

# 4<sup>th</sup> Annual Managing Airline Operating Costs Conference

## EU-US Open Skies Agreement: Its Effect on Airline Competition



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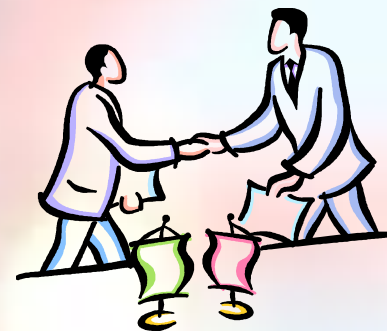


# A New Aeropolitical Regime

**Big Date:** March 2008 → U.S./EC Air Transport Agreement Goes Into Provisional Effect

## What's on the Horizon?

- Second Stage Negotiations
- Assessment of decades-old policies in the light of long-term interests
- U.S Presidential Election → Bad time for bold initiatives?



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# Second Stage Timetable

- March 30, 2008 – *Agreement goes into provisional effect*
- May 30, 2008 – *Parties start negotiations*
- November 30, 2009 – *Review of progress begins*
- November 30, 2010 – *If no second stage agreement, notice of suspension*
- March 2012 – *Next IATA season begins, suspension takes effect*



# The Political Challenge of Authentic Liberalization

## The Situation in the United States

- U.S. DOT Notice of Proposed Rulemaking
- U.S. Carriers Already Have Access Rights (90+ Open Skies Agreements)
- Fly America Program

**Bottom Line:** Time to move beyond bilaterals within the framework of the “Chicago system”

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# Achievements of the First Stage

## *Quaestio Disputata de Compositio*

**Et Quod:** The 2007 U.S./EC Agreement is something new

**Sed Contra:** It is a further iteration of the bilateral model

**Respondeo:** Many features go beyond the conventional open skies template

**Conclusio:** The 2007 U.S./EC Agreement is only a staging-post to true liberalization



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# The Open Aviation Area

“Beyond Open Skies” Paradigm...

## Open Aviation Area

1. Full freedoms of the air extended to both parties
2. Removal of investment restrictions by both parties
3. Unrestricted wet leasing
4. Commitment to regulatory convergences and harmonization standards at a high common level in safety, security, operations, competition, state subsidies, and the environment

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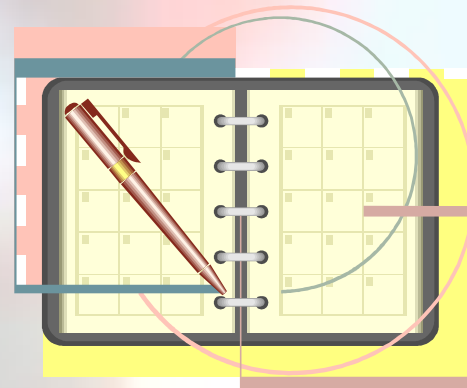
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# The Second Stage Agenda

## Potential Items Drawn From the OAA and UK/Singapore Agreements

1. Cabotage rights
2. Expanding safety cooperation to include “ramp” inspections
3. Full embrace of the ECAA States
4. Unlimited seventh freedom right for cargo and passenger airlines
5. Special labor provisions including social protections for airline workers and amendment of immigration laws to allow exercise of cabotage, wet leasing, and other operations
6. Reciprocal investment rights
7. Deeper agreements on convergence and harmonization



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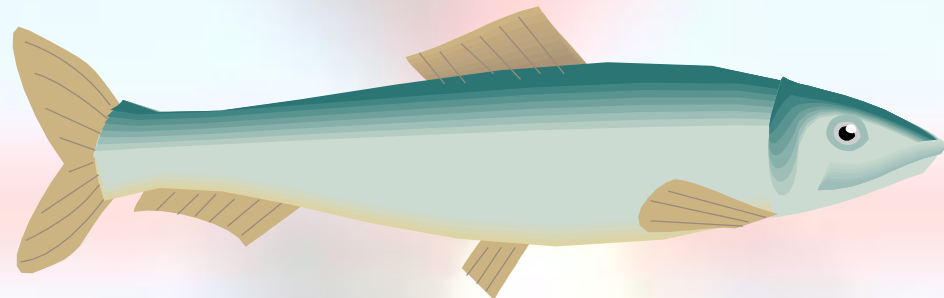
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# Cabotage Rights

- Certain U.S. airlines have collective bargaining agreements that prevent them from supporting cabotage
- Makes more sense for airlines to gain market access through relaxation of foreign investment and right of establishment restrictions

