform in International Air Cargo Transportation. Participants encouraged the OECD to draw on the findings of this report to better inform the policy debate on the impact of regulatory, structural and technical change in the air cargo industry.

22. Given the specificities of air cargo transportation there was agreement that the international regulatory framework for air cargo transportation, at present closely linked with passenger transportation, may need a review in order to see how best to arrange matters in order to make it better for service providers to effectively respond to newly emerging commercial practices. Participants reiterated that any change resulting from the review had to apply to all industry players. The ultimate objective should be to develop a regime which would be multilateral in scope.

23. It was noted that while combination carrier operations are predominant in all OECD Member countries, only certain countries also operate strong all-cargo and integrated services. Therefore, participants were concerned that all-cargo and integrated services would be the only or major beneficiaries from any regulatory reform process, and combi aircraft (both belly cargo and main deck) would not benefit appropriately. However, it was noted that capacity liberalisation would also benefit combination carriers. There was broad agreement that any regulatory reform process would have to be beneficial to all participants in the logistical chain.

24. It was noted that these investigations, of which the most important one is the one related to market access, had not necessarily to end up with the recommendation /elaboration of a total package but, as long as there was a clear commitment for further development, could be undertaken step by step.

25. The Japanese Delegation expressed its view that, in addition to the discussion as in this document, serious concern has to be raised over the possibility of adverse effects including oligopoly resulting from liberalisation as described in the OECD Secretariat report when liberalisation is promoted without safeguards under the constraints of infrastructure. This view was shared by some of the participants.

26. Special attention was devoted upon the division of labour among the institutions dealing with air transport. It was stressed that ICAO’s expertise in the area of setting safety, security and environmental standards should be fully recognised.

27. The OECD’s involvement in air cargo was referred to as setting the stage for like-minded countries to go ahead with their reform of the air cargo regime. Moreover, the OECD’s work could

prepare the groundwork for an initiative in the WTO framework. At the same time participants noted that GATS will most likely leave certain questions affecting traffic rights and certain services directly related to the exercise of traffic rights unanswered. These questions may need work within the OECD.

28. In conclusion, the Workshop on Regulatory Reform in International Air Cargo Transportation recommended to the Secretary General to examine how the OECD, while safeguarding existing liberalisation, could provide momentum to the ongoing discussions on regulatory reform in international air cargo transportation through:

- Studying how to expand liberalisation in scale and scope in particular in respect to market access, including ownership, and ancillary services.
- Determining which aspects of facilitation should be pursued as a matter of priority.
- Looking at appropriate competition regimes.
- Considering an outline of draft arrangements to achieve the above on a multilateral basis.
- Considering in which forum such ideas can best be advanced.

29. Participants in the Workshop agreed to inform their governments about the outcome of the meeting and invited the Secretary-General to present such work, in the not too distant future, to another workshop for consideration by governments, industry and transport users.

ANNEX 5

APEC AIR SERVICES GROUP ON GUIDING PRINCIPLES FOR DEVELOPING AND IMPLEMENTING OPTIONS FOR COMPETITIVE AIR SERVICES WITH FAIR AND EQUITABLE OPPORTUNITY

The ASG recognised that when proceeding with the discussion on options to be developed and how they should be implemented, fundamental guiding principles addressed in the Bogor Declaration, Osaka Action Agenda and other relevant documents should be kept in mind.

Prioritisation of Options

The eight options were prioritised under three categories, i.e. high, medium and low priority, based on the ease of implementation for each of the options.

Recommendations on Options

The ASG reached consensus on the following prioritisation and recommendations for the eight options:

Option 1: Air carrier ownership and control

Recognising that cross-border investments can promote economic cooperation and competition and benefit both carriers and consumers, the ASG:

(A) noted the results of the January 1998 survey on APEC economies' policy and practices on ownership and control of their designated air carriers at Attachment I. The survey showed that most economies required national airlines to be substantially owned and effectively controlled by their own nationals, and that with regard to their bilateral partners, the substantial ownership and effective control clause was prevalent in most bilateral air services agreements; and

(B) noted the recommendation by the ICAO Air Transport Regulation Panel in June 1997:

That States wishing to accept broadened criteria for air carrier use of market access in the bilateral or multilateral air services agreements agree to authorise market access for a designated air carrier which:

(a) has its principal place of business and permanent residence in the territory of the designating State; and

(b) has and maintains a strong link to the designating State.

