

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

PARIS, 4-5 OCTOBER 2000

PRINCIPLES FOR THE LIBERALISATION OF AIR CARGO

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Background

The OECD, following its report on regulatory reform in air transport services generally (see OECD, *The Future of International Air Transport Policy*, 1997), is currently exploring the possibility of liberalising the provision of air cargo services in particular. Work in this direction has progressed through a detailed report on “Regulatory Reform in International Air Cargo Transportation”¹, made available in early 1999, and a workshop on the subject which was held at the OECD’s Paris Headquarters on July 5-6, 1999.

The workshop concluded that the air cargo transportation industry is becoming more and more an integral part of the transportation chain and is now more akin to logistical services driven by the needs of shippers and cargo owners. Participants concluded that it is important that the sector shall be able to meet these needs. Furthermore, it was recognised that the different categories of air cargo providers (combined and all cargo carriers; integrated /express carriers, freight forwarders and any other indirect provider of air cargo transportation) in the logistical chain do not always operate according to the same regulatory regime for the various parts of their operations while competing in the same markets. Any regulatory reform in the sector should therefore take into account the need to establish a regime, which enables, if possible, all categories of air cargo service providers to respond adequately to the needs of the market.

Summary and Action

This report suggests practical ways and means to promote liberalisation in the air cargo transport sector. Two avenues are proposed: a Protocol to existing air service agreements liberalising certain cargo specific issues and a draft Multilateral Agreement liberalising not only cargo specific issues but also aeropolitical ones related to cargo operations.

This document is submitted to national delegations and relevant industry parties for comment by 31 July 2000. A revised version incorporating comments in so far as possible will be circulated early September in preparation for a Workshop on this issue scheduled for 12/13 October 2000.

¹ OECD, “Regulatory Reform in International Air Cargo Transportation”, April 1999 (hereafter, “1999 OECD Study”).

PRINCIPLES FOR THE LIBERALISATION OF AIR CARGO

Executive Summary

1. Air service providers are still highly restricted in their ability to develop the supply of services on the basis of technological and commercial considerations. There are differences between countries and regions as to the availability of cargo-relevant traffic rights, but as a general rule, the international design by different categories of carriers. Carriers are also constrained by a range of other rules affecting operational and “doing business opportunities”. These rules restrain their *corporate and business structures*, notably their *ownership and control* structures, the *possibility to contract freely* with domestic/local carriers abroad, and to diversify into complementary services such as *trucking* and, in certain instances, *freight-forwarding*, in order to develop *seamless transport services* for domestic and international customers. Service providers also face severe practical hindrances, including *the time required for customs to clear air cargo* in airports that erode the advantage of the air mode; quality and costs problems in the ground handling of their cargo and access problems to airport runways at cargo-relevant periods of the day - notably because of airport curfews and noise restrictions. Overall, the industry will have to face these problems, independent of any liberalisation in air cargo services.

2. In line with the findings of the workshop as regards existing restrictions and in the interest of facilitating further consideration of air cargo liberalisation, it was determined that principles for the liberalisation of air cargo services, together with options for governments on how to implement such principles, should be developed as a useful next step.

3. Part I of the document discusses in a fairly general manner a number of principles aimed at promoting liberalisation in air cargo services. These principles are arranged in three clusters (i) liberalisation of market entry; (ii) ancillary services; and (iii) trade facilitation. Part II addresses, in the form of a protocol to existing air service agreements, a number of the cargo specific regulatory barriers that air cargo service providers are faced with e.g. leasing, cargo ground handling, customs, documentation, intermodality, diversification into other services etc. This Part leaves aside specific aeropolitical aspects like traffic rights, authorisation and designation and other specific air transportation issues to be regulated by air service agreements. Part III, on the other hand, goes one significant step further and proposes, in the form of a multilateral agreement, a complete set of articles that would facilitate more immediate liberalisation of air cargo services, without neglecting essential safety and security aspects of civil aviation.

4. The proposed principles in Part II (protocol to existing air service agreements) include a number of innovations of importance to today’s air cargo service providers: maximum scope to diversify into related business, the unfettered ability to use surface transportation when necessary to provide the most efficient service to customers and maximum choice in the arrangement of ground handling services, including self-handling. Because air cargo service providers seek maximum flexibility in their operations, and because the increasingly prevalent wet leasing of aircraft is often treated as a form of charter service, the principles are designed to furnish operators with maximum flexibility. Furthermore, the principles include undertaking to implement the best customs practices as recommended by the World Custom Organization and other international bodies. The prominent place in world trade and commerce enjoyed

today by large, integrated providers of time-sensitive air cargo transportation – transcending the mere provision of conventional transport and becoming comprehensive providers of logistical services – has resulted in much greater pressure on customs organisations to find additional efficiencies. While these customs provisions are an essential element of Part II and Part III in this document they may also serve, in their own right, as valuable contributions to discussions on trade facilitation taking place in other organisations and in other strategic contexts.

5. Principles contained in Part II are also found in Part III . Many of the additional provisions set forth in this part of the document are not unfamiliar. They are modelled on language found in existing liberal bilateral agreements, including so-called “open skies” agreements. Those provisions, deregulating pricing and capacity decisions, facilitating multiple designations, calling for fair competition, and ensuring application of laws for transparency in the levying of user charges, etc., have been in existence for some years now. Of these largely “aeropolitical” provisions the one concerning safety is of crucial importance as under no circumstance any liberalisation of air cargo services must be at the expense of safety. The emergence of any kind of “flags of convenience” has to be avoided at any costs.

6. However, unlike traditional air service agreements, the proposed principles in Part III make no distinction between scheduled and non-scheduled (or charter) air cargo services. Governments considering the liberalisation of air cargo services pursuant to an instrument of this kind will be able to choose to proceed either immediately to a complete liberalisation of traffic rights or to move progressively to more open scenarios.

7. The set of provisions for a multilateral agreement (Part III) is made to accommodate immediate industry needs during the transition to more progressive multilateral regimes. Interest in and support for liberalising international air transport (cargo as well as passenger transportation) by way of a multilateral regime may also develop from the WTO/GATS negotiations or the Transatlantic Common Aviation Area between the United States and the European Union being open also to other states. Once one of these much further reaching agreements is in place, contracting parties to the envisaged Air Cargo Service Agreement outlined in this paper will then have to take a decision as to whether or not this Agreement should cease to exist. In the mean time, however, it could constitute a valuable tool to promote liberalisation in the field of air cargo transportation.

PART I

ESSENTIAL PRINCIPLES FOR THE LIBERALISATION OF AIR CARGO SERVICES

Liberalisation of market access

1. Currently, the air transport aspect of air cargo services is predominantly governed by bilateral aviation agreements prevailing in all countries limiting air carriers ability to respond to market developments and to exploit the market potential by basing their operations on service demand at a global level. They cannot plan international route structures and develop services in full competition with each other (see 1999 OECD Study paragraphs 169-197).

Air Traffic Rights

2. From a strictly economic “ideal” viewpoint, all categories of air carriers should be allowed to make use of the full range of traffic rights and have the same opportunities for unimpeded route design and network operations. A level playing field for all categories of cargo service providers should be created that allows them to respond adequately to the needs of the market. However, it has to be recalled that about 50 % of the overall amount of cargo is moved by air in “belly hold or combi operations” undertaken pursuant to rights to carry cargo set forth in a world wide web of bilateral air service agreements for passenger transportation. The ultimate goal is the removal of all remaining barriers so that air carriers are able to carry out transportation operations on the basis of commercial considerations alone. It does not seem politically feasible at this stage to alter existing bilateral air services agreements governing passenger transportation which provide the legal basis for “belly hold and/or combi cargo operations”. Model provisions governing market entry and thus the pure transportation aspects of cargo transported by air have therefore initially to be designed for all cargo operators.

3. Commercial operations should become more economically viable if all-cargo service providers could exercise 5th and 7th freedom traffic rights (carry freight between two countries on a route with origin/destination in its home country; carry freight between two countries by an airline of a third country on a route with no connection with its home country). For 5th freedom rights to be of practical value it is imperative that potential “beyond” countries also adopt liberal policies with mirroring 5th freedom traffic rights. By granting 7th freedom traffic rights, traffic possibilities between third countries could be improved, thus optimising carriers’ networks.

4. Awarding 5th and 7th freedom traffic rights would add flexibility to the planning of air cargo services, and would take into account that air cargo traffic flows are often one way. Triangular operations and better return traffic possibilities would address the “back-haul” issue and enhance the economic and commercial efficiency in air cargo transportation.

5. By ultimately allowing cabotage operations (to carry freight within a country by an airline of another country on a route with origin/destination in its home country), the market access for carriers from abroad will be improved and will provide opportunities for better network building.

6. The ultimate goal, clearly, is the removal of all remaining barriers to all-cargo air carriers' ability to serve markets on the basis of commercial considerations alone. Through gradually granting the full range of traffic rights, air cargo operations can be expected to become more competitively supplied, freely networked, and more cost-efficient. By adopting such a liberal policy, providers of air transport will gain better access to other countries' domestic markets, and will be able to develop the supply of services solely on the basis of technological and economic viability. However, it is recognised that the objective of full and immediate traffic rights liberalisation is unlikely to be achieved immediately. The gradual implementation of arrangements with a high degree of flexibility, and an agreed timeframe for a transitional period until the full range of traffic rights can be made available to all-cargo service providers, would be the most pragmatic solution. Governments considering the liberalisation of air cargo services pursuant to an instrument, as envisaged in Part III of this document, would have a menu of progressively open scenarios from which to choose. Thus, provisions should be suggested for the authorising of fifth freedom and seventh freedom rights and cabotage services.

7. Co-operation often serves as a substitute for mergers, acquisitions and cross-shareholdership as these traditional forms of co-operation are restricted by the ownership and control regulations of air service agreements. By jointly undertaking certain commercial activities, air carriers aim to rationalise their operations and achieve network efficiencies by expanding their market coverage. The issue of co-operative arrangements is not only relevant to cargo operations and combination services but equally to passenger air services. Combination carriers will continue to be subjected to traffic rights' limitations that will not apply to all-cargo flights, however the opportunity to enter into co-operative arrangements with other air carriers such as, but not limited, to code-share, to block space and to franchise would facilitate market access by combination carriers.

