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COMMUNICATION FROM CANADA, JAPAN AND THE UNITED STATES

Trade In Air Transport Services

The following communication, dated 17 February 2005, from the delegations of Canada, Japan and the United States is being circulated to the Members of the Council for Trade in Services.

1. In December 2004, Australia, Chile, the European Communities, New Zealand, Norway and Switzerland (the co-sponsors) submitted a paper (JOB(04)/185, 3 December 2004) proposing that Members take certain actions with respect to air transport services. The co-sponsors urged Members to:

- (i) take specific commitments in all three areas referred to in paragraph (3) of the Annex on Air Transport Services (Air Annex),
- (ii) take commitments on ground handling during the current round, and
- (iii) give further consideration to the characterization of other aviation services as related to the exercise of either "hard" or "soft" rights prior to the next round of negotiations.

I. COMMITMENTS FOR THE THREE SERVICES SPECIFICALLY REFERRED TO IN PARAGRAPH (3) OF THE AIR ANNEX

2. The co-sponsors urged Members to take specific commitments in all three areas referred to in paragraph (3) of the Air Annex, namely, aircraft repair and maintenance services, the selling and marketing of air transport services, and computer reservation systems services. Canada, Japan, and the United States agree that Members have the option of taking specific commitments in the three areas specifically listed in paragraph (3) of the Air Annex.

II. GROUND HANDLING

3. The co-sponsors urged Members to take specific commitments in ground handling services. They point out that ground handling has become a commercial service in its own right and that, like other service sectors, it should be covered by specific commitments. The co-sponsors argue that paragraph (2) of the Air Annex, which excludes from GATS coverage services directly related to the exercise of traffic rights does not exclude "soft" rights, such as ground handling, because, according to the co-sponsors, these services are not directly related to traffic rights. Therefore, the co-sponsors believe that ground handling is open to commitments, in spite of the fact that there was no consensus

on these issues after discussions during the First Air Annex Review. This issue will be discussed at the Second Air Annex Review.

4. Canada, Japan, and the United States agree with the view that ground handling is becoming a major service within the international aviation industry, with the role of third party ground handling service providers slowly growing in importance. We do not agree, however, that the GATS currently applies to ground handling services, and, therefore, do not agree that it is possible for Members to take specific commitments in ground handling services at this time. Paragraph (1) of the Air Annex indicates that the Annex applies to measures affecting "trade in air transport services" and "ancillary services". Paragraph (2) specifies that traffic rights and services directly related to the exercise of traffic rights are excluded from GATS coverage, with the exception of the three services that are specifically covered under paragraph (3) – aircraft repair and maintenance services, the selling and marketing of air transport services, and computer reservation systems services.

5. In the case of ground handling, we do not agree with the co-sponsors that ground handling is not directly related to the exercise of traffic rights. The bilateral air services agreements of many countries include provisions on ground handling. According to International Civil Aviation Organization (ICAO) information, a total of 233 bilateral air agreements include such provisions, and they are also included in ICAO's bilateral air services template agreements. These provisions often permit airlines to do their own ground handling, to have their ground handling done by code share partners or third parties, or to do ground handling for other carriers. These agreements treat ground handling as a necessary adjunct of traffic rights held by designated carriers. The co-sponsors point to mediation clauses in support of their assertion that not all provisions of bilateral air service agreements address services directly related to the exercise of traffic rights. We disagree with this characterization. Mediation clauses address procedural matters. It is our view that, where such agreements address obligations with respect to service activities conducted by or on behalf of carriers exercising traffic rights, there is a clear and direct relationship between these services and the exercise of those traffic rights. Furthermore, the inclusion of these provisions in air services agreements has, in fact, promoted the development of the independent third party ground handling services referred to by the co-sponsors. Canada, Japan and the United States view ground handling as being directly related to traffic rights. As such, we do not agree that ground handling is open to GATS commitments at this time.

6. Moreover, Canada, Japan and the United States believe that paragraph (2) of the Air Annex is broader than claimed by the co-sponsors, in that services directly related to the exercise of traffic rights include what the co-sponsors refer to as "soft" rights services. In support of this observation, we note that paragraph (3) of the Annex, which lists the three areas of air transport services where GATS coverage does apply, includes two services that fit within the co-sponsors' concept of "soft" rights services – aircraft repair and maintenance and computer reservation systems services. Since paragraph (3) brings these two "soft" services under GATS coverage, one can conclude that the carve-out in paragraph (2) is broader than the interpretation held by the co-sponsors and includes "soft" services. Thus, we do not agree with the view that "soft" rights services are open to commitments at this time.

7. If Members wish to extend the coverage of the GATS coverage to include ground handling, they must do so through a formal amendment to paragraph (3) of the Air Annex that would add ground handling as a fourth item to the exhaustive list. Canada, Japan and the United States believe that the proper forum to discuss such an amendment is through the Air Annex Review. In this forum, air transportation experts can discuss the issues surrounding ground handling. If the co-sponsors wish to have ground handling added to the list of services covered by the GATS, the opportunity to discuss the matter will present itself at the next Air Annex Review, which is scheduled to commence at the last regular meeting of the Council in 2005.

8. Should such an amendment be considered, we have some concerns with the specific services included by the co-sponsors under ground handling. According to the background note provided by the Secretariat during the First Air Annex Review (S/C/W/163/Add.1), there is no consensus internationally on a single definition of "Ground Handling Service". The universe of services that comprises ground handling is open to question and should be the subject of discussion amongst air transportation experts.

III. CHARACTERIZATION OF OTHER AVIATION RELATED SERVICES

9. The co-sponsors urge Members to give further consideration to the characterization of other aviation services as related to the exercise of either "hard" or "soft" rights prior to the next round of negotiations. Canada, Japan, and the United States believe that the Air Annex Review is the proper forum for the discussion of such issues. During the First Air Annex Review, discussions were held on "soft" right services, but no consensus was reached on the issues. The next Review is the forum where Members will have the opportunity to give further consideration to the issue of the characterization of other aviation services and where air transportation experts can have a fruitful discussion of the issue.
