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국제학 석사학위논문

**Study on the Application of the Legal Issues to the  
WTO GATS: Traffic Rights and Aviation Services**

2018년 8월

서울대학교 국제대학원

국제학과 국제통상 전공

도 유 성

# Study on the Application of the Legal Issues to the WTO GATS: Traffic Rights and Aviation Services

지도교수 안덕근

이 논문을 국제학 석사학위논문으로 제출함

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2018년 8월

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# Abstract

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New introduction of aircraft in the early 20<sup>th</sup> century has dramatically changed both industry and trade of the world. Importance of aviation industry grows rapidly as it much relevant with many other advanced technologies such as machinery, electronics and Information Technology. Interrelationship between diversified industries is creating a synergy to boost the economic growth internationally.

This thesis aims to conduct researches regarding the legal issues on the WTO GATS and its annexes. Although importance of the aviation services are sufficiently proven, international organizations seem to neglect legal issues regarding trading aviation services. Such legal issues are that traffic rights and other aviation services, as one of core tradable services are still underestimated. Thus, aviation services that are excluded from the boundary of the WTO GATS will be studied in this thesis.

In order to conduct a research, the study first followed background research of the international documents and organizations. From the research, it is found that provisions on aviation services are duplicated while conducting this research by reviewing documents provided by both WTO and ICAO. ICAO and the Chicago convention has influenced greatly on the development of aviation services but not

in the relevant field such as trading and commerce.

Moreover, despite to the importance of aviation services, WTO and the GATS have no provisions that are sufficient enough for the trade of aviation services. Particularly, omitting the Freedoms of the Air (also known as traffic rights) and exclusion of certain aviation services have been selected for further studies for this paper. Using statistical evidences, it is proved that the traffic rights have played remarkably on the economy.

The significant finding from the analysis is that the legal documents from international organizations have not caught up with the changing industrial environment and market trend. Therefore, in order to secure leading position in the trading aviation services, it is highly positive to add traffic rights to the WTO GATS. However, inclusion of the additional other aviation services other than the traffic right is still unclear.

Key words: General Agreements of Trade in Services, International Civil Aviation Organization, The Chicago Convention, Traffic Rights, Aviation Services

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## Chapter I. Introduction

New introduction of aircraft in the early 20<sup>th</sup> century has dramatically changed both industry and trade of the world. Importance of an aviation industry grows rapidly as it much relevant with many other advanced technologies such as machinery, electronics and information technology. Interrelationship between diversified industries has created synergy to boost the economic growth internationally.

In the modern times, development of the aviation industry, as well as aviation services, is becoming the goal of developed country. During the late 20<sup>th</sup> century, aviation industry has been flourished by growth rate that is more than two digits. It is assumed that the absence of legal control over the industry has led governments to protect and subsidize with no obligations. As a result, aviation industries and services are now considered to be least liberalized sector compare to other tradable industries and services that under the supervision of the WTO. Designated by the WTO as tradable service, questions for the host of aviation industry and service still remain.

To support the assumption that the aviation services are major economic indicator, Table 1 clearly indicates the proportional increasing number of passengers and cargo transportation processed in the Incheon International Airport. Indeed, various factors remain to explain such increase in numbers of passengers and cargo transportation, such as increased trade volumes by air transportation and improved aircraft connecting services may be the cause to the constant increase in recent years.

<Table 1> Incheon International Airport Statistics

Year	Flights		Passengers	
	Arrival	Departure	Arrival	Departure
2005	6,578	6,581	1,062,028	1,117,610
2006	7,162	7,147	1,148,708	1,143,450
2007	8,729	8,735	1,289,449	1,366,673

Year	Flights		Passengers	
	Arrival	Departure	Arrival	Departure
2008	9,171	9,197	1,387,787	1,429,411
2009	8,490	8,503	1,206,719	1,244,115
2010	8,537	8,532	1,333,697	1,409,664
2011	9,700	9,693	1,481,662	1,535,380
2012	10,122	10,116	1,580,281	1,642,899
2013	11,562	11,591	1,757,543	1,828,125
2014	11,982	11,998	1,872,121	1,940,258
2015	13,159	13,165	2,124,023	2,211,888

Source: Korea Airports Corporation, KAC

As seen from the table, steady increasing number of passengers and cargo transportations lead to the conclusion that the development of aviation services and industries is taking place in Korea. Moreover, due to increased trade volumes and improved national brand powers, growth of an economy can also be derived. In such, an assumption can be made that the correlation between the aviation service and performance of an economy. In order to meet the increasing demand for air transport and aviation services, airlines are accommodating growing passenger demand either by increasing the number of flights or by adopting larger aircraft (Zhang, 2014).

