

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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COMMUNICATION FROM INTERNATIONAL CIVIL AVIATION ORGANIZATION

Statement by the Council of the International Civil
Aviation Organization (ICAO) to the Group of
Negotiations on Services

The attached communication is circulated at the request of the International Civil Aviation Organization (ICAO) to the members of the Group of Negotiations on Services.

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Aviation Organization (ICAO) to the Group of Negotiations on Services

The international aviation community recognizes the importance of the work being carried out on trade in services by the Group of Negotiations on Services pursuant to the objectives of the Uruguay Round. Because of the implications of this work for international air transport the International Civil Aviation Organization (ICAO), representing the aviation interests of its 162 Contracting States, has followed closely the progress of the GNS discussions and has co-operated with the GNS through the provision of information on the role of ICAO and the regulatory arrangements that govern this sector. The views and concerns of ICAO on trade in services have been expressed in Assembly Resolutions the most recent of which, Resolution A27-14, was adopted in October 1989 and was circulated to GNS participants at ICAO's request on 14 December 1989 (MTN.GNS/W/88).

The distribution of the Resolution as a GNS working document which can be referred to at any time during the Group's deliberations is noted with appreciation. This action underlines the constructive working relationship and co-operation that have developed between ICAO on the one hand and the GNS and the Secretariat of the General Agreement on Tariffs and Trade (GATT) on the other, which is acknowledged in the final preambular clause of the Resolution.

The timetable and indicative agenda of meetings adopted by the GNS on 19 January 1990 includes two issues of direct interest to ICAO, namely "the role of other international arrangements and disciplines", scheduled for discussion at meetings in February and May 1990, and the "identification of sectors requiring annotations and nature of annotations", scheduled for consideration in May and June 1990. This accelerated programme of work by the GNS, with its objective of completing work on a draft multilateral framework for trade in services by the end of July 1990, impel the ICAO Council in implementation of its mandate in Resolution A27-14, to submit this statement emphasizing several factors it believes will be pertinent to the Group's discussions on these agenda items.

Sectoral coverage: While the final decision on the coverage and applicability of a possible framework has yet to be made by the GNS, it is noted that an agreement with the broadest possible coverage of sectors is under consideration.

The applicability of the trading concepts, principles and rules agreed to by the Ministers Meeting in Montreal (5-9 December 1988) was examined by the GNS in relation to the international air transport sector on 17 July 1989. ICAO was represented at that meeting at the invitation of the GNS. Although the meeting reached no decisions, many participants in the Group expressed serious reservations about the compatibility of certain key trade concepts, such as Most Favoured Nation Treatment and National Treatment (as regards market access), with the existing regulatory arrangements and practices governing international air transport.

The essential feature of these arrangements is the use by States of bilateral air service agreements to govern market access (through traffic rights and routes), capacity and pricing, as well as a number of other commercial matters necessary to the conduct of operations by their designated carriers. Over the years the content of bilateral agreements has been expanded to include other important areas such as aviation security. It was pointed out in the GNS that the application of concepts such as unconditional MFN would have a fundamental impact and could necessitate a choice between continuing with the existing system of bilateral agreements or dismantling them and replacing them with a multilateral régime. ICAO's own preliminary analysis of the possible application of trade in service concepts to international air transport, as presented to its recent Assembly Session in 1989, reached similar conclusions to those voiced at the GNS meeting.

There was some recognition at the GNS meeting in July 1989 of the possible relevance, multilaterally, of the various trade concepts to so-called ancillary rights in air transport, such as ground handling, computer reservation systems and currency conversion and remittance. These are also issues presently dealt with under bilateral arrangements but some may lend themselves to multilateral consideration and ICAO is, for example, presently developing a multilateral code of conduct for computer reservation systems.

Role of other international disciplines and arrangements: The basis for the pervasive system of more than 2000 integrated yet mutually exclusive bilateral agreements to govern air services between States lies in the provisions of the Convention on International Civil Aviation of 1944. This Convention, known as the Chicago Convention, is the basic charter of international air transport and the constitution of ICAO. The crucial provisions of the Convention establish, inter alia, national sovereignty over territorial airspace (Article 1) and the requirement for authorization or permission to operate scheduled services over or into another State (Article 6). Intensive efforts were made within ICAO in the 1940s to exchange such authorization on a broad multilateral basis but were not successful. As a result bilateralism became entrenched as the preferred legal instrument for exchanging market access and for controlling the operations of designated carriers within the framework of the Chicago Convention. Underpinning these regulatory arrangements are a number of fundamental concepts in air transport including reciprocity, non-discrimination and the mutual exchange of benefits or opportunities.

These well-established principles and bilateral arrangements have been considered to be a flexible, adaptable regulatory system which has also facilitated the participation of nearly all States in this highly technological, capital intensive service sector. For developing States the bilateral process allows them to negotiate access to developed country markets on a reciprocal basis, thus greatly increasing their participation in this sector as well as their general economic development. The significant contribution of international air transport to over-all economic performance and development in developing States is widely recognized and in this connexion ICAO manages an extensive programme of technical assistance which helps provide the necessary infrastructure and support for the involvement of developing States in this sector.

The role of ICAO in all aspects of international air transport was explained in considerable detail in its response to a GNS questionnaire early in 1988 (MTN.GNS/W/36 dated 16 May 1988). As indicated therein ICAO's constitutional competence in the economic and regulatory aspects stems from a number of provisions of the Convention. As a multilateral forum on air transport issues ICAO augments the system of bilateral arrangements on commercial access and opportunity.

The trend of liberalization that has affected nearly all service sectors to some degree in recent years has had a major impact on international air transport. Many States have reassessed their air services objectives and approaches, with consequences for their aviation relations with other States as well as the pattern and level of competition generally. In a sector that has always contained a broad spectrum of approaches towards competition and protection, bilateral agreements have enabled liberalization and more open arrangements to develop at a pace determined by partner States' mutual desire for change.

Concurrent with these developments in the competitive environment of international air transport ICAO has taken an active part in regulatory matters. In response to the wish of its Contracting States expressed at Sessions of the Assembly or world-wide Air Transport Conferences ICAO has provided the means for the pursuit of multilateral formulae, guidance and advice for use by States in their aviation relations with one another. For example, model clauses and guidance material for optional use and adaptation in bilateral arrangements have been developed in the areas of capacity, tariffs, aviation security and the application of competition laws to international air transport, as well as the multilateral code of conduct to govern computer reservation systems referred to above. The work produced by ICAO on such issues takes into account the different philosophical approaches of States towards protection and competition in international air transport.

The GNS and GATT have acknowledged ICAO's role and competence through various requests for information and invitations to take part in deliberations whenever international air transport was to be discussed. ICAO recognizes that the objectives of the trade in services negotiations may be relevant to international air transport and has welcomed the opportunities to explain both its role and the regulatory arrangements for this sector. ICAO is confident that as the GNS moves closer to its objective of a multilateral framework for trade in services these facts will be accorded proper weight so that the objectives and principles of both the trade and international air transport fields can be achieved. In pursuit of these goals this Organization remains ready to co-operate with the GNS and GATT and to provide whatever experience and expertise may be needed.