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## **COMMUNICATION FROM AUSTRALIA, CHILE, THE EUROPEAN COMMUNITIES, NEW ZEALAND, NORWAY AND SWITZERLAND**

### Trade in Services to the Aviation Industry: A case for commitments under the GATS

#### *Questions and answers that may help*

The following communication, dated 15 February 2005 from the delegations of Australia, Chile, the European Communities, New Zealand, Norway and Switzerland is being circulated to the Members of the Council for Trade in Services.

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#### **What does this statement mean?**

1. The co-sponsors of this paper are amongst those who consider that it is possible to take meaningful commitments for ground handling services. As important commercial services in their own right, ground handling should be covered by specific commitments.
2. Claims that the GATS excludes all services that support air transport (that can be supplied on a commercial, competitive basis) are mistaken. For example, do you need traffic rights for a cleaning company to clean a plane? Or for a caterer to provide on-board food? Clearly not. These services can be provided without any direct relation to traffic rights. Today, numerous air catering or cleaning companies provide their services within increasingly competitive markets. In these respects, air catering, cleaning services and a range of other ground handling services are not special cases. Trade of these services is a reality today, in practice taking place independently of air traffic rights. Hence, it is possible to take meaningful commitments on ground handling, since these commitments would apply to measures that affect services *not* directly related to the exercise of traffic rights. We note that the Annex on Air Transport Services applies to *measures* affecting trade in air transport services, rather than to any sectors or subsectors as such.
3. Air Services Agreements (ASAs) deal with more than just the exchange of air traffic rights. What measures are directly linked to air traffic rights is not a question of what measures can be affected by an ASA. For example, mediation clauses may be part of an ASA. From this, of course, it does not follow that measures affecting mediation are directly related to the exercise of traffic rights. For another example, ASAs can include references to surface transport. Therefore, the fact that measures affecting ground handling, for example, are included in some ASAs (usually from the perspective of an airline and not a ground handler) does not by itself mean that ground handling as such is excluded from GATS coverage.

### **Why are “measures affecting” air “traffic rights” specifically excluded from GATS?**

4. Since World War II, the international civil aviation industry developed subject to the “bilateral system”. This allows nations to manage their own aviation environment by permitting access to other countries’ air carriers through bilateral negotiation. This is achieved through the negotiation of complex treaties called Air Services Agreements that, among other things, include the reciprocal exchange of air traffic rights.

5. When negotiations on the GATS itself were taking place, arguments over whether the bilateral system should be subject to multilateral trade disciplines threatened to derail the whole GATS process. The exclusion of measures affecting traffic rights and measures affecting services directly related to the exercise of traffic rights was agreed to allow negotiations on trade in all services to continue.

6. The exclusion of measures affecting air traffic rights and services directly related to the exercise of traffic rights actually makes it easier to take commitments on ground handling, since this exclusion guarantees that such commitments relate only to measures that do *not* affect traffic rights. In this sense, the Annex on Air Transport Services carves out what would otherwise be a possible reason for not taking commitments in ground handling. In short, thanks to the Annex, commitments on ground handling pose no challenge to any air traffic rights.

### **What has changed in recent times?**

7. In the sixty years since the bilateral system was established, aviation has become a major service industry. As the recent mandated review required by the GATS Annex on Air Transport Services showed, a whole sector has developed that provides a range of aviation-related services that were formerly supplied only by airlines. For example, ground handling services are still undertaken by many airlines, but specialist companies operating worldwide now also provide them. Those who wish to provide these services cannot be fully assured of doing so on a fair and equitable basis in the continued absence of GATS commitments.

8. The world market for aviation ground handling is estimated to be of the order of \$27 billion annually. Airlines and airports are estimated to control 75 per cent of the market, but increasingly these are disposing of ground handling, as it does not represent core business. Accordingly, commitments on ground handling are increasingly commercially meaningful.

### **When are services not “directly related to the exercise of traffic rights”?**

9. Services such as:

- Catering services;
- Baggage handling services;
- Check-in and counter services;
- Cleaning services;
- Ramp handling;
- Warehousing services;
- Fuel services

can be provided by specialist service providers without the exercise of traffic rights. Sometimes called “soft rights”, these are examples of ground services that support the airline industry (see S/C/W/163/Add.1 for possible corresponding CPC classifications).