Recently, the development of the aviation industry, as well as aviation services, is considered to be the final goal of a nation to be economically developed country. However, simply developing the industry and technology is no longer as efficient as it was in the past; trading service has become crucial than ever. As well as those tradable services such as education and finance, aviation services may also be traded among different countries by various entities. Therefore, study on the aviation services is made in this paper to examine the conformity to the legal documents currently available in the world.



## Chapter II. Aviation Services

Definition of trading service can be easily found anywhere; particularly from the WTO document, the “General Agreement on Tariffs and Trade” (GATT) defines goods limited to products as commercial practice and not include purchase or sale of services. In fact, the “General Agreement on Trade in Service” (the GATS) includes production, distribution, marketing, sale and delivery of a service in the boundary of service supply. Considering the GATT to be less effective than expected on trading service, the new Agreement in 1994 established the World Trade Organization to cover a much wider range of trade. The new agreement has extended beyond goods and now embraces services, intellectual property, procurement, investment and agriculture. Moreover, the new trade regime was no longer a collection of bilateral agreements and understandings of the parties (James Cameron and Kevin R. Gray, 2001).

The term aviation service may be understood as initial services provided by the airline, however, it is more complexly organized. The aviation service is complex of services that include air transportation, aircraft maintenance and airport management, in which, categorized by direct and indirect usage of the aircraft. These aviation services are now becoming the major economic indicator of a nation and have its own comparative advantages. Particularly, advantages of air transport are mainly depending on 1) flexibility and 2) punctuality.

<Table 2> Comparison between air and maritime transportation service

	<b>Air transportation</b>	<b>Maritime transportation</b>
<b>Transit time</b>	Short	Long
<b>On-time arrival</b>	Highly likely to be on-time	May not arrive on-time
<b>Expected damage on cargo during transportation</b>	Low	High
<b>Fare (economic feasibility)</b>	High	Low
<b>Loading capacity</b>	Restrictive	Un-restrictive
<b>Market size</b>	Less than 5%	95% or more

Source: Airport Operation & Management (공항 운영 및 관리), 유광의, 유문기 (2004)

Not only have become as an important economic indicator for the statistical analysis, these aviation services can be traded between partner countries. Under the circumstance of the GATS and the WTO, total liberalization of aviation services may be questionable, yet, trading an aviation service is realistic than ever in the international service market. Most importantly, although aviation industries and services have grown in a drastic speed while legal documents to govern have been unchanged. In fact, recent international document provided by the WTO regulates over the trade in aviation industries and services, it is continuously argued whether the document fully cover the regarded legal issues. Especially, legal issues regarding the traffic right has been one of the frequently debated issues. Due to increasing quantity and quality of aircrafts operating on the globe, the concept, traffic rights, became important than ever.

In addition, almost every aviation services are under the strict control of the governments and international organizations due to the security and safety issues. In particular, most of OECD and other developed countries require high level of security and safety standards for airlines to operate both domestic and international routes. Otherwise devastating aviation accidents may occur due to the mistreatment of an aircraft. Due to low commitment to meet the security and safety standards, those airlines from the third world, including national airlines (the “Flag carrier<sup>1</sup>”) are banned from entering EU airspace<sup>2</sup>. Therefore, as shown in the Table 2, number of new aircrafts introduced in the market with the better features and improved passenger seats is constantly increasing. The increase in aircraft deliveries to the market has also close link to the ‘Return On Invested Capital’ (the ROIC) of an airline. Hence it can be assumed that security and safety issues are the supporting evidence that the aviation services are yet to be fully liberalized compare to other services.

