

Multilateralism in APEC : The Case of Air Transport Services*

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1. Introduction

APEC is an international organization which promotes a multilateral trading system in the region and also foster the development of member economics. Therefore, it can discuss multilateral liberalization of goods and services. To what extent can it pursue the multilateralization? Is there any inherent limitations or impediments in doing so?

APEC has reiterated its position in respect of trade that it is not an inward trade bloc but an open regional trade organization. In this respect, it seems to us that APEC has acted like a sub-regional organization of the

* 본고는 1997년 12월 서울에서 개최된 제1회 "APEC/PECC Transport Conference: Liberalization of Air Services"에서 발표된 논문이며, 이후의 진전 상황을 반영하여 다시 쓴 것임

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WTO (World Trade Organization).

Air transport services has been regarded as a kind of special service activities, different from other goods and services. When APEC for a discuss the possible liberalization of air transport services, what would be the result of such discussion in view of the characteristics of the said services and the WTO agreement?

2. Trade liberalization in APEC

Since APEC (Asia Pacific Economic Cooperation) who was formed in 1989, it has been focusing air two main activities, i. e. TILF (Trade and Investment Liberalization and Facilitation) and ECOTECH (Economic and Technical Cooperation), as two wheels to move the APEC.

Those two complement each other. The former can be expedited by strengthening the latter, vice versa. In APEC, ECOTECH has two different kinds : one which is not related to TILF, and the other which directly supports liberalization and facilitation.

At the beginning of APEC, it was perceived to pursue economic cooperation in a wider context without narrowly defining the term, as showed in the name "Asia Pacific Economic Cooperation."¹⁾

However, as time goes by, APEC was beginning to put a more emphasis on the aspect of trade and investment liberalization. For example, APEC leaders stated in Seattle in 1993, "The foundations of our economic growth has been the open multilateral trading system. Therefore, we pledge our utmost effort to bring the Uruguay Round to a successful conclusion".²⁾ They also added that "we continue to reduce trade and investment barriers

1) <http://www.apecsec.org.sg/>

2) Seattle Declaration, Seattle, the United States, 1993

so that our trade expands within the region and with the world and goods, services, capital and investment flow freely among our economies”³⁾.

At Bogor, Indonesia in 1994, Leaders set the target year to achieve the goal of free and open trade and investment in the region, i. e. no later than the year of 2010 for the industrialized economies, and no later than the year of 2020 for developing economies.⁴⁾

Furthermore, Leaders in Osaka in 1995 adopted the Osaka Action Agenda to carry through their commitments at Bogor, and committed themselves to maintaining open regional cooperation, emphasizing the enlarged participation by APEC economies in the WTO.⁵⁾

Leaders in Subic, the Philippines in 1996, presented the Manila Action Plan for APEC (MAPA) which contains the first steps of an evolutionary process of progressive and comprehensive trade and investment liberalization toward achieving Bogor goals by 2010/2020, in accordance with the Osaka Action Agenda.⁶⁾

In 1997 Leaders gathered in Vancouver, Canada to reaffirm the commitments to multilateral trading system in the region, and gave a strong support for the Early Voluntary Sectoral Liberalization(EVSL), according to which nine items were selected for the early liberalization from 1999.⁷⁾

In the meantime, no substantial achievement has been made in economic and technical cooperation, even though there are existing ten sectoral

3) Id.

4) APEC Leader's Declaration of Common Resolve, Bogor, Indonesia, Nov.15, 1994

5) Seventh Ministerial Meeting, Osaka, Japan, Nov.16-17, 1995

6) APEC Economic Leader's Declaration, From Vision to Action, Subic, the Philippines, Nov. 1996

7) APEC Economic Leader's Declaration, Vancouver, Canada, Nov. 1997

working groups⁸⁾ and several sectoral Ministerial Meetings.⁹⁾

Economic and technical cooperation aims to achieve sustained growth and equitable development by narrowing economic disparities among member economies in the region. Positive measures such as transfer of technology, and funding assistance from developed economies to developing ones are required to expedite and result in substantial progress in economic and technical cooperation.

