

**OECD WORKSHOP ON PRINCIPLES FOR THE LIBERALISATION
OF AIR CARGO TRANSPORTATION**

PARIS, 4-5 OCTOBER 2000

SUMMARY RECORD

Summary

1. The Workshop on Principles for the Liberalisation of Air Cargo Transportation, which was held in Paris on 4-5 October 2000, was convened by the OECD Secretariat to continue deliberations on possible approaches to liberalisation and regulatory reform of air cargo transportation.
2. Industry representatives were strongly of the view that current air transport regulatory arrangements are inappropriate for the needs of air cargo transportation and supported the liberalised approaches outlined by the Secretariat. To a large extent these views were shared by government representatives. At the same time, it was noted that limitations in airport infrastructure, trade facilitation and customs procedures would need to be addressed. The Workshop considered proposed liberalisation principles and alternative liberalisation approaches (a protocol to existing air service agreements/a multilateral air cargo agreement) outlined in the OECD documentation.
3. A principal outcome of the Workshop was a strong recommendation from industry and government representatives for continuing to consider air cargo liberalisation and to explore - within the existing budgetary envelope available - new approaches, under the aegis of the OECD.

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Participation

1. The Workshop was chaired by Mr. H. de Jong (Head, International Affairs, Ministry of Transport, The Netherlands). There were 90 participants including representatives from 20 Member countries plus representatives from Singapore and Chile (which had asked to be present), 12 airlines and five air cargo operators, the International Civil Aviation Organisation (ICAO), the International Air Transport Association (IATA), the World Trade Organization (WTO) and World Customs Organisation (WCO) as well as 13 other international organisations and associations. Participants were invited to speak in their personal capacity.

Purpose

2. The principal purpose established for the Workshop was to consider possible approaches to liberalisation and regulatory reform of air cargo transportation and whether the measures outlined by the OECD Secretariat would be effective tools in enabling improved services to users. Such reform would require an appropriate balance between the objectives of Member countries and the interests of operators (and their workforces), users and all other parties involved.

Introduction and Overview

3. The Secretariat welcomed participants, provided the wider context for the OECD's involvement and interest in international air cargo liberalisation and regulatory reform and outlined the importance and expected outcomes of the Workshop. The Secretariat noted that, while policy and regulatory reforms could offer considerable economic benefits and the OECD has strong interests in the subject, it does not have responsibility for final decisions and implementation. The intention is to ensure the work arising from the documentation provided by the Secretariat is progressed in close co-operation with responsible authorities as well as other interested parties.

4. Introductory comments by the Chairman noted that, historically, the bilateral air services arrangements system had served the international community well. If air cargo arrangements are to be liberalised, the two principal approaches identified were: continuing to rely principally on bilateral arrangements (implying liberalisation at different speeds - initially by those with the greatest interest); or development of multilateral arrangements. There was recognition of the need to ensure that safety, security and the environment were not adversely affected by the liberalisation arrangements under consideration.

5. Many industry representatives stressed that current regulatory arrangements, which were developed primarily for outbound and return international *passenger* services, were not well suited to the unidirectional and diffuse nature of international *air cargo* flows. In many circumstances, air cargo transportation operates in direct competition with other transport modes. Industry participants considered

current arrangements restrict opportunities, increase costs and inhibit trade. Regulatory constraints often prevented traffic rights being secured for the most direct routes required for efficient carriage of cargo to final destinations. The result is that the efficiency and performance of the air cargo system are clearly less than optimal. Whereas manufacturers can control all other aspects of supply chains from production through to delivery to customers, they can not control air cargo movements due to the way air cargo services are provided. As well, industry representatives highlighted the need for better facilitation and improved customs procedures.

6. Looking to the future, air cargo is growing faster than passenger traffic and industry representatives considered air cargo-specific arrangements could be very useful. Industry favoured deregulation of cargo flights and noted trade facilitation and simplified customs procedures were key requirements.

7. While Member country representatives supported the industry's concerns, some also highlighted the need to consider the wider impacts of the liberalisation of air cargo transportation, including in terms of linkages between air cargo services and air passenger services (*e.g.* belly-hold cargo), the capacity of airport infrastructure and customs arrangements.

8. The Secretariat clarified that the documentation produced for the Workshop (including principles and draft text in the detailed provisions) were not 'OECD principles' - as they had not been agreed by Member countries - but rather were papers prepared by the OECD Secretariat for consideration and discussion at the Workshop. Future documents produced by the Secretariat will make clear reference to this.

Preferred approaches

9. Industry representatives indicated that, while industry would accept new WTO/GATS rules, their preference was to pursue liberalisation through modernisation and progressive changes in aviation-specific arrangements, rather than through WTO/GATS action. Industry supported liberalisation via bilateral or multilateral changes along the lines contained in the documents under discussion.