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<sup>1</sup> Flag carrier is a term used to define an airline or a shipping company in a state that is locally registered with given preferential rights or privileges accorded by the government for international operations. In most cases, state owns the majority of the airline’s share; however Korean Air is one of the exceptions that have been privatized.

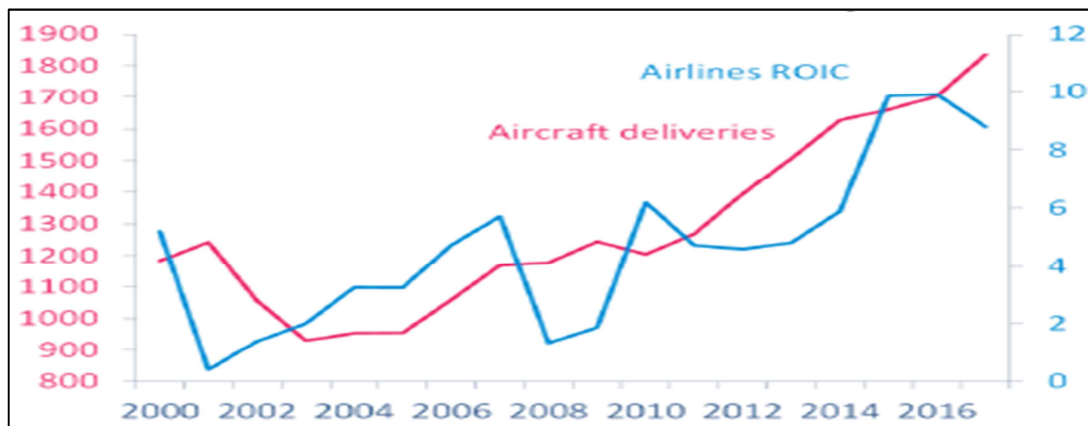
<sup>2</sup> Regulation (EC) No. 2111/2005 of the European Parliament and of the Council states that: (1) Action by the Community in the field of air transport should aim, as a priority, at ensuring a high level of protection for passengers from safety risks. Moreover, full account should be taken of the requirements of consumer protection in general.

<Table 3> Aircraft deliveries and airline industry return on invested capital

<b>Worldwide Airline Industry</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Aircraft fleet	26,608	27,585	28,645
% change over year	3.1%	3.7%	3.8%
Available seats, million	3.7	3.9	4.2
% change over year	5%	6.2%	6.1%
Average aircraft size, seats	140	143	146
% change over year	1.9%	2.4%	2.1%

Source: Economic Performance of the Airline Industry, IATA (2017)

<Figure 1> Aircraft deliveries and airline industry return on invested capital



Source: Economic Performance of the Airline Industry, IATA (2017)

Secondly, as explained earlier, aviation services can be diversified into many different services; from the direct to the indirect use of the civil aircraft. In addition, spectrum of aviation services has grown larger than ever. Thus, not only those services

listed in the GATS and its annex, other services are tradable that can be targeted under the WTO system. As recognized as one of major economic indicators, aviation service sector has been regulated by the additional annex within the GATS under the WTO regime. Although, the GATS exist to provide obligations and commitments for member countries regarding service trading, it has been pointed out that the annex within the GATS and WTO's dispute settlement system lacks strong binding power. Piermartini and Rousova (2008) have published report to provide accurate numbers for the correlation between bilateral passenger flow and the regulatory regime that actually applied. The final result of the paper proved that the robust evidence on the subject of research.

Similarly, Angela Cheng-Jui Lu (2002) mentioned that the MFN is incompatible with air transport with regard to traffic rights granted in a specific bilateral situation which are very capable of covering the award of specific traffic rights. For example, the United States and the European Commission has signed the "Air Transport Agreement" in 2007 that grant rights bilaterally to operate commercial airliners in each other's territory.<sup>3</sup> In which, the purpose of these bilateral agreements are to increase in trading aviation services. In this regard, there are increasing demand to broaden the spectrum of aviation services within the boundary of the GATS and WTO system.

Trade in aviation service has been developing in many ways and now assumed as rights granted to operate or open the relevant markets of a country. Since such liberalization could lead to decrease in the employments and even result to the economic recession. Hence, liberalization on trading aviation service is no longer evitable. However, despite to the progress made in the aviation services and industry, legal documents provided by international organizations are far behind. Therefore, in order to promote safe and fair trade on the globe, arbitration from the international organization is becoming more necessary.