Ministers confirmed the agreement of the establishment of SOM Subcommittee on economic and technical cooperation, in Vancouver in 1997, which is viewed as a parallel body with the Committee on Trade and Investment (CTI) already created years ago.

In sum, APEC has strengthened the activities for trade and investment liberalization and facilitation and will continue to do so in the years to come.

3. Review of Osaka Action Agenda (OAA)

OAA elaborates various principles, framework and concepts pertaining to both TILF and ECOTECH. Section A under part one of OAA illustrates general principles which are applied to the entire APEC liberalization and facilitation process to achieve the long-term goal of free and open trade and investment. As I would like to focus our discussion on air transport services, I will mention more relevant points thereto.

8) Industrial Science and Technology Working Group (IST), Human Resources Development Working Group (HRD), Regional Energy Cooperation Working Group (REC), Marine Resources Conservation Working Group (MRC), Telecommunications Working Group (TEL), Transportation Working Group (TPT), Tourism Working Group (TWG), Fisheries Working Group (FWG), Ad Hoc Policy Group Level Group on Small and Medium Enterprises (PLG-SME), Trade Promotion (TID)

9) Transportation, Science and Technology, Finance, Energy, Agriculture, etc.

The following general principles are the relevant principles to air transport services.¹⁰⁾

1. Comprehensiveness

The APEC liberalization and facilitation process will be comprehensive, addressing all impediments to achieving the long-term goal of free and open trade and investment

According to this principle, air transport services can be included in the APEC liberalization and facilitation.

2. WTO-Consistency

The liberalization and facilitation measures undertaken in the context of the APEC Action Agenda will be WTO-consistent

What entirely matters is the exacting meaning of WTO-Consistency principle. Is it to be interpreted as the exact copy of the WTO agreement or as the equivalent thereto in a broader context?

With this question unanswered, we have to see what the WTO agreement means regarding air transport services. The Annex on Air Transport Services to the WTO agreement which was agreed upon in Dec. 1994. is the relevant document to be referred.

It is noteworthy that the Annex confines the application of the agreement (e.g. most-favored-nation, national treatment) to only ancillary services (i.e. air transport selling, aircraft repair and maintenance, computer reservation system), excluding traffic rights-related services. Moreover it clearly says that traffic rights-related air transport services are not subject to the

10) Selected APEC Documents, Ministry of Foreign Affairs, 1996

application of the agreement for the time being, which means that such services can be the area of the application of the agreement subject to periodic reviews afterwards.

Therefore, when APEC fora talk about the liberalization of air transport services, it is required to define or clarify what air transport services exactly mean.

3. Comparability

APEC economies will endeavor to insure the overall comparability of their trade and investment liberalization and facilitation, taking into account the general level of liberalization and facilitation already achieved by each APEC economy.

While the extent and level of the liberalization of air transport services differ from economy to economy, it would be very difficult to pursue the principle of comparability in the region. Moreover, the principle may have to include the consideration of the general level of liberalization and facilitation in each economy, again varying to a great extent in the region.

8. Flexibility

Considering the different levels of economic development among the APEC economies and the diverse circumstances in each economy, flexibility will be available in dealing with issues arising from such circumstances in the liberalization and facilitation process.

As long as the economies, which are less liberalized in air transport services, insist on applying this principle, it would be difficult for APEC to pursue the liberalization of such services.

9. Cooperation

Economic and technical cooperation contributing to liberalization and facilitation will be actively pursued.

Relating to this principle, it would matter what ECOTECH really means as to air transport services. The Sections in Part One elaborates the APEC process of liberalization and facilitation. It comprises (a) actions by individual APEC economies ; (b) actions by APEC fora ; and (c) APEC actions selected to multilateral fora. In accordance with this process, each economy develops and implement its Action Plan pertaining to air transport services.

The Transportation Working Group (TPT-WG) has been discussing various subsections including air transport services for its actions. Each sectoral working group including TPT-WG should submit to its upper body such as the Senior Officials Meeting (SOM) the result of its discussion in the format of (a) the Matrix or TILF as well as (b) the Matrix on Ecotech.