10. Representatives from Member countries were generally very supportive of the need for further liberalisation of air cargo transportation, although there were reservations from one or two representatives about the extent to which cargo liberalisation should be pursued in an OECD forum. It was confirmed that the OECD procedures necessary for continuation of such work would be followed. Some representatives were of the opinion that additional measures were necessary to create a level playing field for industry. Views differed on whether amendment of existing bilateral agreements or development of a new multilateral air cargo agreement would be the better approach. Discussion suggested greater support for amending bilateral agreements as a short-term measure, with multilateral approaches regarded more as a longer-term measure.

11. The International Civil Aviation Organization considered that existing arrangements, which are based on the Chicago Convention, were flexible enough to accommodate further change. ICAO drew attention to the importance of participation of all States in any regulatory reform and the need for States to assess whether liberalisation through the proposed multilateral agreement would bring benefits to them. The World Trade Organisation representative also indicated liberalisation may be a topic taken up in future WTO negotiations.

12. The debate on Customs aspects highlighted different points of view on the necessity, or otherwise, of including in the OECD documents provisions relating to the Kyoto Convention. If such provisions were to be included, the WCO would need to be consulted before their inclusion.

Consideration of the issues

13. The Workshop participants broadly supported the principles for liberalisation identified in the OECD Secretariat documentation.

14. There was detailed discussion of the key Articles and provisions under the two alternative liberalisation approaches outlined, viz: the Protocol to existing bilateral air service agreements liberalising certain cargo-specific issues; and the draft Multilateral agreement liberalising not only cargo-specific issues but also aeropolitical ones related to cargo operations. A summary of the discussion on the detailed provisions is at **Attachment A**.

15. During the discussions, there was some questioning of the scope of the reforms outlined, including whether they should encompass: air carriers or all air cargo service providers; consumer protection; and go beyond principles to outline detailed provisions on customs and ground handling. In the time available, some aspects of the proposed provisions - including safety and security - were not considered in detail. The Workshop agreed that the issues should continue to be examined. Several participants also raised infrastructural constraints as an issue that needed to be addressed.

16. Following the detailed discussion of the proposed provisions, the Workshop identified five key issues which would require further examination in pursuing regulatory reform:

- i) Leasing of aircraft (especially wet-leases from third countries).
- ii) Ownership and control of air carriers.
- iii) Liberalised traffic rights for air cargo services.
- iv) Safety and security requirements under a liberalised regime.
- v) Competition safeguards / legislation.

17. At this stage, it became clear that 'like-minded' governments wishing to liberalise air cargo would only be in a position to assess the two principal options for doing so (*i.e.* amendments to bilateral air services agreements or development of a multilateral air services agreement) when the key issues had been fully addressed. Representatives from Member countries acknowledged these key issues should be further addressed. There was also recognition of the importance of consultation and liaison, including sharing information in other fora - such as APEC and ICAO - on possible liberalisation initiatives.

18. Industry representatives requested that the actions taken reflect the strong support from the trade that had been demonstrated at the Workshop. Almost all Member country participants confirmed their support for the work being continued on an informal basis through the OECD forum, with contributions from those involved continuing to be in their personal capacity.

Action

19. There was agreement that proposed approaches to the key issues should be developed by a limited number of small groups led by representatives from a Member country in their personal capacity in co-operation with representatives from other interested countries and industry. There was strong support for the issues being pursued - and resolved where possible - over the next 6-9 months. It was agreed that the deliberations should be as transparent as possible, allowing all Member countries to participate if they wished and otherwise to remain informed.

20. The Workshop also recommended that the OECD Secretariat continue its work in this area, within existing budgetary resources, taking into account detailed comments provided in advance, at the Workshop and afterwards on the documentation prepared. Depending on the outcome, a further informal air cargo liberalisation workshop could be envisaged for mid-2001.

DISCUSSION ON DETAILED PROVISIONS

PART II - PROTOCOL

Preamble

Participants raised the need to give greater prominence to safety, security and environmental concerns in the preamble.

Article 1: Definitions

Workshop participants discussed a number of the definitions, focussing on: traffic rights; designation; the breadth of the air cargo service provider definition; ad hoc charters and non-scheduled services; and principal place of business (including the need to avoid back door securing of traffic rights). The broad thrust was that further attention needed to be given to the scope of the definitions and the interaction with definitions included in bilateral air service agreements and the Chicago Convention.

Article 3: Leasing

Industry identified a number of problems with current aircraft leasing arrangements, including the lack of a level playing field. There was considerable discussion of the wet and dry leasing proposals in the OECD Secretariat's documentation. There was also discussion of leasing in the WTO/GATS context and no dissension from the view that wet-leasing restrictions should not be used as a non-tariff barrier. Participants expressed concern that the leasing provisions would unduly restrict the flexibility required by the airlines. Some participants considered the 'temporary period' provision on wet-leases was unnecessarily restrictive and could be relaxed to also allow for 'exceptional circumstances'. An alternative view was that market conditions should be the exclusive test and that no useful purpose was served by restrictions like "temporary period" or "exceptional circumstances". Further clarification was required of: the scope of the provisions; the entitlements of different parties to lease aircraft; the treatment of wet and dry leasing; the interaction between leasing and traffic rights; the intention to cover scheduled and non-scheduled services; and provisions relating to transfer of safety regulatory oversight of leased aircraft.