**Cabotage – A red herring?**



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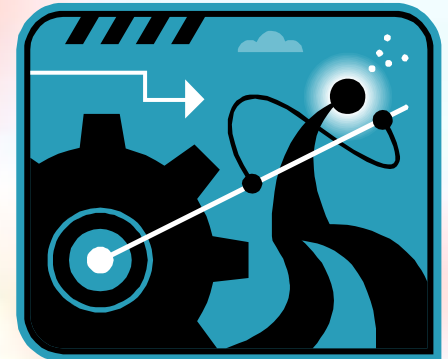
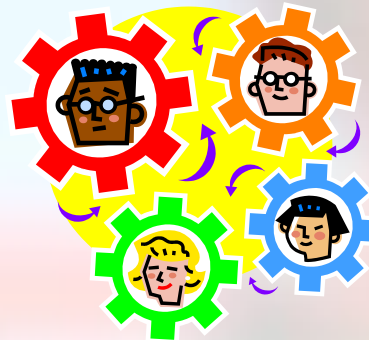
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# Special Labor Provisions

## Question: Is this necessary?

- Evidence suggests neither American nor European employees enjoy a more favorable position under law and regulation
- Performance of individual companies rather than disparate levels of social protection will shape employee welfare on both sides of the Atlantic



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# Reciprocal Investment Rights

## Overcoming Oberstar →



Keep In Mind...

- Right of investment as “right of establishment”
- National security considerations
- Role of non-OAA nationals

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# Convergences and Harmonization

**Areas to Consider:** Security, Facilitation of International Travel, Technical Standards

## **Competition:**

- Replace “double approval” with “one-stop approval” system
- Approval made by jurisdiction with greatest “center of gravity” relationship
- Unclear if it would require legislative action
- Constitutional validity questionable



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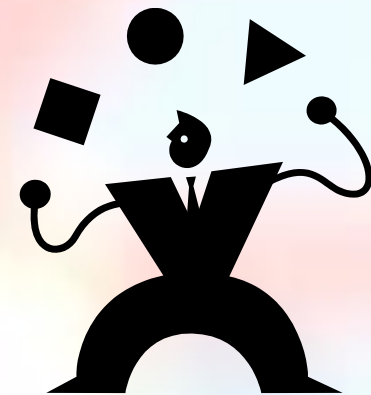
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# Article 21 Issues

1. Effect of Environmental Measures and Infrastructure Constraints on the Exercise of Traffic Rights
2. Further Access to Government-financed air transportation
3. Provision of Aircraft with Crew (Wet Leasing)



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# Single European Sky

- SES would enhance Air Traffic Management
  - Rationalize the current fragmented system
  - IATA calculates 12% of fuel burn in Europe directly attributable to ATM and infrastructure inefficiencies
  - Are unions and national pride slowing progress towards SES?



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# Slot Allocation (Confiscation?)

## ***Did you know...***

- Slots at Heathrow allegedly command up to \$40 million a pair!
- Air France-KLM contemplating lease-based slot trading with U.S. SkyTeam!

- U.S. negotiators may ask for slots to be freed up at big business hubs
- Prospects unclear in a system based on the sanctity of grandfather rights
- Price-based slot trading may be needed to cope with saturation capacity and environmental concerns



# Environmental Taxes and Charges

## *Lux et Veritas*

Environmental taxes & charges increases the cost of doing business (*pecunia non olet*)

→ Multiple national measures in place in the EU, with more being contemplated (*boni pastoris est tondere pecus non deglubere*)

→ Political support drummed up by attaching “environmental” label though monies collected not earmarked for environmental purposes (*mala fide*)

→ Taxes may be framed to benefit home carrier (*amor patriae*)

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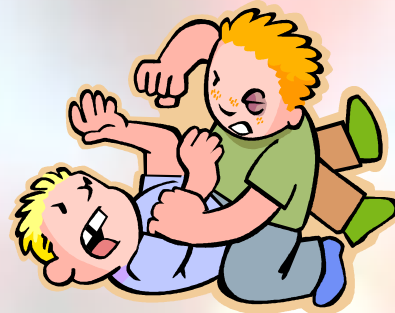
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# Emissions Trading Scheme

- EU - From Deregulators to Environmentalists
- New measure to bring aviation into EU's ETS is unilateral in scope and does not prioritize infrastructure enhancements
  - Goes against ICAO Resolution 17/1 which said no ETS on other States w/o mutual consent
  - May be incompatible with the Chicago Convention



# Further Access to Government-financed Air Transportation

- Liberalization would justify further EC carrier access to the U.S.'s Fly America program
- All carriers seeking U.S. government business should subscribe to the Civil Reserve Air Fleet program
- Similar non-discriminatory protections should be taken in the EC
- WTO Plurilateral Agreement on Government Procurement → Good starting point



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# Provision of Aircraft with Crew

a.k.a.

## Wet Leasing

### **As It Currently Stands...**

Air Services Agreement permits U.S. and EC carriers to wet-lease aircraft of the other party or a third-country for international transportation

### **For the future...**

An extension of this right to transport in the U.S. domestic market would arguably be deemed to constitute cabotage

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# “Broadening” & “Deepening” Liberalization

- Has the liberalization agenda of “open skies” reached its culmination?
- Are multilateral (and even unilateral) approaches more appropriate for the remaining challenges?
- What multilateral forums are there to address these issues?



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