Many in-depth studies have been conducted to identify the level of liberalization of the aviation service and bilateral agreements between major countries. However, there have been few studies over the exclusion of traffic rights and some aviation services. Therefore, this paper will attempt to examine critical aspects related to the traffic rights and indications for the possible extension of the GATS and its annex. In order to arrive at a conclusion, this paper aims to make research on relevant bilateral agreements and compare them with current situations. The main research will explore numerical indexes while investigating major concerns regarding aviation services.

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<sup>3</sup> Article 3, Grant of rights, Air Transport Agreement

## Chapter III. Relevant International Rules for Aviation Services

### 1. Multilateral Trade Rule: WTO GATS

Indeed, it is not simple to make precise judgement over the boundary of services provided in the market. However, the General Agreement on Trade in Services is the outcome of the Uruguay round and its main purpose is to create a credible and reliable system of international trade rules. The application of the GATS is among all service sectors with two exceptions. Those two exceptions are; services supplied in the exercise of governmental authority and air transport services. Nonetheless, the GATS mostly states commitments for member countries to follow in case of service trade. From the GATS, member countries are required to allow foreign operators to compete with domestic suppliers under equal conditions. Such commitments are known as the “Most-Favoured-Nation Treatment”<sup>4</sup>, “Market Access”<sup>5</sup> and “National Treatment”<sup>6</sup>.

The GATS itself, under which the Annex on Air Transport Services functions, identifies four modes of supply or different ways services can be supplied in markets that are foreign to the supplier, namely: cross-border, consumption abroad, commercial presence and presence of a natural person<sup>7</sup>. As well as modes of supply, there are three GATS core liberalization principles, those of: MFN, market access and national treatment. There is an important distinction between these principles. Market access and national treatment are specific principles under the GATS; principles which each individual signatory can choose to apply or not apply to any particular service or aspect thereof under conditions and limitations contained in its specific commitment for that service. In contrast, MFN is a GATS general obligation that one applicable unconditionally to all services, including those for which a signatory has made no specific commitment to market access or national treatment.

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<sup>4</sup> Article 2, Most-Favoured-Nation Treatment, General Agreement on Trade in Services

<sup>5</sup> Article 16, Market Access, Ibid

<sup>6</sup> Article 17, National Treatment, Ibid

<sup>7</sup> Page 3.3-4, Manual on the Regulation of International Air Transport

However, signatory may make an exception to MFN for specific services by including that service in their exemption list. Thus, a signatory can vary the degree of its liberalization of a specific service by (1) filing an exemption from MFN for that service or (2) making specific commitments for market access and national treatment, including any conditions and limitations. However, this may result in variations in the obligations of different signatories with respect to the same service, such as free riders. As well as the general obligations, there are other general obligations in the GATS. From the article 3, it is stated that “Each Member shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement.”<sup>8</sup>

In case of the aviation services, additional annex is provided in the GATS that confines the boundary of the service<sup>9</sup>.

Article 1. This Annex applies to measures affecting trade in air transport services, whether scheduled or non-scheduled, and ancillary services. It is confirmed that any specific commitment or obligation assumed under this Agreement shall not reduce or affect a Member's obligations under bilateral or multilateral agreements that are in effect on the date of entry into force of the WTO Agreement.

Article 2. The Agreement, including its dispute settlement procedures, shall not apply to measures affecting:

- (a) Traffic rights, however granted; or
- (b) Services directly related to the exercise of traffic rights, except as provided in paragraph 3 of this Annex.

Article 3. The Agreement shall apply to measures affecting:

- (a) Aircraft repair and maintenance services;

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<sup>8</sup> Article 3, General Agreement on Trade in Services

<sup>9</sup> Page 307, “The Review of the GATS Annex on Air Transport Services” Communication from the European Communities and Their Member States, S/C/W186

- (b) The selling and marketing of air transport services;
- (c) Computer reservation system (CRS) services.