Article 4: Ground Handling

There was general support for the provisions on ground handling (although one organisation raised concern about whether liberalisation of ground handling could harm safety and cause adverse social consequences). ICAO advised on the existence of a model clause on ground handling and an ongoing study of safety aspects. Discussion included competition policy aspects and differences between European and US approaches in particular. There was some support for inclusion of specific provisions that allow a monopoly to be challenged – in circumstances of inadequate competition in the provision of services.

Ground handling was identified for possible inclusion as an activity for liberalisation under GATS, as the fourth aviation matter.

Article 6: Prices

Discussion of the pricing provisions was quite limited and centred on the need for filing of tariffs. Some Member countries favoured a double disapproval regime and no filing of cargo tariffs. One participant favoured filing of tariffs (including under a 'double disapproval' regime).

Article 7: Consumer Protection

Industry representatives questioned the need for consumer protection provisions in the air cargo context. Shipper organisations considered the markets are likely to ensure information is provided in the interests of the parties involved. Discussion supported the view that the provisions may be overly regulatory and unnecessary. This is to be subject to further consideration.

Article 8: Customs, Duties and Taxes

Participants considered the proposed provisions were in line with ones included in bilateral air service agreements and broadly acceptable. One matter to be addressed is that, while the beneficiaries of bilateral provisions are restricted to air carriers, the beneficiaries of the proposed provisions would be more numerous. The provisions require a review by custom authorities.

Article 10: Expediting Customs Clearance

Presentations highlighted the World Customs Organisation's recently completed re-drafting of the Kyoto Convention. The revised Convention has been adopted by 15 countries and needs to be adopted by 40 of the 61 countries involved before it comes into force. Different views were expressed on the need for the proposed Customs provisions in the OECD documentation, which repeat the principles of the Kyoto Convention and go further in terms of advanced and simplified procedures. One view was that there was no need to replicate the detail in an OECD instrument. The other was that, while the Convention waited to be ratified, the OECD material could make a contribution by mirroring Kyoto Customs principles, while ensuring any revised procedures are not contrary to the Kyoto Convention. Industry noted that Kyoto specifically identifies the possibility for Member States to go some steps further. While there was no consensus on the preferred approach, the Workshop agreed that if the current OECD approach is pursued, it would be important for the OECD material to be considered by the WCO.

MULTILATERAL AGREEMENT

Article 2: Grant of Rights

Discussion focussed on the flexibility offered by the alternative formulations of rights. There was initial support for the simple formulation of a multilateral grant of rights outlined in Alternative 1 which would provide the flexibility available to normal business activities. Clause 1(c) needed to clarify the rights that Parties would enjoy including intermediate and beyond points.

The Workshop was also informed of the current initiatives by like-minded countries in APEC which aimed to reach agreement on the granting of cargo 7th freedom rights. This approach might allow the granting of 7th freedom passenger and cabotage rights by signature of Protocols.

Article 3: Designation and Authorization

The provisions on designation of carriers and authorisation of services provoked considerable discussion. Participants generally expressed support for the formulation in Alternative 1, while others noted that liberalisation of traditional ‘ownership and control’ provisions (such as those in clause 2a) is fundamentally important to liberalisation of services. However, the extent to which this is possible without allowing ‘free-riders’ and ‘flags of convenience’ depends on the approach taken to designation and authorisation. Some strengthening of Alternative 1 may be required by way of linking ‘substantial ownership and effective control’ provisions and reliance on effective ICAO audits, to ensure flag State safety standards are maintained. ICAO should be encouraged to make audits more transparent by making results available to other interested countries. Later discussion explored the scope for a more open environment, without the need for designation. Participants discussed a progression from liberal amendments to existing bilateral agreements in the short term to plurilateral and multilateral amendments later.

Article 4: Operational Flexibility

There were proposals for expanding the operational flexibility available to carriers, including in relation to serving behind, intermediate and beyond points in the territories of the parties in any combination and in any order.

Articles 7, 8 and 11: Commercial Presence, Consumer Protection and Fair competition

Participants debated the extent to which these matters needed to be regulated and the extent of provisions needed under these headings. Some participants favoured ensuring clear rules of competition were outlined in the draft text while others favoured reliance on broad economy-wide competition policy and consumer protection controls.

ANNEX
OECD WORKSHOP ON
PRINCIPLES FOR THE LIBERALISATION OF AIR CARGO TRANSPORTATION

Paris, 4-5 October 2000

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