8. Some potential contracting parties have already negotiated bilateral agreements between them which are more liberal in some respects than the model contained in Part III of this document (or indeed any model that would be likely to obtain widespread support). It is therefore important that the envisaged agreement contains an article whereby accession to a plurilateral agreement does not represent a backward move for any Contracting Party.

Right of Establishment

9. Traditional bilateral air service agreements require that the air carriers designated by a contracting party be substantially owned and effectively controlled by nationals of that contracting party.² This is done to safeguard essential safety requirements in order to avoid the emergence of substandard air carriers. Such requirements impede the flow of inward investment to contracting states and thus inhibit the development of the air cargo industries – precisely the opposite of the results the proposed principles are meant to encourage. For international air cargo services to become more efficient, restrictions on inward investment should be eliminated, and air carriers should be able to determine their ownership and control structures freely, based on capital and strategic business needs. This aim could be achieved by departing in the following manner from the ownership and control requirement entirely; first, a designated air carrier has to be incorporated and is required to have its “principal place of business” in the territory of the Contracting Party that designates it; and second, it is required that the designated air carrier be appropriately licensed by the Contracting Party that designates it.

² This principle, inter alia, was adopted by the EU in its regulation of 1 January 1993, and was optionally suggested by ICAO in 1994. See ICAO, Report of the WorldWide Air Transport Conference on International Air Transport Regulation: Present and Future, Doc 9644, AT Conf/4 (1994) (hereafter “ICAO WWATC Report”), pp. 21-25).

10. Although the phrase “principal place of business” exists in both the Chicago Convention and EU law, there is no precise definition. ICAO’s Air Transport Regulation Panel suggests that, in assessing a carrier’s principal place of business, a state should take into account whether a carrier has a substantial amount of its operations and capital investment in physical facilities in the designating state, pays income tax and registers its aircraft there, and employs a significant number of nationals in managerial, technical and operational positions. These criteria should be used to apply the concept of “principal place of business”.

11. The requirement that each designated air carrier be licensed by the Contracting Party that designates it means that the provision cannot lead to a “flag-of-convenience” syndrome.

12. The issue of “free-riding” by carriers whose governments have not accepted the market-opening obligations assumed by the Contracting States may be a concern (see ICAO WWATC Report at pp. 24-25). The fear is that air carriers from non-signatory States would merely establish new headquarters in the territory of a Contracting Party and thus enjoy the benefits of the Agreement “free of charge.” One response is that such relocation is a non-trivial step for any air carrier to take, and seems relatively unlikely until the Agreement has attracted a large number of Contracting States. Another is that such a carrier might well put at risk its rights in third countries by so doing. Furthermore to counter any risks arising from a possible emergence of “flags of convenience”, safety rules need to be tightened. In particular, rules concerning the acknowledgement of Air Operation Certificates and Operating Licenses should be refined, strengthened and enforced.

Operational Flexibility and Pricing Freedom

13. All cargo operators and, where consistent with existing bilateral air service agreements, combination carriers shall enjoy full operational flexibility in order to exploit business opportunities and to enhance competition among air transportation providers.

14. Existing restrictions should be lifted as regards: i) operations – operation of flights in either or both directions; combination of different flight numbers within one aircraft operation; omission of stops at any point or points – ii) frequency, type of aircraft and capacity to be used in conducting transportation services; and iii) the change of aircraft on any flight as well as iv) commercial agreements with other carriers including but not limited to blocked space agreements, codesharing and interline agreements.

15. Leaving pricing to be set by the marketplace without any governmental intervention would certainly be the ideal economic solution; in fact air cargo service providers are already free to set cargo prices in many countries so that the real world is ahead of the current traffic laws. However, given the long history of direct and indirect governmental involvement in pricing for air transportation a widespread agreement to such a provision may prove very difficult. If considered necessary, interventions by contracting parties should be limited to a bare minimum and should concern solely the transparent and non-discriminatory application of national competition law. Advance filing of tariff changes can be a mechanism of anti competitive co-ordination or even cartelisation, as has, for example, occurred in US passenger air transport. Requiring advance filing could immunize such conduct from prosecution under competition law. Contracting parties shall not require advance filing of tariffs but may require notification to its aeronautical authorities.

Leasing/Safety

16. It is well recognised that the leasing of aircraft is a common practice in the airline industry. The leasing practice enhances the flexibility of the air transport industry for instance by developing cargo

operations with limited capital. Leasing bridges temporary shortages of capacity and can reduce cost and debt levels. It can therefore contribute to the stiffening of competition because it allows smaller cargo operators to enter a market, which would have not been feasible without a leased aircraft.

17. For regulatory purposes it is important to distinguish between “dry leasing” where the lease involves only the aircraft, and “wet leasing” where the aircraft, together with the crew, will be leased. Despite some shared principles regarding the regulation of “dry leasing”, a common approach on how to deal with the approval of aircraft leasing has not yet emerged. The regulatory framework can be a source of significant uncertainty because regulations differ from country to country. Rules are discriminatory, as some countries do not allow “wet-leased” aircraft from any third country but benefit on a substantial scale from more lenient “wet lease” regulations in third countries.

18. Overall, regulators worldwide have imposed various conditions and limitations on the use of leased aircraft. This can be exemplified by rules stating that in order to be licensed as an air carrier, a company may be required to “own and operate” its own aircraft, and employ national citizens as flying personnel. Effectively, the air carrier is prohibited to lease foreign registered aircraft but could still lease aircraft owned/controlled by other national air carriers of the same country³.

19. The air cargo industry seeks greater standardisation and more flexibility—for wet leases in particular. The establishment of simple, agreed standards is needed.

20. In order to achieve a level playing field for air cargo service providers on an international scale, all cargo carriers should be authorised to contract freely for leasing operations with domestic/local carriers abroad. Since combination carriers remain subject to air traffic rights restrictions not applicable to all-cargo operators, “wet leasing” could be seen as one of the ways to provide access by combination carriers to guarded markets for which they do not have underlying route authorisation.

21. “Dry leasing” does not usually give rise to safety or regulatory concerns when the leased aircraft is registered in the State designating the air carrier. On the contrary “wet leasing” raises important safety issues, and has a social dimension as aircraft and personnel are licensed by third party aviation authorities. Safety issues come up because the aircraft is registered in a State other than the one designating the air carrier, and may be temporarily absent from the State of registry which is responsible for safety compliance. Regulatory concerns in certain countries originate from a notion that air carriers providing the “wet leased” aircraft are, in fact, using traffic rights to which they may not be entitled in their own right. Concerns have also been voiced about the impact of “wet leasing” on the labour market as flight crews oppose this, as they fear that core labour standards are being lowered and/or their jobs are at stake.

22. Worries about leasing practices can be adequately addressed by ensuring that safety and labour standards are clearly implemented and strictly met. To achieve this, the legitimate need of Contracting States to be assured of the operational integrity of both dry leased and wet leased aircraft registered in other countries has to be clearly recognised. Furthermore, while recognising that not all significant participants in the international air transport sector are signatories to the Chicago Convention (e.g., Chinese Taipei), it is imperative that an aircraft leased to designated air carriers or other air cargo service providers of a Contracting State meet standards at least *equivalent* to those promulgated by ICAO.

³ At the present time the United States prohibits its own airlines from using aircraft wet leased from foreign airlines, a rule that other governments see as an unjustified barrier to their own airlines’ ability to do business with U.S. carriers.

Liberalisation of Ancillary Services

23. Apart from market access issues, air cargo service providers are hampered by the regulatory environment applied to ancillary services; i.e. services considerably influencing the efficiency of seamless services offered by air cargo service providers. Ancillary services cover, for example, intermodal transportation, groundhandling, forwarding and warehousing as well as other issues related to air cargo business. From the regulatory point of view, the full range or selected ancillary services can be raised in conjunction with market access issues or can be dealt with on a stand-alone basis.

24. A framework with transparent, non-discriminatory rules on ancillary services seems to be necessary to achieve a balanced, more efficient, broader and more innovative choice of the provision of air cargo services which in turn will benefit industry, shippers and consumers on a global scale.

Intermodal Transport

25. Today, virtually all sectors rely on intermodal transport services. Air cargo in particular depends to a large extent on other modes of transport since goods are transported from the producers via airport-to-airport and are then channelled via different modes of transport to their final destination. In addition, air cargo is carried partly by other modes due to geographical reasons or to accommodate distribution networks. Air cargo transport serves as one piece in the logistical chain to ensure relatively new services, such as time definite deliveries and door-to-door integrated services, which are in high demand by shippers. The operation of intermodal transport services is therefore a unique feature of the air cargo industry.

26. The intermodal nature of air cargo services is insufficiently recognised by the regulatory bodies. A more common regulatory approach to intermodal issues should be striven for to counter the uncertainties and achieve more coherence as well as predictability for air cargo service providers.

27. As a consequence, modal boundaries imposed on air cargo service providers should be removed. All companies, whose transportation activities include air cargo, should be able to operate intermodal transport services (notably trucking services) abroad.

28. By creating an air cargo policy framework that comprises liberalised intermodal services, OECD economies can better facilitate the efficient, timely and safe movement and delivery of goods. The interlocking of modes of transport better responds to the changes in the global economy and industry's needs for seamless logistics, in particular in light of the growing e-commerce business. Although the granting of intermodal (surface) delivery rights improves carriers' market access, and advances service quality, concerns related to competitive distortions in the upstream or downstream markets need to be addressed by complementary strict competition rules.

29. One solution presenting "the smallest denominator approach" would be to allow all companies whose transport activities include air cargo to be able to transport goods in connection with or in substitution of other modes of their own choice within a certain geographical limit from and to the airport. This approach would take care of diverging regulations that apply to the different transport mode operators. However, inserting a geographical limit is one form of market access constraint that would impair air cargo service operators' flexibility and would incur substantial disadvantages in terms of cost, distance, and delivery time trade-offs. Therefore, intermodal services should be liberalised without geographic limitations to support air cargo service operations.

Ground handling

30. Ground handling services play a decisive role in the processing of air cargo. Air cargo service providers recognise these services as being one of the key determinants ensuring the comparative advantage over other modes of transport. Ground handling services comprise *inter alia* ramp-handling, surface transportation, parcel dispatching and storage. These services have a direct impact on handling times, cost and reliability of air cargo deliveries.