As seen from the annex, article 2 states that the traffic rights are excluded from the GATS. Not only the traffic rights, article 3 only apply to three services listed. One can wonder the reasons why traffic rights and other aviation services are not applicable. Putting aside of the curiosity, the annex continues to cover the dispute settlement procedure regarding service trade dispute.

Article 4. The dispute settlement procedures of the Agreement may be invoked only where obligations or specific commitments have been assumed by the concerned Members and where dispute settlement procedures in bilateral and other multilateral agreements or arrangements have been exhausted.

Article 5. The Council for Trade in Services shall review periodically, and at least every five years, developments in the air transport sector and the operation of this Annex with a view to considering the possible further application of the Agreement in this sector.

From the article 23 of the GATS, the dispute settlement procedure can proceed as other member fails to carry out its obligations. If an agreement cannot be reached, consultation will be applied instead. In which, it is interpreted that any measures that fail to meet obligations are subject of DSB. On the other hand, the dispute settlement procedures mentioned in the annex can be applied only when DSB procedure fails in bilateral and other multilateral agreements. Therefore, application of article 23 of the GATS is more efficient than that of the annex. Finally, the annex concludes by delivering definitions of terms.

One of the noticeable parts in the annex is the definition of traffic rights<sup>10</sup>. From

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<sup>10</sup> Article 6: Definition, General Agreement on Trade in Services

the annex, it is defined that "Traffic rights means the right for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Member, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control". Traffic rights, by definition, seems to fall into the obligations of the GATS, however, it is deliberately been excluded from the coverage of the annex.

Moreover, although the annex attempts to cover some aviation services, there have been intended exclusions as well. Aviation services, which are a very broad term to cover, can be dissected into two sub-categories depending on to the direct and indirect access to the aircraft. Not only the division of the service, principal agent to provide aviation services is subject of consideration within the GATS since it can be either public or private. Generally, it makes more challenging to distinguish between the natures of the service. Therefore, exclusions of services have been made accordingly and this paper will focus on two of those services.

Firstly, "ground-handling" is essential to the proper functioning of air transport and competition between operators in this area ensures that proper use is made of air transport infrastructure. It helps reduce the operating costs of airlines and improves the quality of service for airport users. The GATS can be considered to cover ground-handling without affecting either the right of Members to distribute traffic rights or the right of air carriers to use them. Liberalizing ground handling simply promotes efficient use of the existing traffic rights that are already in the possession of air carriers. While it is not always practical to allow multiple providers of these services at every airport, especially smaller airports, application of the GATS should ensure that, where that market is indeed open, all ground-handling operators at least have market access on fair and equal terms. As demonstrated by the Secretariat paper, ground-handling is already an international business, where access is often guarded by various types of reciprocity measures.<sup>11</sup>

Secondly, the airport management service is one of neglected service. Such management may consist of air terminal services and runway operating services. In most countries, the state still performs a major role in provision of these services. But in so far as such services are open to foreign operators, it could be considered whether GATS

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<sup>11</sup> Page 3, The Review of the GATS Annex on Air Transport Services, Communication from the European Communities and Their Member States, S/C/W186



could contribute to ensure transparent procedures and non-discrimination<sup>12</sup>.

## 2. Specialized Rule: ICAO

On November 1944, the International Civilian Aviation Convention was held in Chicago, United States. It was the first multilateral international agreement on the civilian aviation and introduced open skies policy. The convention requires substantial level of commitment from member countries on aviation rules and standards to ensure meaningful progress for aviation industry and service. Currently there are approximately 190 member countries agreed on the Chicago convention.

One of the most recognized international organization is the International Civil Aviation Organization (hereby ICAO). ICAO is a United Nation specialized agency that attempts to reach consensus on international civil aviation Standards and Recommended Practices (SARPs) and policies in support of a safe, efficient, secure, economically sustainable and environmentally responsible civil aviation sector. “Convention on International Civil Aviation” is the basis of establishment. Its main objective is to develop principles and techniques of international air navigation. In order to insure the objective, the article 44 of the Chicago convention additionally listed provisions. Moreover, similar to the dispute settlement system provided by the WTO, the Chicago convention also provides dispute settlement. The article 84<sup>13</sup> and 85<sup>14</sup> is provided in order to settle any dispute caused between parties of interest.