(C) recommended that APEC economies give consideration to relaxing the ownership and control requirements when considering designation made by partners under bilateral air services arrangements on a case-by-case basis. The ICAO Air Transport Regulation Panel's formulation could be used as a guide/option.

This recommendation is categorised as medium priority.

Option 2: Tariffs

The ASG recommended that APEC economies support the removal or progressive easing of tariff regulations through the bilateral air services arrangements where this promotes competitive pricing to

the benefit of consumers. A double disapproval regime could be considered. Consideration could also be given to the elimination of formal filing requirements. Where filing is required, electronic filing could be considered.

This recommendation is categorised as medium priority.

Option 3: Doing Business Matters

The ASG recognised that the maintenance and development of competitive air services is often dependent on minimising restrictions and discriminatory practices on "doing business", for example, ground handling arrangements, currency conversion and remittance of earnings, employment of non-national personnel, sale and marketing of air services products and access to computer reservation systems.

The ASG recommended that APEC economies work towards removing impediments to "doing business" matters whether under bilateral agreements or in domestic laws and by-laws, using as guidance the model clauses developed by the ICAO Air Transport Regulation Panel, or through other means.

This recommendation is categorised as high priority.

Option 4: Air Freight

Noting that the current framework of bilateral agreements has generally worked well to provide the necessary capacity and route alternatives for the carriage of air freight; and

recognising that the facilitation and enhancement of air freight services and related activities can assist in:

promoting trade by APEC member economies; and

complementing broader efforts being made by APEC member economies to better facilitate trade within the region;

the ASG recommended that APEC economies progressively remove restrictions in the operations of air freight services while ensuring fair and equitable opportunity for the economies involved. One means of doing so would be to include, where appropriate, provisions for additional flexibility and capacity for air freight services in air services arrangements between APEC economies.

The ASG also reached general consensus that adequate physical infrastructure, flexibility in intermodal operations and implementation of business-friendly procedures are important to the development of air freight services.

The ASG agreed to categorise this recommendation as high/medium priority, as this option involves elements on Doing Business Matters (Option prioritised as high) and Market Access (Option prioritised as medium).

Option 5: Multiple airline designation

Noting that the growth in the number of airlines providing services within the region adds to competition and provides greater choice for consumers, the ASG recommended that APEC economies include, as appropriate, multiple airline designation in their bilateral air services agreements.

This recommendation is categorised as high priority.

Option 6: Charter services

The ASG recommended that APEC economies allow and facilitate the operation of both passenger and freight ad hoc charter services which supplement or complement scheduled services, having regard to the principle of reciprocity, as appropriate.

This recommendation is categorised as medium priority.

Option 7: Airlines' cooperative arrangements

The ASG recommended that APEC economies facilitate cooperative arrangements such as code-sharing including third-country code-share and code-share over domestic sectors, joint operations and block space arrangements, where it can be shown to be of benefit to consumers and airline(s), and where there are no anti-competitive effects, and where fair and equitable opportunity for the economies involved can be ensured.

This recommendation is categorised as high priority.

Option 8: Market access

The ASG reached general consensus to recommend that APEC economies take an approach to progressively achieve more liberalised market access under their bilateral air services arrangements, while ensuring fair and equitable opportunity for the economies involved.

This recommendation is categorised as medium priority.

Follow-up

The Air Services Group discussed the importance of having some mechanism to monitor and report on the progress of implementation of the eight options across APEC economies. The Group agreed that such issues would be for the Transportation Working Group to decide.