31. In many instances, impediments to ground handling services are a serious obstacle for the air transport sector in general, and air cargo operators in particular, that can erode the competitive advantage of air transport. Often, restrictions on self-handling, together with a legislated operator monopoly, cause undue handling charges and low quality of handling services.

32. The existing differences in cost and quality of ground handling services are mirrored through varying regulatory frameworks. While some bilateral agreements already contain liberal standard ground handling clauses, a whole range of countries imposes restrictions on ground handling. Whereas in certain countries airport ground handling services are supplied by a monopolist, others have opted for competitive providers and some allow air carriers to perform their own ground handling services and offer this service to other air carriers.

33. Ground handling operations at airports should be made available to all air cargo service providers on an efficient, transparent, and non-discriminatory basis. Service providers should be permitted to select among different alternative ground handlers. They should be able to choose freely between providing their own ground handling, performing ground handling with other air cargo service providers, or selecting among competing ground handling service providers. Restrictions should only be permitted for reasons of security or infrastructure constraints arising from considerations of airport safety and should be applied on a non-discriminatory basis.

34. By introducing self-handling and/or competition among service providers, the swiftness of ground handling operations will be enhanced, and will have a positive influence on cost and quality of air cargo services.

Diversification into other services

35. Any regulatory reform in the sector should take into account the need to establish a regime which enables all categories of air cargo service providers to respond adequately to the needs of the market. It is therefore important to give air cargo providers the opportunity to provide all kind of services related to air cargo business such as warehousing, freight forwarding, express services and any other related activity. Through this diversification, new forms of global cargo networks will be developed and new innovative services can be offered in accordance with business needs and technological strategies.

36. Business boundaries for air cargo service providers should be broadened and competition rules and safety provisions, associated with the emergence of these forms of new business, strengthened. Any abuse of a dominant market position is clearly objectionable and must be adequately dealt with by the competition authorities whose objective should be to ensure that all air cargo service providers compete on a fair and equal basis.

Trade Facilitation

Customs

37. Industry experts have noted that customs clearance procedures account for as much as 20 percent of average transport time and 25 percent of average transport costs of imports in many Member States. While expedited customs clearance is a crucial issue for the express delivery services industry, reductions in the time and cost of customs clearance will benefit all air cargo service providers.

38. The prominent place in world trade and commerce enjoyed today by time-sensitive air cargo transportation – transcending the mere provision of conventional transport and becoming comprehensive providers of logistical services – has resulted in much greater pressure on customs organisations to find additional efficiencies. A set of Principles designed to assist the liberalisation of air cargo services would therefore be incomplete without concern for the freedom with which their cargoes can move about, within the global trading system. All commercial consignments crossing national frontiers are subject to the combined requirements of national regulatory regimes. These often draw their force and form from international conventions and other instruments.

39. The main constituent of these regulatory interventions is a set of Customs controls, mainly directed to raise duties and taxes, enforce trade policy, interdict illicit drugs and collect statistical information. It has been thought necessary and useful, therefore, to include in these Principles a set of Articles setting out certain basic elements of simplification of Customs procedures which are especially important to the aviation industry which must offset the relatively high cost of their services by relating origin-delivery timings as closely as possible to the key advantage of rapid air movement.

40. The draft identical provisions contained in Part II and III are based on the World Customs Organisation (WCO) Express Guidelines and the texts of the revised WCO Kyoto Convention and some more detailed references in Annex 9 of the ICAO Chicago Convention, which is, itself, in the process of review, to take account of Kyoto.

41. These proposals are restricted to a relatively small number of standards, mainly concerned with those Customs interests attached to the relatively short time during which they have physical control of the goods and aircraft. In a modern Customs service such requirements are separated from the complications of fiscal requirements, increasingly handled by post entry data submissions, from approved company computerised systems.

42. Some account is taken, however, of the extra facilitation which may result for the air cargo service provider if his customer is already entitled to premium Customs procedures, by reason of high-quality compliance records or other stipulated qualification. The primary requirement is rapid, preferably immediate release of goods on arrival. This has to take account of key Customs responsibilities. Provisions therefore call for appropriate, in practice automated, risk-management by Customs and high-quality information and operational reliability from carrier and customer. At the same time it is possible to reduce Customs intervention to a bare minimum for low-value consignments which might yield revenue which is less than or only about equal to costs of collection.

43. An additional objective is the convergence of official controls. All administrative interventions can be made at the same time and place, ideally by a single agency, preferably Customs.

44. Aircraft, themselves, encounter few Customs problems, but there are frequent difficulties in securing expeditious and trouble free delivery of spare parts. The EU Commission has identified the use of commercial certificates as a sound basis for Customs control. Substantial quantities of air freight depart

and arrive outside normal business hours. It is essential that Customs attendance be available on fair and equitable terms.

45. Finally, in many countries Customs inefficiencies are compounded and sustained by low standards of professional integrity. It is impossible to legislate for honesty, but an important primary need is a clear, freely available statement of procedural requirements, with associated provisions for an independent appeal tribunal.

Documentation

46. The sort of procedural reforms suggested under Customs should also be reflected through “documentary” changes including risk-assessment, convergence of official controls and pre-arrival notice of intention to release. However, the term “documentation” is interpreted as any accepted means of conveying a piece of information or set of data. It should be noted that neither the Chicago nor the Kyoto Conventions define the term “document”.

47. It is essential to bear in mind that:

- virtually all Customs and other official control authorities still demand certain conventional forms. Many developing countries remain highly dependent on prolix paper documentation.
- while advanced countries may have transferred most Customs entries to electronic media, all sustain a possible requirement for supporting conventional documents, such as an invoice or certificate of origin. A new approach to the rapid clearance of urgently required spare parts is particularly desirable.
- acute documentary problems, in international trade and transport, can always be traced to procedural causes.

48. The procedural reforms suggested as interim until the coming into force of the WCO Kyoto Convention must be echoed by radical “documentary” changes. However, further efforts will be necessary to streamline documentary aspects given the rapidly growing e-commerce and the necessity for the industry to respond to such developments.

PART II

PROTOCOL

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PART II

PROTOCOL

BETWEEN

[]

AND

[]

TO AMEND THE AIR TRANSPORT AGREEMENT OF

PREAMBLE

The Government of [] and the Government of []

Desiring to facilitate the expansion of international air cargo transport opportunities;

Recognising that efficient, innovative and competitive international air cargo services enhance trade, the welfare of consumers and economic growth;

Desiring to promote an international air cargo transport system based on competition among air carriers and other air cargo service providers in the marketplace;

Noting the need to promote the growth of airfreight through liberalisation of ancillary services, including, in particular, the ability of air transport providers to diversify freely into related commercial activities, including ground handling, intermodal operations, integrated deliveries, warehousing and freight forwarding;

Recognising the necessity of supporting such service liberalisation by easy, economical movement of airfreight consignments across national boundaries, through simple, standard, Customs and other official control procedures and documentation;

have agreed as follows:

The Agreement shall be amended by incorporation of Articles XX as set forth below:

ARTICLE 1. DEFINITIONS

For the purpose of this Protocol – unless otherwise stated the term:

“Protocol”

means this Protocol and any amendments thereto;

“Air cargo transport”

means the public carriage of cargo by aircraft for remuneration , whether in scheduled air service or charter air service, including surface transportation when incidental to movements by air and when covered by the contract of carriage;

“Air cargo service provider”

means a designated air carrier and any other provider of services related to air cargo transport, including, but not limited to, multimodal operations, freight forwarding, express operations, brokerage services, etc.

“Cargo”

means freight and mail, without prejudice to the Acts of the Universal Postal Union and to national legislation concerning postal services;

“Contracting Party”

means either Party that is signatory to this Agreement, (whether an individual State or a group of States);

“Convention”

means the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944; and includes: a) any amendment that has entered into force under Article 94(a) of the Convention and that has been ratified by contracting parties to this Agreement, and b) any Annex or any amendment thereto adopted under Article 90 of the Convention insofar as such Annex or amendment is at any given time effective for contracting parties;

“Designated air carrier”

means an air carrier designated and authorised in accordance with Article XX of this Agreement;

“Dry lease”

means the lease of an aircraft where the aircraft is operated under an AOC (Air Operators Certificate) of the lessee. It is a lease of an aircraft without crew operated under the commercial control of the lessee and using the lessee’s air carrier designator code and traffic rights.

“Ground handling”

means services necessary for an aircraft’s arrival at, and departure from, an airport, and services relating to the loading, unloading, handling and storage of air cargo at the airport, but excludes those services provided by air traffic control.

“International air transportation”

means air transportation that passes through the air space over the territory of more than one state.

“Price”

means any fare, rate or charge for the carriage of cargo in air transportation by air service providers, including their agents, and the conditions governing the availability of such fare, rate or charge.

“Traffic right”

means the right to load, transport cargo by air, and unload cargo for remuneration without in any way affecting the right to take on or put down passengers ;

"Territory"

means the land areas under the sovereignty, jurisdiction, protection, or trusteeship of a State, and the territorial waters adjacent thereto;

“Wet lease”

means the lease of an aircraft where the aircraft is operated under the AOC of the lessor. It is a lease of an aircraft with crew, operated under the commercial control of the lessee and using the lessee’s air carrier designator code and traffic rights.

ARTICLE 2. COMMERCIAL PRESENCE, DIVERSIFICATION INTO OTHER SERVICES, AND OPERATIONS

Air cargo service providers of each Contracting Party shall be allowed:

1. to establish in the territory of the other Contracting Party offices for the promotion and sale of air transportation as well as other facilities, such as warehousing, required for the provision of the direct/indirect air transportation to be carried out pursuant to this Agreement.
2. to enter into all aspects of air cargo related business, including but not limited to the lease/purchase of warehouse space; the right to engage directly in freight forwarding in its own right.
3. to bring in and maintain in the territory of the other Contracting Party - in accordance with the laws and regulations of that other Contracting Party relating to entry, residence and employment - managerial, sales, technical, operational and other specialist staff required for the provision of air transportation and related services.
4. to engage, in the territory of the other Contracting Party, directly and, at that air carrier's discretion through its agents, in the sale of air transportation and related services in the currency of the other Contracting Party and at rates which that air carrier may charge for the transportation concerned under Article 6.
5. to issue and use its own air waybills, as well as to use and issue air waybills of other air service providers of the other Contracting Party if so authorised.
6. to use any brand name or corporate identity available to an air service provider under applicable national and international law.
7. to pay for local expenses in the territory of the other Contracting Party, including purchases of fuel, in local currency or, at the option of the air carriers and air cargo service providers and where authorised, in any freely convertible currency; and

8. to convert and remit abroad all local revenues from the sale of air cargo transport services and associated services in excess of sums locally disbursed, without restriction, discrimination or taxation in respect thereof at the rate of exchange applicable as of the date of request for conversion and remittance, and shall not be subject to any charge except for normal service charges collected by banks for such transactions.