10. The other rights – those related to access to another country’s aviation market, or “traffic rights” that are sometimes called “hard rights” – are measures which are excluded, and can not be covered by commitments without a separate decision under a Review of the Annex on Air Transport Services.

**What is this paper proposing?**

11. This paper proposes that Members:

- make commitments in all three areas specifically referred to in the Annex, if they have not also done so,
- make commitments on ground-handling services during the current round, and
- give further consideration to the characterisation of other aviation-related services as related to the exercise of either “hard” or “soft” rights prior to the next round of negotiations.

12. It is not the intention of the co-sponsors of this paper that the exchange of GATS commitments on ground handling would apply to measures affecting traffic rights of the designated airlines of Members, or for that matter, other measures affecting services related to traffic rights of the aviation industry.

**How many Members actively support this view that commitments on ground handling are meaningful?**

13. The European Communities, New Zealand, Switzerland and Australia already have made offers including “soft rights”. There are other Members that agree in principle with this view but have not yet made formal offers in this area.

**So why should providers of these services be different to service providers in other industries?**

14. This is exactly what the argument is about – there is no reason. Suppliers who provide services to airlines should have the same advantages as do other service providers, including providers of similar support services to other modes of transport. It is contrary to the principles of broad and meaningful trade liberalisation that services in the aviation industry should be treated differently to services in any other industry.

**Why should Members do something about it now?**

15. The aviation sector is of great and growing importance to economies worldwide. Efficiency through improvements in competition in services such as ground handling will enable the aviation industry to better meet the needs of users, as well as being valuable during a difficult time for the global airline industry. Further, any improvement for the global airline industry particularly supports tourism, amongst other services.

**Is this a back door method for getting measures on Air Transport Services related to traffic rights included in the GATS?**

16. Commitments on ground handling or other “soft rights” services will not prejudice the positions Members may wish to take in relation to traffic rights at the next Review of the Annex on Air Transport. Over the last 60 years the bilateral system has become the means by which countries regulate access to their air transport markets. The sponsors of this paper believe that trading in ground handling and other “soft right services” is not always directly related to measures affecting the

exercise of traffic rights. We are presenting this informal Questions and Answer Paper to assist Members in considering their views during the current round.

Modes of Supply (1) Cross-Border (2) Consumption Abroad (3) Commercial Presence (4) Presence of Natural Persons			
Sector or sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<b>AUSTRALIA</b>			
11. TRANSPORT SERVICES C. <u>Air Transport Services</u>  <b>Ground handling services:</b> - <b>Airport operation services (7461 - excludes cargo handling)</b> - <b>Cargo handling (74110 and 74190 air transport sector only)</b> - <b>Other supporting services for air transport (7469 – excludes airport and terminal firefighting services)</b>	1) <b>Unbound*</b> 2) <b>None</b> 3) <b>None</b> 4) <b>Unbound except as indicated in the horizontal section.</b>	1) <b>Unbound*</b> 2) <b>None</b> 3) <b>None</b> 4) <b>Unbound except as indicated in the horizontal section.</b>	
<b>EUROPEAN COMMUNITIES</b>			
11. TRANSPORT SERVICES C. <u>Air Transport Services</u>  <b>Groundhandling</b>	1) <b>Unbound</b> 2) <b>None</b> 3) <b>None, except that categories of activities depend of size of airport, the number of providers in each airport can be limited due to available-space constraints and to not less than two suppliers for other reasons, and non-discriminatory pre-approval procedures may apply</b> 4) <b>ICT and BV: Unbound except as indicated in the horizontal section</b>  <b>CSS: Unbound</b>	1) <b>Unbound</b> 2) <b>None</b> 3) <b>None, except that categories of activities depend of size of airport, the number of providers in each airport can be limited due to available-space constraints and to not less than two suppliers for other reasons, and non-discriminatory pre-approval procedures may apply</b> 4) <b>ICT and BV Unbound except as indicated in the horizontal section</b>  <b>CSS: Unbound</b>	

\* Unbound due to lack of technical feasibility

Modes of Supply (1) Cross-Border (2) Consumption Abroad (3) Commercial Presence (4) Presence of Natural Persons			
Sector or sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<b>NEW ZEALAND</b>			
11. TRANSPORT SERVICES C. <u>Air Transport Services</u> <b>Airport Operation Services</b> (CPC74610**, excl Navigation aids)  <b>Other supporting services for air transport</b> (CPC 74690** excl fire fighting and fire-prevention services) <b>Cargo and baggage handling services</b> (CPC 741**)	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section  1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section  1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section  1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section  1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section  1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section  1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section	
<b>Ramp handling services</b> (CPC 741**)	1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section	1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section	
<b>Airfreight Storage and warehousing services</b> (CPC 742**)	1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section	1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section	

\* Unbound due to lack of technical feasibility.