4. Discussion at the TPT-WG

The First APEC Transportation Ministers Meeting which was held in Washington D.C. June, 1995 issued the joint Ministerial statement, as an outcome of the meeting. In the statement, Ministers expressed their ideas regarding Guiding Principles for Asia-Pacific Transportation as well as priorities for cooperation and action in the Transportation sector.

“Confining our discussion to air transport services, they emphasized transport policies promoting a more cooperative framework among member economies while achieving a more competitive environment among the industry players on the basis of fair, equitable, and mutually realizable opportunities for the transport industry to improve efficiency and reliability and enhance choices,” as a said principle.¹¹⁾

They also agreed “to promote, on the basis of fair and equitable access to markets, a more competitive transportation operating environment, and to address institutional constraints affecting the provision of transportation service in the region.¹²⁾ Recognizing the necessity of proceeding with consensus, Ministers agreed that a small group drawn from member economies should jointly prepare an options paper for consideration by all APEC members, on a consensus basis, for more competitive air services, with fair and equitable opportunity for all member economies.”

As we see the above statement, there is no such word as liberalization. Instead they added and emphasized the expression such as “more competitive air services”, “with fair and equitable opportunity” and “on a consensus basis”.

From the beginning of discussing this issue in APEC, there have been two different groups (one for the liberalization of air transport services consisting of the U.S., New Zealand Singapore, etc., the other against that consisting of Japan, China, Thailand, Indonesia, etc.)

The opposing group did not agree to even use the wording of liberalization. And it has always emphasized the rule of consensus, which is the APEC principle for decision-making. Even Ministers recognized “the difference in the stages of economic development and in the political, legal, and administrative systems, and with equal respect for the views of all participants.”

In accordance with the agreement at the first Ministerial Meeting, “the Small Group Meeting on More Competitive Air Service with Fair and Equitable Opportunity” was convened in Oct. 1995. The meeting which thirteen member

11) Guiding Principles for Asia-Pacific Transportation, Joint Ministerial Statement, the First APEC Transportation Ministerial Meeting, Washington D.C. June, 1995

12) id.

economies attended submitted the Options paper to the 9th TPT-WG Meeting of April 1996 with the understanding that the TPT-WG would consider it on a consensus basis and forward it to the Transport Ministers. The meeting also identified and recommended eight options (i. e. air carrier ownership and control tariffs, "doing business" matters air freight, multiple airline designation charter services, airlines cooperative arrangements, market access. However, the meeting itself did not agree on the actions to implement eight options.

In the meantime, the TPT-WG discussed the issue of categorization of air transport services, namely whether the said services should be under TILF Matrix or under ECOTECH Matrix. The TPT-WG meeting spent much time over this issue, mostly at the 9th and 10th TPT-WG meetings in 1996. In particular, the U.S. and Japan respectively showed a sharply different position and views regarding this issue. The lead shepherd of TPT-WG in vain sought a guidance from CTI on this issues. Some economies including Korea were relatively flexible on this matter. They actively participated in the discussion and also played as a mediator to solve the problem. As a result of a lengthy debate at the 10th TPT-WG meeting held in Phuket, Nov. 1996, it reached an agreement on this issue as follows¹³⁾:

Air Services

Note : This project has many components. All or some of these components may fall under ECOTECH subject to further consideration by the TPT-WG. The TPT-WG has provisionally categorized this project as TILF/ECOTECH in the transportation action program for the purpose of the TPT-WG's reports to other APEC fora. This categorization shall be subject to further consideration by the TPT-WG taking into account a decision by Transportation Ministers as to the future work of the group of experts on air services invited from the all member economies.¹⁴⁾

13) Report of the 10th TPT-WG, Phuket, Thailand, Nov. 1996

In accordance with this agreement, the TPT-WG has reported various TPT-WG projects reflecting this outcome to various APEC fora under TILF and ECOTECH Matrix.

Currently five projects are categorized under TILF. Whereas fifteen projects are categorized under ECOTECH out of a total 20 projects, only air services is categorized as TILF/ECOTECH.