ARTICLE 3. LEASING

1. Each Contracting Party shall require that authorisation be obtained by a designated air carrier prior to its exercise of rights conferred by this Agreement where such exercise entails the use of an aircraft leased from another air carrier.

2. Neither Contracting Party shall prevent any designated air carrier of the other Contracting Party from enjoying any right conferred by this Agreement solely on the grounds that the aircraft to be used by such designated air carrier is leased, provided that:

- a. in the case of a dry leased aircraft, all of the functions and duties in respect of the leased aircraft under Articles 12, 30, 31 and 32 (a) of the Convention are transferred to the authorities of the lessee in accordance with Article 83 bis of the Convention.
- b. in the case of a wet leased aircraft, it is --
 - i) registered in a State that maintains standards and recommended practices at least equivalent to the standards the relevant Contracting Party would require for issuing AOC's under its own laws and regulations, and
 - ii) operated by an air carrier duly licensed, according to the existing air service agreement between the two contracting parties, and designated by the contracting party in which it is established.
- c. such leases are not designed to provide market access for nationals from a third country.

3. Neither Contracting Party shall prevent its own air carriers from entering into a lease arrangement of aircraft registered in another Contracting Party, provided that the requirements set forth in subparagraphs 2(a) and 2(b) of this Article as well as the requirements of the Safety Article of this Agreement are met.

4. No air carrier of a Contracting party shall be permitted to wet lease aircraft registered in a third country except for a temporary period.

ARTICLE 4. GROUND HANDLING

1. Each Contracting Party shall, on a non-discriminatory basis, authorise air cargo service providers of the other Contracting Party, at their choice, to;

- a. perform their own ground handling, including the handling of aircraft chartered or leased for carrying cargo by an air cargo service provider (and the cargo on such aircraft), ("self-handling");
- b. perform ground handling for other air carriers; and/or
- c. select among competing ground handling service providers.

2. Ground handling and other ancillary services such as warehousing and storage, shall be open to freely competing services, be cost efficient and available on an equal basis to all air cargo service providers. Charges shall not exceed the full costs of services provided; such services shall be comparable to the kind and quality of services as if self-handling were possible.

3. These rights shall be subject only to physical constraints resulting from reasonable considerations of airport safety, security or capacity, it being understood that the Contracting Party in whose territory such constraints occur shall provide appropriate evidence thereof. Where due to safety, security or capacity reasons it is not possible to permit free competition in the provision of groundhandling for air cargo service providers, national competition or anti-trust laws shall apply. In the event of exemptions being provided for monopoly suppliers of air cargo handling services, all such monopolies should be subject to public tendering procedures or requirements”.

4. Any air cargo service provider of either Contracting Party shall be allowed to enter into co-operative arrangements with any other air cargo service provider(s) and any other interested person(s) or body (bodies), provided such arrangements meet the requirements established in respect thereof under the legislation of the other Contracting Party concerned:

- a. for the purpose of resolving problems caused by insufficient capacity to provide, at any time, customs, technical or operational services and facilities, including handling and other ground services and facilities, and
- b. for the purpose of achieving a more efficient use of aircraft, staff or facilities, assisting - at least temporarily - less developed air carriers, or simplifying technical and operational conditions and do not, without the approval of the other Contracting Party, result in the independent exercise by any air carrier participating therein of traffic rights which that air carrier is otherwise not permitted to exercise.

ARTICLE 5. INTERMODAL SERVICES

Air cargo service providers of the contracting parties shall be permitted to employ any surface transport for air cargo to or from any points in the territories of the contracting parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport air cargo in bond. Such air cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Air cargo service providers may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other air carriers and other air cargo service providers. Such intermodal cargo services shall be subject to relevant national laws and regulations to be applied on a non-discriminatory basis.

ARTICLE 6. PRICES

1. Each Contracting Party shall allow rates for air cargo transportation, including intermodal transportation and ancillary services, to be established by air cargo service providers of the Contracting Party based upon commercial considerations in the marketplace. Intervention by the contracting parties shall be limited to the transparent and non-discriminatory application of national competition and trade practices law.

2. Each Contracting Party shall allow intermodal cargo services to be offered at a single through rate for the air and surface transportation combined.

ARTICLE 7. CONSUMER PROTECTION

Air cargo service providers shall supply, in the interest of consumer protection to air cargo transport users, upon request, and provided that the air cargo transport users have a legitimate interest in such information, all relevant information (change of gauge, blocked space agreements, code sharing and interline agreements) concerning the transportation of air cargo.

ARTICLE 8. CUSTOMS DUTIES AND TAXES

1. On arriving in the territory of a Contracting Party, aircraft engaged in international air transportation by air cargo service providers of the other Contracting Party, their regular equipment, ground equipment, fuel, lubricants, consumable technical supplies, spare parts including replacement engines, and aircraft stores and other items intended for or to be used solely in connection with the operation or servicing of aircraft engaged in international air transportation under this agreement, shall be relieved from customs duties, excise taxes, and similar fees and charges imposed by the national authorities, not based on the cost of services provided, provided such equipment and supplies remain on board the aircraft.

2. There shall also be relief, on the basis of reciprocity, from the duties, taxes, fees and charges referred to in paragraph 1 of this Article, with the exception of charges based on the cost of the service provided:

- a. aircraft stores introduced into or supplied in the territory of either Contracting Party, and taken on board, within reasonable limits, for use on outbound aircraft engaged in international air transportation by the air cargo service provider(s) of the other Contracting Party, even when these stores are to be used on a part of the journey performed over the territory of the Contracting Party in which they are taken on board; and
- b. ground equipment, security equipment and spare parts including engines introduced into the territory of a Contracting Party for the servicing, maintenance or repair of aircraft engaged in international air transportation under this agreement by the air cargo service provider(s) of the other Contracting Party; and
- c. fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of either Contracting Party for use in aircraft engaged in international air transportation under this Agreement by the air cargo service provider(s) of the other Contracting Party, even when these supplies are to be used on a part of the journey performed over the territory of the Contracting Party in which they are taken on board; and
- d. Equipment and supplies referred to in paragraphs 1 and 2 of this Article may be required to be kept under the supervision or control of the appropriate authorities.

3. The reliefs provided for by this Article shall also be available where the air cargo service provider(s) of either Contracting Party have contracted with any other air cargo service provider(s) for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraphs 1 and 2 of this Article.

4. A Contracting Party shall use its best efforts to secure for the air cargo service provider(s) of the other Contracting Party relief from duties, taxes, charges and fees imposed by State, regional and local authorities on the items specified in paragraphs 1 and 2 of this Article, as well as from fuel through-put

charges, in the circumstances described in this Article, except to the extent that the charges are based on the actual cost of providing the service.

ARTICLE 9 CARGO IN TRANSIT OR UNDER BOND

Cargo in direct transit and not leaving the airport or carried under bond shall, except in respect of security measures against violence and air piracy, be subject to no more than a simplified control by either Contracting Party. Cargo in direct transit or carried under bond shall be relieved from customs duties and other similar charges. Laws and regulations in respect of cargo in transit shall be applied in a non-discriminatory way

ARTICLE 10 EXPEDITING CUSTOMS CLEARANCE

Each Contracting Party shall, with respect to air cargo transportation covered by this Agreement,

1. Kyoto Convention

implement, at the earliest possible time, the “International Convention on the Simplification and Harmonization of Customs procedures (Kyoto Convention) – Revised version (June 1999)

2. Customs scope of responsibility

- a. delegate authority to Customs or, in special circumstances, to one of the other official control agencies. where the nature of a consignment could attract the attention of two or more such agencies;
- b. ensure that, at the request of the person concerned, and for reasons deemed valid by Customs, the latter shall, subject to the availability of resources, perform the functions laid down for the purposes of a Customs procedure or practice outside the designated hours of business and/or away from Customs offices. Any expenses chargeable by Customs shall be limited to the approximate cost of the services rendered.
- c. provide a legal right for an initial appeal to Customs and, where an appeal to Customs is dismissed, the right of a further appeal to an authority independent of the Customs administration.
- d. ensure that all relevant information relating to Customs laws and procedures is readily available to any interested person, and that, at the request of the interested person, the Customs shall provide as quickly and accurately as possible, information relating to the specific matters raised by the interested person and pertaining to Customs law or procedures.

3. Customs efficiency (rapid, transparent, risk analysis system)

- a. ensure that their Customs services use risk analysis to determine which goods and means of transport should be examined and the extent of that examination.
- b. ensure that Customs processes include controls based on the audit and acceptance of traders' normal records.
- c. ensure that national legislation provides for:

- i) electronic commerce methods as an alternative to paper-based documentary requirements
 - ii) electronic as well as paper-based authentication methods
- d. require their Customs services to:
 - i) accept and use relevant international standards
 - ii) develop systems to grant release/clearance on receipt of a specified single set of central data, built up on a cumulative basis by direct electronic input from relevant trade participants.
- e. establish regulations and contractual arrangements with operators and other parties to provide for in-transit movements of cargo under bond within the state. Such movements may include-
 - i) the transfer of inbound containerised cargo to off-airport facilities for unloading and clearance, and
 - ii) the unloading of inbound cargo at the first airport of arrival, transfer to another aircraft or other means of transport and subsequent transport to another Customs office for clearance or re-export.
- f. ensure that electronic systems for the release and clearance of air cargo cover the transfer of cargo between air and other means of transport.