\*\* In the context of CPC listings in the schedule, the use of \*\* against individual CPC listings indicates that the service specified constitutes only part of the total range of activities covered by the CPC concordance

Modes of Supply (1) Cross-Border (2) Consumption Abroad (3) Commercial Presence (4) Presence of Natural Persons			
Sector or sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<b>SWITZERLAND</b>			
11. TRANSPORT SERVICES			
C. <u>Air Transport Services</u> - <b>Ground-handling services (ground administration, passenger handling, baggage handling, freight and mail handling, ramp handling, aircraft services, fuel and oil handling, flight operations and crew administration, surface transport)</b>	1) <b>Unbound due to lack of technical feasibility</b> 2) <b>None</b> 3) <b>None</b> 4) <b>Unbound except as indicated in Part I</b>	1) <b>Unbound due to lack of technical feasibility</b> 2) <b>None</b> 3) <b>None</b> 4) <b>Unbound except as indicated in Part I</b>	
H. <u>Services Auxiliary to All Modes of Transport</u>			
(a) Cargo-handling services (CPC 741)	1) Unbound due to lack of technical feasibility 2) None 3) None 4) Unbound except as indicated in Part I	1) Unbound due to lack of technical feasibility 2) None 3) None 4) Unbound except as indicated in Part I	
(b) Storage and warehouse services (CPC 742)	1) Unbound due to lack of technical feasibility 2) None 3) None 4) Unbound except as indicated in Part I	1) Unbound due to lack of technical feasibility 2) None 3) None 4) Unbound except as indicated in Part I	

**UN PROVISIONAL CENTRAL PRODUCT CLASSIFICATION <sup>1</sup>**

<b>SECTION: 7 TRANSPORT, STORAGE AND COMMUNICATIONS SERVICES</b>						
Division: 74 Supporting and auxiliary transport services						
Group: 741 Cargo handling services		Group: 742 Storage and warehousing services			Group: 746 Supporting services for air transport	
Class: 7411 Container handling services		7421 Storage services of frozen or refrigerated goods	7422 Bulk storage services of liquids or gases	7429 Other storage or warehousing services	Class: 7461 Airport operation services (excl. cargo handling)	Class: 7469 Other supporting services for air transport
<p><b>Sub Class 74110 - Container handling services</b> Cargo handling services provided for freight in special containers. Included are services of freight terminal facilities, on a fee or contract basis, for all modes of transport, including stevedoring services (i.e. the loading, unloading and discharging of vessels' containerized freight, at ports).</p>	<p><b>Subclass: 74190 - Other cargo handling services</b> Cargo handling services provided for non-containerized freight or for passenger baggage. Included are services of freight terminal facilities, on a fee or contract basis, for all modes of transport, including stevedoring services (i.e. the loading, unloading and discharging of vessels' non-containerized freight, at ports), and cargo handling services incidental to freight transport, not elsewhere classified. Also included are baggage handling services at airports, and at bus, rail or highway vehicle terminals.</p> <p>Exclusions: Other supporting and auxiliary transport services linked to a specific mode of transport are classified in subclass 74300 for railway transport, subclass 74490 for road transport, subclass 74590 for water transport and subclass 74690 for air transport.</p>				<p><b>Subclass: 74690 - Other supporting services for air transport</b> Aircraft cleaning and disinfecting services, firefighting and fire-prevention services, and hangar services, on a fee or contract basis. Aircraft towing services are also included.</p> <p>Exclusion: Air-sea rescue services are classified in subclass 91290 (Other public order and safety affairs related services).</p>	

<sup>1</sup> Statistical Papers Series M No. 77, Provisional Central Product Classification, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991.