The Chicago Convention was the one of the most important document written by the United States Government. From the work of Young (2003), the preamble of a Convention frequently facilitated the interpretation of the convention and drafters’ intentions. It is further noted that the preamble to the Chicago Convention, in observing that the abuse of international civil aviation can become a threat to the general security, set out the purpose of, inter alia, developing civil aviation in a ‘safe and orderly manner’<sup>15</sup>. Thus, the Chicago convention has been widely cited and basis of aviation

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<sup>12</sup> Page 3 - 4, The Review of the GATS Annex on Air Transport Services

<sup>13</sup> Article 84: Settlement of disputes, Convention on International Civil Aviation

<sup>14</sup> Article 85: Arbitration procedure, Ibid

<sup>15</sup> Page 13, Paragraph 3, 3.1 The Chicago Conference of 1944, Responsibility and Liability

acts in the world. Although, the purpose of the convention does not attempt to regulate commercial behaviors of airlines, provision of traffic rights is still valid<sup>16</sup>. In addition, the “International Air Services Transit Agreement” and “The International Air Transport Agreement” are in effect. The “International Air Services Transit Agreement” is to permit transit rights to aircrafts; on the other hand, the “The International Air Transport Agreement” permits the fifth freedoms of the air to the members. These multilateral agreements are valid upon members agreed to sign and have been firm supporting basis for the Chicago convention. However, despite of the convenience, less than 20 countries are remaining within both agreements.

ICAO has been international air regime for around 50 years that dominated aviation industry and services. However, emergence of regionalism, particularly the European Union, has made curious that 1) how ICAO will manage to remain as top international air regime, 2) possibilities that other international regime to substitute ICAO. Indeed, there is the Federal Aviation Administration (FAA) and the International Air Transport Association (IATA) that may be possible substitution to the ICAO.

Although the Chicago Convention has been the basis for the establishment of the ICAO that aims to ‘ensure the safe and orderly growth of international civil aviation throughout the world’, many member countries are now doubting on its efficiency due to changing environment in aviation services. Introduction of jet engines and increase in transportation capacities are now requiring better understanding of an aviation industry. Due to the fact that the first introduction of the convention was in the 1940s with cognitions of that time, ICAO attempted to apply modifications to the convention. However, it is still in question whether the modification has been effectively made. Even though, the convention strives to ‘promote safety of flight in international air navigation’ and ‘meet the needs of the peoples of the world for safe, regular, efficient and economical air transport’<sup>17</sup>, questions remain whether the ICAO should remain as key document in respect to trade in aviation services.

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for Unlawful Interference in International Civil Aviation

<sup>16</sup> Although the term, traffic rights, is not specifically mentioned within the Chicago convention, article 1 of Sovereignty states the right of airspace above the territory.

<sup>17</sup> Page 13, Paragraph 4, Ibid

### 3. The Bilateral Agreements: Cases in Korea

In 2015, Korea's export-import ratio compare to the GNI is around 88.1% where the importance of cargo transportation for the national economy can be seen. Since the country is located on the peninsula; the major export-import through shipping and air transport plays significant role. With the increasing importance of the transportation method, efficiency of the air transport has been spotlighted once again. In order to operate efficiently on the international trade, government had begun to focus on bilateral agreement with trading partners.

<Table 2> Export-import ratio in air transport sector

		2010	2011	2012	2013	2014	2015
<b>Total</b>	Export	466,384	555,214	547,870	559,632	572,665	526,757
	Import	425,212	524,413	519,584	515,586	525,515	436,499
	Total	891,596	1,079,627	1,067,454	1,075,218	1,098,180	936,256
<b>Air transport</b> Unit: million dollars	Export	114,782	116,583	118,284	132,044	136,764	138,946
	Import	100,010	110,124	103,662	108,355	113,268	115,762
	Total	214,792	226,707	221,946	240,399	250,032	254,708
<b>Air transport percentage</b>	Export	24.6	21	21.6	23.6	23.9	26.4
	Import	23.5	21	20	21	21.6	26.5
	Total	24.1	21	20.8	22.4	22.8	26.4

Source: 항공교통 부문의 합리적인 재정운용 방안, 한국교통연구원(2016)

As described in the table, it can be seen that the percentage of export-import by air transport has increased from 21% to 26.4% in 2015. With the significant increase in air transportation in a country, study on the efficient management methods are in progress. The underlying condition for the efficient management of air transport is

traffic rights. In order to maintain air transportation ability, traffic rights are the essential prerequisite since cargo transportation can only be done with the permitted rights. Moreover, Korea's air transport percentage is increasing than ever and it is expected to increase constantly. In accordance to the increase in the trade volume, long-term prospect on the industry is also promising that aviation market is becoming more intense.