4. *Special Customs Provisions*

- a. provide simplified release and clearance procedures for the equipment and supplies referred to in paragraphs 1 and 2 of Article 8.
- b. provide simplified release and clearance procedures for consignments meeting specified criteria such as:
 - i) certain value limits below which consignments may be cleared immediately on the basis of data from the cargo manifest and air waybill, and relieved from duty or taxes or other charges
 - ii) certain value limits below which consignments may be cleared immediately on the basis of a simple declaration by the importer (in addition to the cargo manifest and air waybill) and payment of any applicable duties, taxes or other charges.
- c. provide, for consignments not meeting the criteria in a) above, for the immediate release of goods on the basis of minimal, standard, information submitted at a specified time prior to arrival of the cargo and an adequate guarantee for subsequent completion of all documentary requirements and payment of applicable duties, taxes and other charges.
- d. ensure that for authorised persons who meet criteria specified by Customs, including an appropriate record of compliance with Customs requirements and a satisfactory system for managing their commercial records the Customs shall provide for:
 - i) release of the goods on the provision of the minimum information necessary to identify the goods and permit the subsequent completion of the final Goods Declaration;

- ii) clearance of the goods at the declarant's premises or another place authorised by the Customs;
- iii) acceptance of a single Goods Declaration for all imports or exports in a given period, where goods are imported or exported frequently by the same person;
- iv) use of authorised persons commercial records to self-assess their duty and tax liability, and, where appropriate, to comply with other Customs requirements;
- v) acceptance of lodgement of the Goods Declaration by means of an entry in the records of the authorised person, to be supported subsequently by a supplementary Goods Declaration.

ARTICLE 11 DOCUMENTARY SIMPLIFICATION

Each Contracting Party shall:

- a. instruct its control agencies to use the UN/ECE layout key as the basis for any new or revised paper documents;
- b. seek to replace supporting certificates and other official paper documents, customarily carried and presented with the goods, by electronic communications between relevant government agencies of the countries concerned, testifying that specific consignments have certification status;
- c. accept airworthiness certificates or other documents showing compliance with aviation requirements for the purpose of Customs verification of imports of spare parts for use in aircraft in international services.
- d. endeavour to achieve the highest possible standards of harmonisation of documentation.

ARTICLE 12. ENTRY INTO FORCE

This Protocol shall enter into force on the day on which both Parties have informed each other by an exchange of diplomatic notes that the necessary internal procedures for entry into force of this Protocol have been completed.

PART III

PRINCIPLES FOR THE LIBERALIZATION OF AIR CARGO SERVICES

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LIBERALISATION OF AIR CARGO SERVICES

PREAMBLE

Parties to this Agreement

Desiring to facilitate the expansion of international air cargo transport opportunities;

Recognising that efficient, innovative and competitive international air cargo services enhance trade, the welfare of consumers and economic growth;

Desiring to promote an international air cargo transport system based on competition among air carriers and other air cargo service providers in the marketplace;

Noting the need to promote the growth of airfreight through liberalisation of ancillary services, including, in particular, the ability of air transport providers to diversify freely into related commercial activities, including ground handling, intermodal operations, integrated deliveries, warehousing and freight forwarding;

Recognising the necessity of supporting such service liberalisation by easy, economical movement of airfreight consignments across national boundaries, through simple, standard, Customs and other official control procedures and documentation;

Hereby, without prejudice to any stronger liberalisation commitments they have already undertaken elsewhere, agree as follows.

ARTICLE 1. DEFINITIONS

For the purpose of this Agreement – unless otherwise stated the term:

“Aeronautical authorities”

means, for each Contracting State, the agency or agencies authorised to license and regulate the provision of air transport services to, from, and within the territory of that Contracting State, as identified more specifically in Annex 1;

“Agreement”

means this Agreement, its Annexes, and any amendments thereto;

“Air cargo transport”

means the public carriage of cargo by aircraft for remuneration , whether in scheduled air service or charter air service, including surface transportation when incidental to movements by air and when covered by the contract of carriage;

“Air cargo service provider”

means a designated air carrier and any other provider of services related to air cargo transport, including, but not limited to, multimodal operations, freight forwarding, express operations, brokerage services, etc.

“Cargo”

means freight and mail, without prejudice to the Acts of the Universal Postal Union and to national legislation concerning postal services;

“Contracting Party”

means any Party that is signatory to this Agreement, whether an individual State or a group of States;

“Convention”

means the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944; and includes: a) any amendment that has entered into force under Article 94(a) of the Convention and that has been ratified by contracting parties to this Agreement, and b) any Annex or any amendment thereto adopted under Article 90 of the Convention insofar as such Annex or amendment is at any given time effective for contracting parties;

“Designated air carrier”

means an air carrier designated and authorised in accordance with Article 3 of this Agreement;

“Dry lease”

means the lease of an aircraft where the aircraft is operated under an AOC (Air Operators Certificate) of the lessee. It is a lease of an aircraft without crew operated under the commercial control of the lessee and using the lessee’s air carrier designator code and traffic rights.

“Ground handling”

means services necessary for an aircraft’s arrival at, and departure from, an airport, and services relating to the loading, unloading, handling and storage of air cargo at the airport, but excludes those services provided by air traffic control.

“International air transportation”

means air transportation that passes through the air space over the territory of more than one state.

“Principal place of business”

means the primary corporate headquarters of an air carrier company⁴

“Price”

means any fare, rate or charge for the carriage of cargo in air transportation by air service providers, including their agents, and the conditions governing the availability of such fare, rate or charge.

“Traffic right”

means the right to load, transport cargo by air, and unload cargo for remuneration without in any way affecting the right to take on or put down passengers ;

"Territory"

means the land areas under the sovereignty, jurisdiction, protection, or trusteeship of a State, and the territorial waters adjacent thereto;

“User charges”

means a charge imposed on air cargo service providers for the provision of airport, air navigation or aviation security facilities or services including related services and facilities;

“Wet lease”

means the lease of an aircraft where the aircraft is operated under the AOC of the lessor. It is a lease of an aircraft with crew, operated under the commercial control of the lessee and using the lessee’s air carrier designator code and traffic rights.

⁴

There is as yet no widely accepted definition of “principal place of business” as the term might be used to establish an air carrier’s nationality. ICAO 's Air Transport Regulation Panel suggests that, in assessing a carrier's principal place of business, a state should take account whether a carrier has a substantial amount of its operations and capital investment in physical facilities in the designating state, pays income tax and registers its aircraft there, and employs a significant number of nationals in managerial, technical and operational positions. The definition, interpreted in the above sense, is designed to leave no doubt that the company is “based primarily in the territory in which it has its “principal place of business.”

I. LIBERALISATION OF COMPETITIVE MARKET ENTRY

ARTICLE 2. GRANT OF TRAFFIC RIGHTS

Notwithstanding the provisions of other air service agreements between the contracting parties, each contracting party grants to all other contracting parties the following rights for the conduct of international air cargo transport services by the air carriers of such other contracting parties:

Alternative 1

- a. the right to fly across its territory without landing;
- b. the right to make stops in its territory for non-traffic purposes;
- c. the traffic rights on routes between two airports within the territory constituted by the contracting parties. **OR**

Alternative 2⁵

- a. the right to fly across its territory without landing;
- b. the right to make stops in its territory for non-traffic purposes;
- c. the traffic right to/from another Contracting Party which has licensed and designated the air carrier;
- d. the right, on flights operated for the purpose of exercising the right conferred by subsection (c) above, to take on board or unload in its territory cargo for carriage to or carriage from the territory of any Contracting Party or Parties other than the Contracting Party that designated the air carrier (5th freedom); **OR**

[*Alternate* (d) the right on flights not servicing the territory of the Contracting Party that designated the air carrier to take on board or unload in its territory cargo destined for or arriving from the territory of any Contracting Party or Parties other than the Contracting Party that designated the air carrier (7th freedom – limited between territories of contracting parties);]⁶

- e. the right, on flights operated for the purpose of exercising the right conferred by subsection (c) above, to take on board or unload in its territory cargo destined for or arriving from the territory of any other State or States (5th freedom); **OR**

² If possible, grant of traffic rights should cover a-g. However contracting parties might agree on a less liberal regime.

⁶ Subsection (d) covers the provision by the air carrier of one contracting party of air services between **two other contracting parties**. The first version is a conventional grant of fifth freedom rights – i.e., on flights that operate to or from the territory of the contracting party that designated the air carrier. The second version [*Alternate* (d)] does not require that such flights begin or end in the territory of the contracting party designating the air carrier. The latter formulation represents a grant of seventh freedom rights, albeit limited to services between the territories of contracting parties.

[*Alternate* (e) the right to take on board or unload in its territory cargo destined for or arriving from the territory of any other State or States (7th freedom – flights between the territories of the contracting parties and all other States);]⁷

- f. the right, on flights operated for the purpose of exercising the right conferred by subsection (c) above, to take on board cargo at one point in its territory and to off-load that cargo at another point in its territory (8th freedom fill-up cabotage)⁸ ; **OR**

[*Alternative* (f) the right to take on board cargo at one point in its territory and to off-load that cargo at another point in its territory (sometimes referred to as the “ninth freedom”)]
and

- g. the rights otherwise specified in this Agreement.

⁷ Subsection (e) is addressed to the provision of air services by the air carrier of one contracting party between the territory of another contracting party and any other State, **whether or not signatory to the Agreement**. The first version is a conventional grant of fifth freedom rights – i.e., limiting the right to flights that begin or end in the territory of the contracting State that designated the air carrier. The second version (“*Alternate* (e)”) represents a grant of unlimited seventh freedom rights – i.e., discarding the requirement that such flights begin or end in the territory of the contracting party that designated the air carrier and expanding the right granted in *Alternate* (d) to flights between the territories of the contracting parties and all other States.

In both these cases the actual exercise depends on the availability of 5th and 7th freedoms in the Air Service Agreements between a contracting party and third countries; this could lead to competitive distortions among contracting parties as not all of them have the negotiating power to achieve 5th and 7th freedom rights with third countries.

⁸ Subsection (f) permits the operation of cabotage services by the air carriers of contracting parties within the territories of other contracting parties. This version allows only what is commonly referred to as “fill-up” cabotage – i.e., the ability to take on and discharge wholly domestic traffic within the territory of another contracting party, but only on flights that begin or end in the territory of the contracting party designating the air carrier. (This right is sometimes referred to as the “eighth freedom.”)

The second version (alternative (f)) would permit the air carriers of contracting parties to operate air services freely within the territories of other contracting parties without the need to begin and end flights in their own territories (sometimes referred to as the “ninth freedom”).