(26 February 1998)

ANNEX 6

ECAC RECOMMENDATION ON LEASING OF AIRCRAFT RECOMMENDATION ECAC/21-1

RECOGNIZING

that the leasing of aircraft is a common practice in the airline industry;
that a flexible approach to leasing can bring economic benefits to air carriers and consumers and help air carriers to meet market needs better;
that the maintenance of satisfactory safety standards is the main priority;
that all Member States are bound by the provisions of the Chicago Convention and its relevant annexes, that some Member States are also bound by EC Council Regulation 2407/92 on the licensing of air carriers which contains provisions on leasing and that the conditions which Member States apply with regard to leases must be consistent with their national and international legal obligations;
that Member States have imposed various conditions and limitations on the use of leased aircraft;
that Member States consider that there is a need to harmonise policy on leasing to the highest possible degree;
that the regulations and practices of Member States concerning leases should be transparent and objective and contribute to an orderly development of civil aviation;
that, in the case of a wet lease, passengers and other users are entitled to expect an equivalent standard of safety and service from the lessor to that which the lessee would provide, and to be informed of the identity of the actual air carrier which is operating the flight;
that, in the case of a dry lease, safety functions and duties of the State of Registry that can more adequately be discharged by the State of the Operator should normally be transferred to the authorities in the State of the lessee, and notes that Article 83 bis of the Convention, which provides for a transfer where a lease exists, has not yet entered into force;
that leases should not be used as a means to circumvent applicable laws, regulations or international agreements;
that exchange of information between Member States in matters concerning leasing is important, in particular in developing a common approach with regard to safety and in the context of the work of the JAA in developing a data base within the framework of the ECAC Action Programme for the Safety Assessment of Foreign Aircraft (SAFA);
that work in progress in Europe is expected to lead to common rules applied in many Member States, which could form the basis for a uniform and more liberal leasing regime for airlines of these countries,

THE CONFERENCE HAS ADOPTED THE FOLLOWING RECOMMENDATION concerning leases of aircraft between air carriers:

For the purposes of this recommendation a lease is understood to be a contractual arrangement whereby a properly licensed air carrier gains commercial control of an entire aircraft without transfer of ownership.

Member States may apply different rules to leases between air carriers licensed by them of aircraft on their national register or of aircraft registered within the European Economic Area.

A dry lease is understood to be a lease of an aircraft where the aircraft is operated under the AOC of the lessee. It is normally a lease of an aircraft without crew, operated under the commercial control of the lessee and using the lessee's airline designator code and traffic rights.

A wet lease is understood to be a lease of an aircraft where the aircraft is operated under the AOC of the lessor. It is normally a lease of an aircraft with crew, operated under the commercial control of the lessee and using the lessee's airline designator-code and traffic rights.

The provisions applying to wet leases are also intended to apply to leases with a partial crew (sometimes known as damp leases) and short notice wet leases (sometimes known as sub-charters).

1. For the purpose of ensuring safety and liability standards and compliance with any applicable economic conditions, all leasing arrangements entered into by air carriers should receive prior approval from the appropriate authorities.
2. Before granting approval, authorities should obtain the following information:
 - type of lease
 - names of the parties to the agreement
 - start date and duration of lease
 - number and type of aircraft, registration mark(s) and country of registration, noise certificate(s) where appropriate
 - evidence of passenger and third party insurance
 - name of air carrier under whose AOC the aircraft will be operated and maintained
 - name of air carrier with commercial control of the aircraft.

Member States may also require additional information, for example concerning the reason for the lease and the planned operations, to the extent that such information is necessary to ensure compliance with their national rules and international obligations.

3. In the case of a dry lease, all or part of the functions and duties in respect of the leased aircraft under Articles 12, 30, 31 and 32 (a) of the Chicago Convention should normally be transferred to the authorities of the lessee in accordance with Article 83 bis. For this purpose it is recommended that all Member States ratify this Article as soon as possible to enable it to enter into force.

4. In the case of a wet lease, in addition to paragraphs 1 and 2:

- a) Before granting approval to an air carrier to lease in an aircraft, an aeronautical authority shall be satisfied, if necessary by means of an audit, that the lessor meets safety standards equivalent to those which its own airlines are required to meet under their AOC.