Not only the changes in the export-import ratio by air transports, business environment has changed rapidly. Until the late 20th century, aviation market in Korea was almost monopolized by the Korean Air. In order to alleviate the monopolization, the government has lifted restrictions on license to allow more service providers to enter the market. After 2005, numbers of "Low Cost Carriers" (the LCC) were found and began to operate. To vitalize aviation services, there must be supporting infrastructures that correspond to the operation. Introduction of new technologies applied in the operation of the airport that attracts airlines and passengers is one of the aviation strategy set by the Korean government.

Thus, in order to conform to the increasing demand, air transport agreements on the bilateral or multilateral basis must be achieved in order to operate. Korea, on the one hand, is one of major countries to sign bilateral agreement and currently there are 85 air transport agreements<sup>18</sup> that signed or expected to be in effect. These bilateral air transport agreements are signed on the basis of articles provided in the Chicago Convention. The article 1<sup>19</sup> and 6<sup>20</sup> guarantee the sovereign rights of a member country when operating scheduled international routes. With the basis to the air transport agreement, Korea-United States air transport agreement has been signed and is one of oldest in Korea that grants traffic rights to transport passengers and cargos. Not only traffic rights that are granted but the annex of the agreement are also listed that the annex 3 states the principles of non-discrimination within and competition among computer reservations system. From the agreement, it can be seen that the computer reservations system is assumed to represent the foundation for an airline's competitive opportunities. Asymmetric open skies agreement between Korea-Philippines is also one of the cases that improve the operation<sup>21</sup>. Therefore, traffic rights and other aviation services are tradable.

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<sup>18</sup> Air Transport Agreement (2018. 04), Ministry of Foreign Affairs

<sup>19</sup> Article 1: Sovereignty, Convention on International Civil Aviation

<sup>20</sup> Article 6: Scheduled air services, Ibid

<sup>21</sup> Article 3.4, Exchange of Notes for the Amendment of the Air Transport Agreement between the Government of the Republic of Korea and the Government of the Republic of the Philippines



## Chapter IV. Legal Issues in the WTO System

### 1. Traffic Rights

There are many legal issues to be accounted for the amendment of GATS and WTO system. One of the legal issues regarding the GATS is the traffic rights. Traffic rights have been core element that can be traded between countries; however, the GATS and WTO system has not been playing significant role on the matter. Therefore before making suggestion to amend the GATS, aspects of the traffic right must be understood. The term, traffic rights, by definition, is a privilege that all countries determine use of their airspace under the territorial sovereignty principle. By reviewing the “Convention on International Civil Aviation”, the Freedoms of the Air are defined as Table 2.

<Table 4> Definition of Freedoms of the Air

<b>Freedoms of the Air</b>	<b>Coverage</b>
First	In respect of scheduled international air services, granted by one State to another State or States to fly across its territory without landing.
Second	In respect of scheduled international air services, granted by one State to another State or States to land in its territory for non-traffic purposes.
Third	In respect of scheduled international air services, granted by one State to another State to put down, in the territory of the first State, traffic coming from the home State of the carrier.
Fourth	In respect of scheduled international air services, granted by one State to another State to take on, in the territory of the first State, traffic destined for the home State of the carrier.
Fifth	In respect of scheduled international air services, granted by one State to another State to put down and to take on, in the territory of the first State, traffic coming from or destined to a third State.
Sixth	In respect of scheduled international air services, of transporting, via the home State of the carrier, traffic moving between two other states. The so-called Sixth Freedom of the Air, unlike the first five freedoms, is not incorporated as such into any widely recognized air service agreements such as the "Five Freedoms Agreement".