An argument has been made that, by prohibiting signatories from granting the privilege of carrying cabotage traffic to any other State “on an exclusive basis,” Article 7 of the Chicago Convention effectively prohibits States from entering into the kind of arrangement envisioned in Article 2(f). The better view, however, is that Article 7 of the Chicago Convention does not prohibit States from permitting each other’s designated air carriers to enjoy cabotage rights as long as the agreement does not include a commitment to deny other States similar privileges:

“The wording would seem to permit even the grant and receipt of cabotage rights on an exclusive basis, provided that it is not ‘specified’ in the agreement that these are exclusive rights. The net result is that States remain free to do what they like as long as they do not claim specifically that the privilege they are granting or receiving is exclusive.” Bin Cheng, *The Law of International Air Transport* (1962) at 315.

That view seems particularly compelling in the context of an Agreement which, like this one, is available to any State that is prepared to accept the obligations it creates subject to the agreement of the other contracting parties.

ARTICLE 3. DESIGNATION AND AUTHORIZATION

1. Each Contracting Party shall have the right to designate, on a non-discriminatory basis, any number of its air carriers for the conduct of international air cargo transport services in accordance with this Agreement and to withdraw or alter such designations. Such designations shall be transmitted to other contracting parties in writing through diplomatic channels.

2. On receipt of such a designation, and of an appropriate application by the designated air carrier in the form and manner prescribed for operating authorisations and technical permissions, a contracting party shall grant appropriate authorisations and permissions with minimum procedural delay, provided that:

Alternative 1

- a. the designated air carrier is incorporated in, has its principal place of business in the designated country and holds an AOC of the designating Party; **OR**

Alternative 2

- a. [substantial ownership and] effective control of that air carrier [are][is] vested in the Party designating the air carrier, nationals of that Party, or both][substantial ownership and effective control of that air carrier are vested in Contracting parties and/or their nationals;
- b. the designated air carrier is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Contracting Party considering the application or applications; and
- c. the Contracting Party designating the air carrier is maintaining and administering standards set forth in Article 14 (Safety) and Article 15 (Security) of this Agreement.

ARTICLE 4. REVOCATION AND SUSPENSION

1. A Contracting Party may refuse to grant a permission, may suspend or revoke such permission, or may impose such conditions as it deems necessary on the conduct by any designated air carrier of international air cargo in any case where such Contracting Party is satisfied that such designated air carrier:

- a. is not incorporated and does not have its principal place of business in the territory of another Contracting Party;
- b. does not hold a current license issued by the Aeronautical Authorities of that Contracting Party;
or
- c. has failed to comply with the laws and regulations referred to in Article 10 (Application of Laws) of this Agreement,
- d. Is subject to action in accordance with Article 15(2).

2. Unless immediate action is essential to prevent further non-compliance with subparagraph 1(c) and 1(d) of this Article, the rights established by this Article shall be exercised only after consultation with the other Contracting Party concerned. In accordance with Article 23, such consultations shall take place within thirty (30) days from the date a request is made by one Party, unless both Parties agree otherwise.

3. This Article does not limit the rights of a Contracting Party to withhold, revoke, limit or impose conditions on the operating authorisation or technical permission of a designated air carrier or air carriers of another Contracting Party in accordance with the provisions of Article 15 (Security).

ARTICLE 5. OPERATIONAL FLEXIBILITY

1. Operations

Designated air carriers, in conducting the air cargo transport services authorised pursuant to this Agreement, shall be permitted to --

- a. operate flights in either or both directions;
- b. combine different flight numbers within one aircraft operation; and
- c. omit stops at any point or points.

2. Capacity

Each Contracting Party shall allow the designated air carrier(s) of another Contracting Party to determine the frequency, type of aircraft, configuration and capacity to be used in conducting air cargo transport services pursuant to this Agreement based upon commercial considerations in the marketplace.

3. Change-of-Gauge; Interlining; Codesharing

- a. Designated air carriers of contracting parties may, on any flight, change aircraft in the territory of any other contracting party and at any point.
- b. For change-of-aircraft operations, a designated air carrier may use its own equipment and, subject to standards and requirements at least equivalent to the standards and recommended practices promulgated pursuant to the Convention, leased equipment under any type or form of lease agreement, and may operate under commercial arrangements (including but not limited to blocked space agreements, codesharing and interline agreements) with another carrier.
- c. A designated air carrier may use different or identical flight numbers for the sectors of its change-of-aircraft operations; position aircraft in the territory of any other Contracting Party at any airport open to international traffic; and may use other modes of cargo transport for any, all, or part of the specified routes.

ARTICLE 6. PRICES

1. Each Contracting Party shall allow rates for air cargo transportation, including intermodal transportation and ancillary services, to be established by air cargo service providers of a Contracting Party based upon commercial considerations in the marketplace. Intervention by the contracting parties shall be limited to the transparent and non-discriminatory application of national competition and trade practices law.

2. Each contracting party shall allow intermodal cargo services to be offered at a single through rate for the air and surface transportation combined.

ARTICLE 7. COMMERCIAL PRESENCE, DIVERSIFICATION INTO OTHER SERVICES, AND OPERATIONS

Air cargo service providers of any Contracting Party shall be allowed:

- a. to establish in the territory of any other Contracting Party offices for the promotion and sale of air transportation as well as other facilities, such as warehousing, required for the provision of the direct/indirect air transportation to be carried out pursuant to this Agreement,
- b. to enter into all aspects of air cargo related business, including but not limited to the lease/purchase of warehouse space; the right to engage directly in freight forwarding in its own right.
- c. to bring in and maintain in the territory of any other Contracting Party - in accordance with the laws and regulations of that other Contracting Party relating to entry, residence and employment - managerial, sales, technical, operational and other specialist staff required for the provision of air transportation and related services,
- d. to engage, in the territory of any other Contracting Party, directly and, at that air carrier's discretion through its agents, in the sale of air transportation and related services in the currency of that other Contracting Party and at rates which that air carrier may charge for the transportation concerned under Article 6,
- e. to issue and use its own air waybills, as well as to use and issue air waybills of other air service providers of contracting parties if so authorised,
- f. to use any brand name or corporate identity available to an air service provider under applicable national and international law,
- g. to pay for local expenses in the territory of any other Contracting Party, including purchases of fuel, in local currency or, at the option of the air carriers and air cargo service providers and where authorised, in any freely convertible currency, and
- h. to convert and remit abroad all local revenues from the sale of air cargo transport services and associated services in excess of sums locally disbursed, without restriction, discrimination or taxation in respect thereof at the rate of exchange applicable as of the date of request for conversion and remittance, and shall not be subject to any charge except for normal service charges collected by banks for such transactions.

ARTICLE 8. CONSUMER PROTECTION

Air cargo service providers shall supply in the interest of consumer protection to air cargo transport users upon request, and provided that the air cargo transport users have a legitimate interest in such information, all relevant information concerning the transportation of air cargo pursuant to paragraphs 3a-c of Article 5.

ARTICLE 9. LEASING

1. Each Contracting party shall require that authorisation be obtained by a designated air carrier prior to its exercise of rights conferred by this Agreement where such exercise entails the use of an aircraft leased from another air carrier.

2. No Contracting Party shall prevent any designated air carrier of another Contracting Party from enjoying any right conferred by this Agreement solely on the grounds that the aircraft to be used by such designated air carrier is leased, provided that

- a. in the case of a dry leased aircraft, all or part of the functions and duties in respect of the leased aircraft under Articles 12, 30, 31 and 32 (a) of the Convention are transferred to the authorities of the lessee in accordance with Article 83 bis of the Convention.
- b. in the case of a wet leased aircraft, it is --
 - (i) registered in a State that maintains standards and recommended practices at least equivalent to the standards the relevant Contracting Party would require for issuing AOC's under its own laws and regulations, and
 - (ii) operated by an air carrier duly licensed, according to the existing air service agreement between the contracting parties, and designated by the contracting party in which it is established.
- c. such leases are not designed to provide market access for nationals from a third country.

3. No Contracting Party shall prevent its own air carriers from entering into a lease arrangement of aircraft registered in another contracting party, provided that the requirements set forth in subparagraphs 2(a) and 2(b) of this Article as well as the requirements of the Safety Article of this Agreement are met.

4. No air carrier of a contracting party shall be permitted to wet lease aircraft registered in a third country except for a temporary period.

ARTICLE 10. APPLICATION OF LAWS

1. While entering, within, or leaving the territory of any Contracting Party, each designated air carrier shall comply with the laws and regulations of that Contracting Party relating to the operation and navigation of aircraft.

2. While entering, within, or leaving the territory of any Contracting Party, each air cargo service provider shall comply with the laws and regulations relating to the admission to or departure from its territory of crew and cargo on aircraft as well as the provision of air cargo related logistics business.

ARTICLE 11. FAIR COMPETITION

1. Each Contracting Party shall within its territory ensure that conditions of fair competition prevail among all air cargo service providers of the contracting parties in respect of any part or aspect of, or any matter related to, air transportation performed under this Agreement.

2. Each Contracting Party within its territory shall in particular:

- a. provide any air cargo service provider of any Contracting Party the opportunity to perform, and to compete in, air transportation under this Agreement on an economic and efficient basis, and
- b. within its legal powers ensure, or otherwise use its best efforts to ensure, that its own air cargo service provider and any other person or body under its jurisdiction do not affect unduly the opportunity for the air cargo service providers of any other Contracting Party to perform, and to compete in, air transportation under this Agreement, and
- c. in any other respect use its best efforts to avoid at any time situations to arise or to continue which unduly affect the opportunity for the air cargo service providers of any Contracting Party to perform air transportation under this Agreement and to compete in such transportation under conditions of fair competition.

3. No Contracting Party shall within its territory, in respect of air transportation performed under this Agreement by a designated air carrier of any other Contracting Party, without the agreement of that other Contracting Party, limit or restrict, or permit any person or body under its jurisdiction to limit or restrict, that air carrier's traffic, capacity, frequency of service, regularity of service, aircraft type(s), aircraft configuration(s), or rights specified in this Agreement, except as may reasonably be required for safety, customs, technical, operational or environmental reasons under the uniform conditions envisaged in Article 15 of the Convention, provided that:

- a. such conditions do not affect fair competition,
- b. such conditions are applied without discrimination to all air carriers of the contracting parties and are not more restrictive than those applied to any air carrier of any State not party to this Agreement, and
- c. the contracting party wishing to apply such conditions provides, as soon as possible, appropriate evidence to the other contracting parties of the need for such conditions, so as to allow for any consultations pursuant to Article 23 prior to the date of effectiveness of such conditions.