- b) Furthermore, an air carrier shall only be permitted to wet lease in an aircraft of a type not included in its own AOC if the authority considers that this will not affect the maintenance of safety standards equivalent to those which the lessee is required to meet under its own AOC.

- c) A lessor may not fulfil its obligations towards the lessee with capacity wet leased in from a third carrier unless this has been approved by the aeronautical authority of the lessee.

- d) Approval for the use of wet-leased aircraft should not be given for an unlimited period of time.

- e) The information listed in paragraph 2 should also be obtained before approval is granted for short notice leases. However, alternative arrangements for the prior approval of such leases may be implemented by the appropriate aeronautical authorities. Such alternative arrangements might include, for example, the establishment of a list of air carriers approved by its national aeronautical authorities from whom an air carrier may lease an aircraft at short notice to meet an unforeseen need for a short period.

f) The use of wet-leased aircraft should not be used as a means to circumvent applicable laws, regulations or international agreements.

g) Aeronautical authorities should respond promptly to requests from their counterparts in other Member States for information about leases.

h) Consumers should be informed, as soon as practicable and in any event prior to boarding, of the actual operator if a flight is to be operated with a wet-leased aircraft.

i) Member States may also, for safety and/or economic reasons, and where this is compatible with national and international regulations, choose to ensure that air carriers are not excessively dependent on wet leased aircraft registered in another State.

5. Member States are also urged to co-operate in the provision of information concerning leases, in particular in connection with the ECAC Action Programme for the Safety Assessment of Foreign Aircraft (SAFA).

ANNEX 7

LACAC RESOLUTION A12-1 ON CRITERIA AND DIRECTIVES FOR AIR TRANSPORT POLICY MATTERS

WHEREAS the complexity of the civil aviation activity claims for the coordination of civil aviation, economic and international relations policies inside each LACAC member State;

WHEREAS to keep up with the exigencies of the socio-economical and technological changes, the need to consolidate a flexible position which permits the constant updating of directives and revision in due time of its objectives;

WHEREAS it is necessary to articulate a solid base of the essential elements of an air transport policy, because, on the contrary, it is at risk that other multilateral organizations may do;

WHEREAS it is of priority that the region counts with its own criteria for the establishment of a commercial policy.

THE XII LACAC ASSEMBLY

RESOLVES to promulgate the attached document as guidance of the LACAC member States on criteria and directives in Air Transport Policy matters.

REQUESTS the Executive Committee and its Subordinate Bodies that, depending on the evolution of this activity, periodically revise and update these criteria.

ANNEX TO RESOLUTION A12-1 ON CRITERIA AND DIRECTIVES FOR AIR TRANSPORT POLICY MATTERS CRITERIA FOR THE ESTABLISHMENT OF A LACAC COMMERCIAL AIR TRANSPORT POLICY

I. PRESENT REGULATION

LACAC reaffirms the principles and objectives contained in the Chicago convention.

LACAC recognizes the benefit and importance of the International Air Services Transit Agreement and invites member States which have not yet adhered to (to so as soon as possible in benefit of the air transport world-wide system and its global application.

At the same time and notwithstanding if the State has or has not adhere to the Air Traffic Agreement. LACAC recognizes what is stipulated in the bilateral agreements which may grant or not first and second freedom rights to the designated airlines.

On the other band. exhorts all ICAO member States which have adhered to said Agreement to comply with the compromise assumed making no discrimination.

II. CONTENTS OF THE FUTURE REGULATION

OBJECTIVES

LACAC considers that air transport future regulation must safeguard the right of each member State to guarantee the creation of enterprise which operate within the international commercial contour.

It reaffirms that the principles contained in the Chicago Convention on sovereignty, non-discriminatory measures, interdependence, harmonization and cooperation, as well as safe and orderly development of international civil aviation and equal opportunities, constitute the appropriate frame for future arrangements on market access.

Therefore, LACAC member States look forward to achieve, in their relations with other States, a regulatory frame which will permit all carriers develop within an environment of righteous and even competence, for which a prudent and equal handling of the capacity offered and of the tariff regime could be necessary to avoid market distortions and safeguard the users and operators rights.

