

COMMUNICATION FROM NEW ZEALAND

Negotiating Proposal for Air Transport Services¹

The attached communication has been received from the delegation of New Zealand with the request that it be circulated to Members of the Council for Trade in Services.

A. INTRODUCTION

1. The air transport sector remains an anomaly under the General Agreement on Trade in Services (GATS) as it is the only services sector subject to specific sectoral exclusions.² This situation grew out of the dilemma of reconciling the practice of bilateral reciprocity, which has traditionally dominated air services negotiations, with the MFN principle underlying the multilateral trading system. This dilemma is not, however, unique to air transport services.

2. Notwithstanding such an anomaly, and without prejudice to the eventual results of the Review of the Annex on Air Transport Services³ New Zealand believes that there is sufficient scope for Members to increase the number and quality of commitments for air transport services during the course of the resumed services negotiations.

3. In terms of such commitments, New Zealand is of the view that aside from the specific exclusions outlined in paragraph 2 of the Annex on Air Transport Services covering the limited area of those services only able to be supplied by the holders of traffic rights, *all other air transport services and general aviation and supporting services must be considered to fall within the scope of the GATS.*

¹ New Zealand reserves the right to submit further and more detailed proposals on this sector at any time and would note that this proposal has to be read together with New Zealand's initial objectives for the resumed services negotiations, as contained in S/CSS/W/90 of 26 June 2001.

² The only other area explicitly excluded from GATS coverage is that of "services supplied in the exercise of governmental authority" (Article I:3(b) refers).

³ As Members are aware, paragraph 5 of the Annex on Air Transport Services provides that the Council for Trade in Services shall review periodically, and at least every five years, developments in the air transport sector and the operation of the Annex, with a view to considering the possible further application of the GATS to the air transport sector. This Review is still underway and New Zealand fully recognises that the question of whether or not the application of the GATS can be extended is to be considered by the Review. Accordingly, this negotiating proposal is squarely based on exploring ways in which Members can increase, within the existing scope of the GATS, the number and quality of commitments for air transport services during the course of the resumed services negotiations. Of course, if the Review ultimately decides to extend the application of the GATS, this will be taken into account by the services negotiations themselves.

B. BACKGROUND

4. The significance of the transport sector, as a whole, to the growth of the global economy cannot be underestimated and is well documented. Air transport services are the conduit for trade in high value goods, just-in-time items, and perishables, and are the principal means of access for the ever expanding number of tourists. The air transport industry has witnessed dynamic recent growth resulting in downstream effects for trade in goods and also a range of closely linked services sectors such as tourism, distribution, and postal and courier services.

5. As an island nation in the South Pacific, geographically isolated from its main trading partners, air transport services are of vital importance to the New Zealand economy. Indeed, it is fair to say, that air transport services constitute the “back-bone” of New Zealand’s services trade, particularly in terms of the tourism sector.

C. THE SCOPE OF THE ANNEX ON AIR TRANSPORT SERVICES

6. Paragraph 1 of the Annex on Air Transport Services establishes that the “Annex applies to measures affecting trade in air transport services, whether scheduled or non-scheduled, and ancillary services” and goes on to confirm that “any specific commitment or obligation assumed under this Agreement shall not reduce or affect a Member’s obligations under bilateral or multilateral agreements that are in effect on the date of entry into force of the WTO Agreement.”

7. Notwithstanding the language of Paragraph 1, Paragraph 2 explicitly establishes that the GATS “shall not apply to measures affecting:

- (a) traffic rights, however granted; or
- (b) services directly related to the exercise of traffic rights ...”

8. The Annex contains a definition of “traffic rights”⁴ but not of “services directly related to the exercise of traffic rights”. The language used in Paragraph 2(b) does, however, provide some guidance on the parameters for this present exclusion - the services in question must be “*directly related*” to the “*exercise of traffic rights*”. This tends to imply that the supply of such services necessitates the holding of designated traffic rights. As a result, “services directly related to the exercise of traffic rights” can be understood to mean those for which the services supplier would be required to be designated in order to exercise the traffic rights applicable to the service in question.

9. Such parameters constitute a relatively straightforward test for determining whether or not a service is “directly related to the exercise of traffic rights”. Those services where the supply of such a service is constrained to the holder of the traffic rights are clearly “directly related to the exercise of traffic rights”, whereas services able to be supplied by a range of services suppliers irrespective of whether or not these suppliers are in a position to exercise traffic rights could not be argued to be “directly related to the exercise of traffic rights”. Examples of services under this latter category include *services auxiliary to air transport* (including *ground handling services*), *airport management services*, *air traffic control services*, *general aviation services*, as well as *domestic air services*.

⁴ Paragraph 6 (d) of the Annex establishes that “[t]raffic rights” mean “the right for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Member, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control”.

10. Paragraph 3 of the Annex does, however, expressly confirm the GATS coverage of three auxiliary services: namely, *aircraft repair and maintenance services*, the *selling and marketing of air transport services* and *computer reservation system (CRS) services*. And, as Members know, this paragraph effectively formed the basis of most of the (limited) commitments that Members made during the Uruguay Round.

D. PROPOSAL

11. New Zealand believes that Members should actively explore ways in which the number and quality of commitments made for air transport services can be increased. In New Zealand's view, there is significant scope for such improvements to be made as the number and quality of commitments taken at the conclusion of the Uruguay Round was very limited.

12. Such improvements could occur not only in the three areas explicitly referred to in the Annex, but also in such areas as auxiliary services (including cargo handling and storage and warehouse services), airport management services, air traffic control services, general aviation services, domestic air services and other supporting services for air transport.

13. Of course, such a process will need to bear in mind the "Negotiating Guidelines and Procedures"⁵, as established by the Special Session of the Council for Trade in Services, so as to ensure that these negotiations are an opportunity for all Members to benefit from further liberalisation, not just a select few.

14. Finally, New Zealand recognises that there are certain sensitivities in relation to the impact of improved specific commitments on the regulatory frameworks contained in existing bilateral and multilateral air services agreements, but believes that the GATS framework provides a flexible mechanism capable of accommodating the regulatory challenges across the full range of services sectors. After all, the GATS is not all-encompassing. Many areas currently regulated by governments or by intergovernmental agreement (eg aviation safety and security) would not be affected. It should also be noted that many other regulatory concerns traditionally addressed in existing bilateral and multilateral air services agreements (eg remittance of earnings) find close parallels in existing GATS provisions or other elements of the multilateral trading system (eg the GATT) and should not constitute obstacles to more meaningful specific commitments in the air transport services sector.

⁵ S/L/93 of 29 March 2001 refers.