4. No Contracting Party shall within its territory impose, or permit any person or body under its jurisdiction to impose, on an air cargo service provider of any other Contracting Party any requirement or condition, including a first refusal requirement, uplift ratio, or no-objection fee, which is inconsistent with the purposes of this Agreement.

5. Each Contracting Party shall facilitate, to the greatest possible extent, the conduct by air cargo service providers' under this Agreement, in particular by minimising administrative requirements and procedures.

6. A Contracting Party shall promptly examine concerns notified by any other Contracting Party that unfair competitive behaviour by its air service provider(s) is adversely affecting the air service provider(s) of the other Contracting Party. Following such examination, the first Contracting Party shall, when appropriate, take steps following notice from the other Party to ensure that fair and equal opportunity to compete exists.

ARTICLE 12. PROMOTION OF CONVERGENCE OF COMPETITION POLICY

Where contracting parties differ in their approach to and intervention in competition policy, they should promote convergence of national competition policies and enforcement practices. This Article shall not however be subject to Article 24 (Dispute Settlement) of this Agreement.

ARTICLE 13. USER CHARGES

1. User charges imposed by the competent charging authorities or bodies of each contracting party on air cargo service providers of other contracting parties shall be just, reasonable, not discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be levied on air cargo service providers of one contracting party by another on terms not less favourable than the most favourable terms available to any other air carrier at the time the charges are levied .

2. User charges imposed by the competent charging authorities or bodies of one contracting party on air cargo service providers of other contracting parties may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full cost may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Contracting Party shall encourage consultations between the competent charging authorities or bodies in its territory and air cargo service providers using the services and facilities, and shall encourage the competent charging authorities or bodies and the air cargo service providers to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs 1 and 2 of this Article. Each Contracting Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before charges are made.

ARTICLE 14. SAFETY

1. Each Contracting Party shall recognise as valid, for the purpose of operating the air cargo transportation, certificates of airworthiness, certificates of competency, and licenses issued or validated by any other Contracting Party and still in force, provided that the requirements for such certificates or licenses are at least equal to the standards and recommended practices promulgated pursuant to the Convention or any other higher standard endorsed by a majority of contacting parties. Such endorsed standards are set out in Annex II.

2. A Contracting Party may, in accordance with Article 23, request consultations at any time concerning safety standards in any area relating to the design, certification, manufacture, continuing airworthiness, maintenance and operation of aircraft, and to the organisations and personnel involved in these tasks by any other Contracting Party. Such consultations shall take place within thirty days of that request.

3. Each Contracting Party reserves the right immediately to suspend or vary the operating authorisation of an air carrier or air carriers of another Contracting Party in the event that the competent safety authority of the first Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access for ramp inspection, failure to implement the recommendations made under paragraph 4 of this Article by an independent expert or otherwise, that immediate action is essential to the

safety of an air carrier operation. A list of the competent safety authorities of the contracting parties is specified in Annex I.

4. Upon request of a contracting party which considers that there are serious doubts about the safety oversight capabilities of the competent authority of another contracting party according to the standards established or set out in Annex II, the International Civil Aviation Organization shall be invited to carry out an investigation into the safety oversight capabilities of the competent authority concerned. The report shall, if necessary, make recommendations, including a timetable, for improvements to be implemented by the competent authority concerned. The report shall be communicated to all contracting parties.

ARTICLE 15. SECURITY

1. Each Contracting Party:

- a. reaffirms its commitment to act consistently with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 6, 1970, and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;
- b. shall require that operators of aircraft of its registry act consistently with applicable aviation security provisions established by the International Civil Aviation Organization; and
- c. shall provide maximum aid to any other Contracting Party with a view to preventing unlawful seizure of aircraft, sabotage to aircraft, airports, and air navigation facilities, and threats to aviation security; give sympathetic consideration to any request from any other Contracting Party for special security measures for its aircraft to meet a particular threat; and, when incidents or threats of hijacking or sabotage against aircraft, airports or air navigation facilities occur, assist any other Contracting Party by facilitating communications intended to terminate such incidents rapidly and safely.

2. When a Contracting Party or its Aeronautical Authorities have reasonable grounds to believe that any other Contracting Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Party may request immediate consultations with the aeronautical authorities of the other Contracting Party. Failure to reach a satisfactory agreement within fifteen (15) days from the date of such a request shall constitute grounds to withhold, revoke, limit or impose conditions on the operating authorisation and technical permissions of an air carrier or air carriers of the Contracting Party that has departed from the aviation security provisions of this Article. When required by an emergency, a Contracting Party may take interim action prior to the expiry date of fifteen (15) days.

II. ANCILLARY SERVICES

ARTICLE 16. GROUND HANDLING

1. Each Contracting Party shall, on a non-discriminatory basis, authorise air cargo service providers of other contracting parties, at their choice, to;

- a. perform their own ground handling, including the handling of aircraft chartered or leased for carrying cargo by an air cargo service provider (and the cargo on such aircraft), (“self-handling”);

- b. perform ground handling for other air carriers; and/or
- c. select among competing ground handling service providers.

2. Ground handling and other ancillary services such as warehousing and storage, shall be open to freely competing services, be cost efficient and available on an equal basis to all air cargo service providers. Charges shall not exceed the full costs of services provided; such services shall be comparable to the kind and quality of services as if self-handling were possible.

3. These rights shall be subject only to physical constraints resulting from reasonable considerations of airport safety, security or capacity, it being understood that the Contracting Party in whose territory such constraints occur shall provide appropriate evidence thereof. Where due to safety, security or capacity reasons it is not possible to permit free competition in the provision of groundhandling for air cargo service providers, national competition or anti-trust laws shall apply. In the event of exemptions being provided for monopoly suppliers of air cargo handling services, all such monopolies should be subject to public tendering procedures or requirements”.

4. Any air cargo service provider of any Contracting Party shall be allowed to enter into co-operative arrangements with any other air cargo service provider(s) and any other interested person(s) or body (bodies), provided such arrangements meet the requirements established in respect thereof under the legislation of the Contracting Party or Parties concerned:

- a. for the purpose of resolving problems caused by insufficient capacity to provide, at any time, customs, technical or operational services and facilities, including handling and other ground services and facilities, and
- b. for the purpose of achieving a more efficient use of aircraft, staff or facilities, assisting - at least temporarily - less developed air carriers, or simplifying technical and operational conditions and do not, without the approval of the Contracting Party or Parties, result in the independent exercise by any air carrier participating therein of traffic rights which that air carrier is otherwise not permitted to exercise.

ARTICLE 17. INTERMODAL SERVICES

Air cargo service providers of contracting parties shall be permitted to employ any surface transport for air cargo to or from any points in the territories of the contracting parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport air cargo in bond. Such air cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Air cargo service providers may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other air carriers and other air cargo service providers. Such intermodal cargo services shall be subject to relevant national laws and regulations to be applied on a non-discriminatory basis.

III. TRADE FACILITATION

ARTICLE 18. CUSTOMS DUTIES AND TAXES

1. On arriving in the territory of any Contracting Party, aircraft engaged in international air transportation by air cargo service providers of any other Contracting Party, their regular equipment, ground equipment, fuel, lubricants, consumable technical supplies, spare parts including replacement engines, and aircraft stores and other items intended for or to be used solely in connection with the operation or servicing of aircraft engaged in international air transportation under this agreement, shall be relieved from customs duties, excise taxes, and similar fees and charges imposed by the national authorities, not based on the cost of services provided, provided such equipment and supplies remain on board the aircraft.

2. There shall also be relief, on the basis of reciprocity, from the duties, taxes, fees and charges referred to in paragraph 1 of this Article, with the exception of charges based on the cost of the service provided:

- a. aircraft stores introduced into or supplied in the territory of any Contracting Party, and taken on board, within reasonable limits, for use on outbound aircraft engaged in international air transportation by the air cargo service provider(s) of any other Contracting Party, even when these stores are to be used on a part of the journey performed over the territory of the Contracting Party in which they are taken on board; and
- b. ground equipment, security equipment and spare parts including engines introduced into the territory of any Contracting Party for the servicing, maintenance or repair of aircraft engaged in international air transportation under this agreement by the air cargo service provider(s) of any other Contracting Party; and
- c. fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of any Contracting Party for use in aircraft engaged in international air transportation under this agreement by the air cargo service provider(s) of any other Contracting Party, even when these supplies are to be used on a part of the journey performed over the territory of the Contracting Party in which they are taken on board; and

3. Equipment and supplies referred to in paragraphs 1 and 2 of this Article may be required to be kept under the supervision or control of the appropriate authorities.

4. The reliefs provided for by this Article shall also be available where the air cargo service provider(s) of any Contracting Party have contracted with any other air cargo service provider(s) for the loan or transfer in the territory of any other Contracting Party of the items specified in paragraphs 1 and 2 of this Article.

5. Each Contracting Party shall use its best efforts to secure for the air cargo service provider(s) of any other Contracting Party relief from duties, taxes, charges and fees imposed by State, regional and local authorities on the items specified in paragraphs 1 and 2 of this Article, as well as from fuel through-put charges, in the circumstances described in this Article, except to the extent that the charges are based on the actual cost of providing the service.