OWNERSHIP AND CONTROL OF AIR CARRIERS

LACAC considers necessary that the concept "air carriers ownership and control" must be re-analyzed within ICAO, considering the regional and subregional "community of interests and that the nationality of the carriers designated be controlled by the legislation of the country which made the designation.

STRUCTURAL IMPEDIMENTS

LACAC recognizes the work of the IATA Schedule Coordination Conferences as a possible means to solve temporarily the problem of schedule services slots in congested aerodromes and considers not practicable to pretend world-wide regulation on this matter.

Accordingly, LACAC considers of first prior" achievement of effective progress in the establishment of a legal and institutional frame which permits the use of the world-wide satellite navigation systems in an equitable manner, assuring the universal and equal access and preserving States' sovereignty.

On the other hand, LACAC is contrary to the use of "subsidies" as a method of assistance of States with their airline operators.

BROADER REGULATORY ENVIRONMENT

Laws on competence

LACAC ratifies its policy with respect to the application of unilateral measures which affect international air transport and urges ICAO Contracting States to abstain taking measures of this nature and not pretend to give extraterritorial nature to certain dispositions of their national law to avoid affecting sovereignty of States and reiterates that the extraterritorial application of national laws on competence damages cooperative arrangements that many consider essential for the efficiency, regularity and viability, of international air transport, due that certain categories of arrangements benefit the users as well as the air carriers. Therefore, when antimonopoly or competence legislation are applied to said agreements, they should count with immunity and the necessary exemptions be made in order to permit cooperation between air carriers, including coordination of tariffs, when it results in benefit of the users and air carriers.

Otherwise, LACAC urges States to apply present ICAO directives in legislation on competence which may extend beyond purely procedural matters.

LACAC considers that in order to achieve an adequate air transport capacity based on the enhancements of airport infrastructure. in profitable air traffic services (CNS/ATM) and appropriate

planning methods, it is necessary that a real and concrete technical cooperation exists and that sufficient funds be available for the mentioned specific ends.

Environmental legislation

LACAC recognizes the role of ICAO as a world-wide forum for the elaboration of environmental measures in international air transport and considers that the measures of environment protection to be adopted should not be discriminatory for the air carriers of the States involved.

In the same manner, LACAC considers that the replacement of flight material should adjust to the economical/financial limitations of air carriers and the States where they render their services.

Taxes

LACAC recognizes that the taxes and charges imposed to users constitute an increasing cost on the airlines and consumers in detriment of the development of the air transport industry, specially if they are not applied for the safe, economical and orderly development of the international air transport in a uniform and universally accepted manner.

Commercial agreements and arrangements

LACAC recognizes that ICAO is and must continue being the world-wide forum for the elaboration of rules and recommended practices on international air transport matters directed towards the efficient and effective solution of International Civil Aviation problems. Therefore, ICAO should continue assigning high priority to the commercial aspects of air transport.

On this basis, LACAC considers that a continuous and efficient cooperation should exist between ICAO and the World Trade Organization, in particular, as well as with other United Nations organizations and others which participate in commercial aspects affecting international air transport.

Measures of preference for developing countries

LACAC considers that ICAO, with highest priority and the direct participation of its Contracting States, using the measures it may deem pertinent and effective, should continue intensifying studies in order that any future regulation of air transport may consider the actual possibilities of participation and adaptation of each and every one of the States, specially developing countries, considering the difficult economical and financial circumstances in which these expand.

COMMERCIAL ASPECTS

Ground Handling

LACAC recognizes the different alternatives of "ground handling" and considers air carriers should be permitted to choose freely among them and combine or change their option, being the only limitations those related with protection and-safety or when such a minimum level of aerodrome operations exist not permitting competence among providers. Besides, necessary measures should be adopted to ensure fixation of reasonable prices based on costs and on a uniform non-discriminatory fair play.

Currency conversion and remittance of earnings

LACAC recognizes the right of air carriers, if they request so and with no restriction whatsoever, of converting and remitting abroad the excess local earnings registered after local expenditures; it also states that air carriers have freedom of remitting their earnings to any other country, besides their country of origin.

