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U.S.-E.U. Open Skies Deal and Its Implication for the Liberalization of International Air Transport Services: A Chinese Perspective

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As the primary mode of long distance transport between nations, international air transport plays an essential role in the development and prosperity of the global economy. While other services sectors have benefited immensely from the multilateral trading system, the air transport services have long been dominated by restrictive bilateral arrangements since the Chicago Conference of 1944. Following the successful deregulation of its domestic air transport regimes, the United States initiated an Open Skies campaign toward international air services liberalization in 1990s. The conclusion of the U.S.- EU Open Skies Agreement in April 2007 represents a landmark in the liberalization of international air services. This historic deal not only heralded a new era in transatlantic aviation, but also strengthened the path-dependence of air transport services liberalization. As a major economic power and potential aviation power, China would benefit immensely from the liberalization of air services. However, base on actual conditions, a controllable and phased-in approach toward liberalization is a more rational choice for China at present.

Keywords

Open Skies, Air Transportation, Five Freedoms, Bilateral Regimes

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I. Introduction

Air transport plays a crucial role in facilitating international commercial transactions. With the acceleration of economic globalization, the movement of goods and personnel worldwide has become more and more frequent, which leads to an increasing demand for international air transport services. Although the WTO multilateral trading system has made noticeable achievements in liberalizing trade in services since the Uruguay Round negotiations, the main body of international air transport services is still dominated by traditional bilateral arrangements, most of which are characterized by protectionism and restrictionism.

The United States emerged as the world's dominant aviation power after World War II and went to great length to promote the liberalization of international air transport services. During the Chicago Conference of 1944, the U.S. proposed a free-market philosophy in which airlines of all nations would have relatively unrestricted operating rights on international routes, but it was then too ambitious to be popular.¹ As the Chicago Conference failed to formulate a comprehensive multilateral framework for international air services liberalization, bilateral regimes based on protectionism and reciprocity became prevalent.²

Following the successful deregulation of its domestic air transport regimes in 1970s, the U.S. began to export Open Skies policy into international level through a strategy of "divide and conquer," which gave rise to much controversy within the European Union (EU).³ After undertaking an arduous journey, the U.S. and the EU eventually signed an Open Skies Agreement on 30 April 2007. This historic deal opened up air services between the EU and the U.S. by removing all caps on routes, prices, and the number of weekly flights between the two markets.⁴ Compared with the slim prospects of the Doha Round air transport services negotiations, the U.S.-EU Open Skies deal not only heralded a new era in transatlantic aviation, but also strengthened the path-dependence of air transport services liberalization. Faced with global aviation competition, China

¹ Paul Stephen Dempsey, *Turbulence in the Open Skies: the Deregulation of International Air Transport*, 12 TRANSP. L. J. 305, 312-13 (1982).

² Adam L. Schless, *Open Skies: Loosening the Protectionist Grip on International Civil Aviation*, 8 EMORY INT'L L. REV. 435, 438-39 (1994).

³ Jacob A. Warden, "Open Skies" at a Crossroads: How the United States and European Union Should Use the ECJ Transport Cases to Reconstruct the Transatlantic Aviation Regime, 24 NW. J. INT'L L. & BUS. 227, 238-39 (2003).

⁴ EU Press Release, EU-US "Open Skies": The EU and the US Start Talks on Air Services Agreement to Reshape Global Aviation (May 15, 2008), available at http://ec.europa.eu/transport/air_portal/international/pillars/global_partners/us_en.htm (last visited on May 25, 2008).