ARTICLE 19 CARGO IN TRANSIT OR UNDER BOND

Cargo in direct transit and not leaving the airport or carried under bond shall, except in respect of security measures against violence and air piracy, be subject to no more than a simplified control by each Contracting Party. Cargo in direct transit or carried under bond shall be relieved from customs duties and other similar charges. Laws and regulations in respect of cargo in transit shall be applied in a non-discriminatory way

ARTICLE 20 EXPEDITING CUSTOMS CLEARANCE

Each Contracting Party shall, with respect to air cargo transportation covered by this Agreement,

1. Kyoto Convention

implement, at the earliest possible time, the “International Convention on the Simplification and Harmonization of Customs procedures (Kyoto Convention) – Revised version (June 1999)

2. Customs integrity and reliability

- a. delegate authority to Customs or, in special circumstances, to one of the other official control agencies, where the nature of a consignment could attract the attention of two or more such agencies;
- b. ensure that, at the request of the person concerned, and for reasons deemed valid by Customs, the latter shall, subject to the availability of resources, perform the functions laid down for the purposes of a Customs procedure or practice outside the designated hours of business and/or away from Customs offices. Any expenses chargeable by Customs shall be limited to the approximate cost of the services rendered.
- c. provide a legal right for an initial appeal to Customs and, where an appeal to Customs is dismissed, the right of a further appeal to an authority independent of the Customs administration.
- d. ensure that all relevant information relating to Customs laws and procedures is readily available to any interested person, and that, at the request of the interested person, the Customs shall provide as quickly and accurately as possible, information relating to the specific matters raised by the interested person and pertaining to Customs law or procedures.

3. Customs efficiency (rapid, transparent, risk analysis system)

- a. ensure that their Customs services use risk analysis to determine which goods and means of transport should be examined and the extent of that examination.
- b. ensure that Customs processes include controls based on the audit and acceptance of traders' normal records.
- c. ensure that national legislation provides for:
 - i) electronic commerce methods as an alternative to paper-based documentary requirements
 - ii) electronic as well as paper-based authentication methods

- d. require their Customs services to:
 - i) accept and use relevant international standards
 - ii) develop systems to grant release/clearance on receipt of a specified single set of central data, built up on a cumulative basis by direct electronic input from relevant trade participants.
- e. establish regulations and contractual arrangements with operators and other parties to provide for in-transit movements of cargo under bond within the state. Such movements may include-
 - i) the transfer of inbound containerised cargo to off-airport facilities for unloading and clearance, and
 - ii) the unloading of inbound cargo at the first airport of arrival, transfer to another aircraft or other means of transport and subsequent transport to another Customs office for clearance or re-export
- f. ensure that electronic systems for the release and clearance of air cargo cover the transfer of cargo between air and other means of transport.

4. *Special Customs Provisions*

- a. provide simplified release and clearance procedures for the equipment and supplies referred to in paragraphs 1 and 2 of Article 18.
- b. provide simplified release and clearance procedures for consignments meeting specified criteria such as:
 - i) certain value limits below which consignments may be cleared immediately on the basis of data from the cargo manifest and air waybill, and relieved from duty or taxes or other charges
 - ii) certain value limits below which consignments may be cleared immediately on the basis of a simple declaration by the importer (in addition to the cargo manifest and air waybill) and payment of any applicable duties, taxes or other charges.
- c. provide, for consignments not meeting the criteria in a) above, for the immediate release of goods on the basis of minimal, standard, information submitted at a specified time prior to arrival of the cargo and an adequate guarantee for subsequent completion of all documentary requirements and payment of applicable duties, taxes and other charges.
- d. ensure that for authorised persons who meet criteria specified by Customs, including an appropriate record of compliance with Customs requirements and a satisfactory system for managing their commercial records the Customs shall provide for:
 - i) release of the goods on the provision of the minimum information necessary to identify the goods and permit the subsequent completion of the final Goods Declaration;
 - ii) clearance of the goods at the declarant's premises or another place authorised by the Customs;

- iii) acceptance of a single Goods Declaration for all imports or exports in a given period, where goods are imported or exported frequently by the same person;
- iv) use of authorised persons commercial records to self-assess their duty and tax liability, and, where appropriate, to comply with other Customs requirements;
- v) acceptance of lodgement of the Goods Declaration by means of an entry in the records of the authorised person, to be supported subsequently by a supplementary Goods Declaration.

ARTICLE 22. DOCUMENTARY SIMPLIFICATION

Each Contracting Party shall:

- a. instruct its control agencies to use the UN/ECE layout key as the basis for any new or revised paper documents;
- b. seek to replace supporting certificates and other official paper documents, customarily carried and presented with the goods, by electronic communications between relevant government agencies of the countries concerned, testifying that specific consignments have certification status;
- c. accept airworthiness certificates or other documents showing compliance with aviation requirements for the purpose of Customs verification of imports of spare parts for use in aircraft in international services.
- d. endeavour to achieve the highest possible standards of harmonisation of documentation.

IV. FINAL CLAUSES

ARTICLE 22. EXISTING AGREEMENTS

This Agreement shall prevail over provisions in agreements concluded between contracting parties, to the extent that the same subject matter is governed by this Agreement except where more liberal economic agreements exist.

ARTICLE 23. CONSULTATIONS

1. The contracting parties shall endeavour to agree on the interpretation and application of this Agreement and, with a view to arriving at a mutually satisfactory resolution of any matter that affects its operation, consult regularly with each other. Any Contracting Party may request consultations with any other Party or Parties at any time for the purpose of examining the interpretation and application of any provision of this Agreement, including but not limited to, any actual or proposed measure or any matter that it considers affects the interpretation and application of the Agreement.

2. The requested Party or Parties shall provide adequate opportunity for such consultations and shall enter into them within thirty (30) days of the date of delivery of the request, unless otherwise agreed between the Parties, on matters which the requesting Party deems and states to be urgent. In all other cases

consultations shall commence at the earliest possible date, but not later than sixty (60) days from the date of receipt of the request for consultations, unless otherwise agreed by the Parties.

3. Each Contracting Party participating in such consultations shall prepare and present evidence in support of its position in order to facilitate informed, rational and economic decisions. Prior to the commencement of such consultations the contracting parties participating therein shall inform all other contracting parties of the nature and date of such consultations and such other contracting parties shall have the right to attend such consultations as an observer.

ARTICLE 24. DISPUTE SETTLEMENT

1. Any dispute arising under this Agreement that is not resolved by a first round of formal consultations may be referred, by agreement of the Parties, to some person or body for decision. If the Parties do not so agree, the dispute shall, at the request of either Party, be submitted to arbitration in accordance with the procedures set forth below.

2. Arbitration shall be by a tribunal of three arbitrators. The tribunal shall be constituted according to the following procedure:

- a. Within thirty (30) days after the receipt of a request for arbitration, each Party shall name one arbitrator. If there are two or more parties on a side of a dispute the Parties on that side shall jointly choose one member for the arbitration tribunal. Within sixty (60) days after these two arbitrators have been named, they shall, by agreement, appoint a third arbitrator, who shall act as President of the arbitral tribunal;
- b. If either Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph (a) of this paragraph, either Party may request the President of the Council of the International Civil Aviation Organisation to appoint the necessary arbitrator or arbitrators within thirty (30) days. If the President of the Council is of the same nationality as one of the Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.

3. Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules. The tribunal, once formed, may recommend interim relief measures pending its final determination. At the direction of the tribunal or at the request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than fifteen (15) days after the tribunal is fully constituted.

4. Except as otherwise agreed or as directed by the tribunal, each Party shall submit a memorandum within forty-five (45) days of the time the tribunal is fully constituted. Replies shall be due sixty (60) days later. The tribunal shall hold a hearing at the request of either Party or on its own initiative within fifteen (15) days after replies are due.

5. Any other Party to this Agreement with an interest in the dispute shall be provided with an opportunity to make its views known to the arbitral tribunal.

6. The tribunal shall, unless otherwise agreed by the Parties, attempt to render a written decision within thirty (30) days after completion of the hearing or, if no hearing is held, after the date both replies are submitted. The decision of the majority of the tribunal shall prevail.

7. The Parties may submit requests for clarification of the decision within fifteen (15) days after it is rendered and any clarification given shall be issued within fifteen (15) days of such request.

8. Each Party shall, to the degree consistent with its national law, give full effect to any decision or award of the arbitral tribunal.

9. The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Parties. Any expenses incurred by the President of the Council of the International Civil Aviation Organisation in connection with the procedures of paragraph (2)(b) of this Article shall be considered to be part of the expenses of the arbitral tribunal.

ARTICLE 25. APPLICABLE LAW AND JURISDICTION

1. The contracting parties shall take appropriate steps, in accordance with their respective constitutional procedures, to ensure that this Agreement and all of its provisions are incorporated in their respective national laws.

2. This Agreement shall be governed by international law and the contracting parties undertake to perform this Agreement in good faith.

3. In case a dispute between any two or more contracting parties arises under any provision of this Agreement, the dispute shall be considered to have arisen under international law, the determination and interpretation of which shall be resolved exclusively in accordance with the provisions of Article 24 of this Agreement.

ARTICLE 26. AMENDMENT OF THE AGREEMENT

This agreement shall be reviewed by the contracting parties at the request of any one of them and in any event two/three years after its entry into force. Amendments to the agreement shall require [the unanimous decision of all contracting parties] **OR** [a two-thirds majority of contracting parties] and shall enter into force upon the deposit of an instrument of acceptance by all [2/3] of the contracting parties, or at such a date as may be specified by the Contracting Party at the time of the adoption of the amendments.

ARTICLE 27. TERMINATION

Any Contracting Party may withdraw from participation in the Agreement by notifying all other contracting parties in writing and through diplomatic channel of its intention to do so. The Agreement shall cease to be in force for that contracting party one year after the day of notification. The Agreement shall remain in force for other contracting parties as long as it is adhered to by at least two contracting parties.

ARTICLE 28. ENTRY INTO FORCE

1. This Agreement shall be subject to approval or ratification in accordance with the contracting parties' own procedures and each contracting party shall notify to the other contracting parties of the completion of the procedures necessary for that purpose.

2. This Agreement shall enter into force on the date on which at least two contracting parties have approved or ratified its terms. Thereupon the Agreement shall become valid for each subsequent contracting party on the date it approves or ratifies the Agreement.

3. Upon the entry into force of this Agreement, the contracting parties shall arrange to register it and all amendments thereto with the International Civil Aviation Organisation pursuant to Article 83 of the Convention.

4. Any State [subject to the approval of all contracting parties] **OR** [subject of approval by a two thirds majority of contracting parties] may adhere to the Agreement by transmitting written notification of its approval or ratification to all other contracting parties through diplomatic channels.

ANNEX I

AERONAUTICAL AUTHORITIES OF THE CONTRACTING PARTIES

Contracting Party

ANNEX II

SAFETY STANDARDS ENDORSED BY THE MAJORITY OF CONTRACTING PARTIES