In the same manner, when States establish airport charges in strong currency", they should base their measures on the orientating principles of ICAO, specially on the principle of non-discrimination of rights presented in Article 15 of the Chicago Convention.

Non-national personnel

LACAC recognizes the right of air carriers to bring and maintain their own employees of any nationality, subject to compliance of the legislation of the host State.

Sale and commercialization of air transport services

LACAC considers necessary that the air carriers count with flexibility and loyal competence in the sale and commercialization of its services in territories other than their own, in places where they do or do not effectively operate.

Computer Reservation System (CRS)

LACAC considers necessary to count with a "standard clause" for the CRSs with the purpose of using it in the air transport bilateral agreements or in multilateral agreements. On the other side, urges States to incorporate into their legislations the Code of Conduct promulgated by ICAO on this respect.

III. PROCEDURES AND STRUCTURE OF THE FUTURE REGULATION

LACAC confirms that the Contracting States of the Chicago Convention have different levels of development. For that reason, any action directed towards the regulation air transport must consider this fact. To this respect, it appreciates that market access must guarantee of the principles contained in said Convention, which permits coexistence of markets organized in different ways.

On the other side, it considers that for the developing countries adjust and directly participate in the future regulation arrangements, it is necessary to establish means to secure effective access of these countries to funding and advanced technology in reasonable economical and financial conditions.

Likewise, it reiterates that Bilateralism has permitted development of Air Transport and continues an adequate means to reach agreements which guarantee States read and effective participation of the Parties, defining among these. flexible conditions which assure viability and growth of the airlines of the Region.

For LACAC, the progressive process of integration and economical cooperation in which the region is found is the starting point towards Multilateralism, which will make possible increasing the levels of flexibilization in this fundamental economical activity. In this sense, it calls attention towards the experience of the Andean Group, where five of its member States form part of the Commission, and towards which we call attention of the international aeronautical community.

LACAC reaffirms that the development of the air transport industry of its member States constitutes a key component for the socio-economic growth of the Region. Therefore. each State should assure the necessary legal frame to permit strengthening of private enterprise, in benefit of their respective populations.

It also reaffirms that any future regulation, i.e. Security Network, Safeguards or mechanisms for Controversies Solution, should offer guarantees which assure adjustment and equal opportunities for the effective participation of airlines of the Region in international air transport and prevent the formation of monopolies or oligopolies.

ANNEX 8

SELECTED PROVISIONS FROM REGIONAL AGREEMENTS AND
ARRANGEMENTS ON AIR SERVICES

(Source: ICAO)

Andean Pact – 1991 (5 States)	Caribbean Community (CARICOM) – 1996 (14 States)	Fortaleza Agreement – 1997 (6 States)	Banjul Accord – 1997 (6 States)	CLMV Agreement – 1998 (4 States)
Non-Scheduled Services				
Permits unrestricted all-cargo flights and inclusive tour passenger charters within the region which do not endanger the economic stability of existing scheduled services	No provision	No provision	No provision	No limitation subject to permission procedures of each country
Third and Fourth Freedoms				
Yes	Yes – when licensed and with prior notification; day tours/air taxis may be subject to uplift/directional conditions	Yes, but only on routes not being served under bilateral agreements	Yes, for two traffic points in each State	No limitation on 3rd/4th freedom traffic rights; no limitations on eight international airports for origin, destination, intermediate and beyond points within region
Fifth and Sixth Freedoms				
Fifth: Yes Sixth: Not mentioned per se	Fifth: To be exchanged on a reciprocal and liberal basis between members Sixth: Not mentioned	Carriage of Fifth and Sixth freedom traffic permitted only with consent of States concerned	Fifth: Yes, unrestricted where no 3rd and 4th freedom operations; limited to 20 per cent of capacity with 3rd/4th; reciprocal for non-African carriers	Fifth: No limitation on traffic Sixth: Implicitly recognized from traffic points description (see 3rd/4th freedoms above)