The Ministers responsible for Transportation met again in Victoria, Canada, June 1997(The 2nd meeting), and issued the Joint Ministerial Statement regarding air services as follows¹⁵⁾:

“More Competitive Transportation Operating Environment”

18. Recognizing the mutually complementary and supportive relationship between liberalization, and facilitation, and economic and technical cooperation, and noting the importance of promoting a more competitive transportation operating environment, on the basis of fair, reciprocal and equitable access to markets and opportunity for all member economies :

- We endorse the Options Paper prepared by the Group on More Competitive Air Services with Fair and Equitable Opportunity (the Air Services Group). Further, we instruct the Transportation Working Group to reconvene the Air Services Group to analyze and prioritize the eighth options and prepare, on a consensus basis, a recommendation on the options to be developed and how they will be implemented. We direct the TPT-WG to submit for our consideration, by mid-1998, a comprehensive final report including recommendations on options to be implemented by each member economy as developed on a consensus basis by the TPT-WG.

14) Id.

15) Joint Ministerial Statement, the Second APEC Ministers Responsible for Transportation, Victoria, Canada, June, 1997

As a follow up to the agreement at the 2nd Transportation Ministerial Meeting, the Air Service Group (ASG) Meeting open to all member economies was convened in Singapore in Oct. 1997. Fourteen APEC member economies including Korea attended the meeting.

The ASG continued to discuss about eight options which were endorsed by the Ministers for Transportation. As a result, the ASG prioritised the eight options under three categories i. e. eight, medium and low priority, based on the urgency of the implementation for each of the options, and developed the recommendations for the options.¹⁶⁾ It also agreed to convene the next meeting in Singapore in late Feb. 1998 to complete its work, and to submit its recommendations to the TPT-WG at the 13th meeting in April 1998 for its consideration.

Option 1 : Air carrier ownership and control	(M)
2 : Tariffs	(M)
3 : Doing Business Mattes	(H)
4 : Air Freight	(Undecided)
5 : Multiple Airline designation	(H)
6 : Charter Services	(M)
7 : Airlines' Cooperative Arrangements	(H)
8 : Market Access	(M)

*H: High Priority, M: Middle Priority

The ASG held in Singapore in Feb. 1998, as envisioned, submitted the report to the 13th meeting of TPT-WG, the content of which was basically the same as that of ASG meeting of Oct. 1995 in Singapore. The 13th TPT-WG meeting endorsed the report as submitted. It is to be noted that some economies (e.g., Japan, Thailand) showed reluctance to implement the recommendations as suggested by ASG.

16) Report of the Air Services Group Meeting, Singapore, Oct. 1997

5. Conclusion

Even though air transport services is increasingly regarded as an economic activity, subject to multilateral liberalization, it is still viewed as somewhat exceptional, in that market access is predominantly achieved under the current bilateral negotiation regime, and mfn principle is not applicable.

The U.S. has been actively selling its Open-Sky initiatives which are more often than not controversial to as many countries as possible in the world. It concluded open sky agreements with some smaller European countries, and later expanding to larger countries such as Germany. And it continues to persuade APEC member economies to follow its open sky initiatives. Some APEC economies (e.g., Singapore, New Zealand, Chinese Taipei, Malaysia, Korea, etc.) have already concluded the agreement with the U.S. or others in progress.

The spread of the open sky gospel initiated by the U.S. to the Asia-Pacific will be likely to expedite and deepen the level and contents of the liberalization of air transport services.

Notwithstanding the APEC principle of WTO-consistency, APEC is not likely to follow the same path taken by the WTO regarding air transport services, in view of the recent development at the Ministerial meetings, TPT-WG meetings and ASG meeting. In other words, APEC is more flexible in taking initiatives as to multilateral liberalization of air transport services than the WTO.

When the Ministers endorse the recommendations on Options, it will take the form of the collective action plan by member economies, which is different from the WTO formula of multilateral trade liberalization including mfn. and national treatment. Moreover, the APEC decision-making, on the

basis of consensus, will make the process of multilateralization more difficult.

In sum, the pace and level of the multilateralization regarding air transport service are subject to an agreement at the various transport sector fora which involve the will of each member economy.