Andean Pact – 1991 (5 States)	Caribbean Community (CARICOM) – 1996 (14 States)	Fortaleza Agreement – 1997 (6 States)	Banjul Accord – 1997 (6 States)	CLMV Agreement – 1998 (4 States)
Multiple Designation				
Yes	Yes, except where it would lead to serious financial loss to the existing air carriers licensed by both States	Yes	Maximum of two airlines per State	Yes
Tariffs				
Country of origin	Dual approval required by States concerned, but tariffs to be approved which meet general criteria	Country of origin; tariffs applied can be examined by Council of Aeronautical Authorities	Double approval; tariffs fixed on basis of price cap policy based on operating cost of designated airlines	Dual disapproval for sub-regional tariffs
Ownership and Control				
Determined by national law (legally constituted in Pact country designating air carrier)	Air carrier must be owned and controlled by one or more Member States or nationals thereof	No specific provision	Headquarters and major operations in designating State which should have minority interest with veto	No specific provision
Capacity				
Accords the “free exercise of rights of third, fourth and fifth freedoms of the air”, but the offer of non-scheduled flights on scheduled service routes may not endanger the economic viability of scheduled services	A primary objective is the provision, at a reasonable load factor, of capacity adequate to meet the current and reasonably anticipated requirements for the carriage of passengers, cargo and mail on specified routes; limitations are permitted on multiple-designation, air taxi operations	Capacity must be adapted to the respective traffic potential. States involved to consider capacity proposed by airlines to avoid any excess capacity not in accordance with traffic potential (an anti-competitive practice) taking into account airport technical limitations	Five frequencies per week per airline; schedules should be harmonized	No limitation on capacity and frequency

Andean Pact – 1991 (5 States)	Caribbean Community (CARICOM) – 1996 (14 States)	Fortaleza Agreement – 1997 (6 States)	Banjul Accord – 1997 (6 States)	CLMV Agreement – 1998 (4 States)
Fair Competition				
Competition rules of Andean Pact are applicable to air transport	Accords airlines fair and equal opportunity to compete; requires action to eliminate all forms of discrimination or unfair competitive practices; no undue effect on airline services of other Member States	Members to adopt measures to eliminate all forms of discrimination and unfair competition practices; establishes a national standard for treatment of airlines of other Member States	No specific provision	No specific provision
Other Agreements Among Parties				
May not impose restrictions to any facilities which Member States have granted, or may grant, through bilateral or multilateral agreements	Shall not affect any bilateral, multilateral or other contractual agreement or arrangements	May not establish restrictions on what is established in air service agreements among Parties, provisions of which are applied subsidiarily	Prior consultation, observer status for States for bilateral negotiations within, outside of group; States to reflect and promote broader group interest in such negotiations. In event of inconsistencies, Yamoussoukro Declaration prevails	Existing bilateral air services agreements recognized; progressive implementation; any two States may initiate cooperative arrangements, others join when ready
Non-party States				
Permits non-scheduled cargo flights between Pact and non-Pact States; fifth freedom rights exchanged with non-Pact States on basis of equity and adequate compensation	Does not affect bilateral agreements/arrangements or operating licenses/similar authorizations already in force between a Member State and a non-Member State	No specific provision	See “Other Agreements among Parties,” above	Existing bilateral air service agreements recognized

Andean Pact – 1991 (5 States)	Caribbean Community (CARICOM) – 1996 (14 States)	Fortaleza Agreement – 1997 (6 States)	Banjul Accord – 1997 (6 States)	CLMV Agreement – 1998 (4 States)
Inclusion of New Member States				
Presumably requires State to join Andean Pact	Open to State or Territory which becomes part of Caribbean Community	Open to other States of South America; requires unanimous approval of States Parties to the Agreement	No provision	Open to other countries subject to acceptance by all member States (agreed in 1999)
Entry into Force				
Decision 297 (June 1991)	When eighth ratification was deposited, 8 December 1998	30 days after third ratification deposited	Upon signature of three States	Upon signature, 14 January 1998
Amendment				
Through Decision of Cartagena Commission	Requires agreement, ratification and deposit of all Member States	Aeronautical Authorities can modify Appendices by unanimous agreement	No provision	All parties must accept proposed amendments