Freedoms of the Air	Coverage
Seventh	In respect of scheduled international air services, granted by one State to another State, of transporting traffic between the territory of the granting State and any third State with no requirement to include on such operation any point in the territory of the recipient State, i.e the service need not connect to or be an extension of any service to/from the home State of the carrier.
Eighth	In respect of scheduled international air services, of transporting cabotage <sup>22</sup> traffic between two points in the territory of the granting State on a service which originates or terminates in the home country of the foreign carrier or (in connection with the so-called Seventh Freedom of the Air) outside the territory of the granting State.
Ninth	The right or privilege of transporting cabotage traffic of the granting State on a service performed entirely within the territory of the granting State.

Source: Manual on the Regulation of International Air Transport, ICAO

From the definition provided by the ICAO, third, fourth and fifth Freedom of the Airs are commonly known as the traffic right. With the traffic right of third, fourth and fifth freedom of the air, an aircraft can act commercially based on organized operational plans between airports. Particularly, the fifth freedom of the air is the extended rights of the third and fourth rights which can lead to increase in market shares. For instance, Korea operating between China and Japan with fifth freedom of the air can combine multiple routes and attempt to create a complete single route. The sixth right may act similarly to the fifth right, however, main defect is that an aircraft must operate via home country<sup>23</sup>.

<sup>22</sup> Article 7 of the Convention on International Civil Aviation defines the term 'cabotage' that "each contracting state shall have the right to refuse permission to the aircraft of other contracting states to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory. Each contracting state undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other state or an airline of any other state, and not to obtain any such exclusive privilege from any other state."

<sup>23</sup> Page 60, 김미숙, EU 항공운송시장 통합 이후 운수권 배분에 관한 연구, 2014

In order to achieve such rights, it is true that countries go through open skies agreement<sup>24</sup> with each other to open airspace either bilaterally or multilaterally. In case of multilateral agreement, ICAO member states have agreed to grant the first two traffic rights according to the multilateral agreement named International Air Services Transit Agreement. Although most of the member states have signed the transit agreement, grant of other traffic rights is in the rather tardy progress compare to the transit agreement. One of reasons may be derived by countries main concerns regarding the open skies agreement which can be summarized as the following table.

<Table 5> Major concerns on the open skies agreement

<b>Access to the aviation market</b>	Freedoms of the Air	- Third, Fourth and Fifth - Seventh, Eighth
	Fares	- Unlimited freedom - May restraint on abnormal issues
	Route	- Inhibit on duplicated routes - Access to the market - Distribution of seats - Supply ability suspension
	Business activities	- Airline's license - Code share - Franchise and brand - Airline alliance - Anti-trust immunity
	Exceptions	- Slot allocation

Source: 항공사 노선 시장 분석을 통한 항공자유화에 대한 정책 방안 연구, 한국교통연구원, 2013

<sup>24</sup> It is in the format of air transport agreement on a bilateral basis for more liberalization of aviation services; however, the title is only given due to convenience.



With these traffic rights and open skies agreements, performance of an airline may vary drastically. In fact, granting freedoms of the air is determined by the bilateral agreements and then the government distributes it to airlines. In general, open skies agreement consists first to fourth freedom of the air or may vary depending on the circumstances such as geographical reasons. An open skies agreement in 2007 between the EU and Singapore is one of the exceptions that granted ninth freedom of the air in 2007. The agreement stands for lifting restrictions of traffic rights and allows Singapore airlines to host different routes in the EU. As time passes, the aviation market is now in the stage of unification and liberalization; however, countries are still hesitating on granting more than traffic rights. In addition, procedure for such agreements settle may last longer than expected. United States – Qatar negotiation has lasted almost three years due to suspicion of illegal subsidies for airlines in the Middle-East region. The traffic rights have intimate relationship with airlines operating international routes.

While many aspects of trade of aviation industry are dealt with on a multilateral basis, relations between states are still governed by bilateral agreements. Due to inconsistency caused by economic integration in the region, bilateral agreements on the traffic rights are forced to advance toward a different multilateral or multilateral framework<sup>25</sup>. On the year of 1995, although most countries were not prepared to abandon the current system of bilateral reciprocity agreements and the multilateral system for traffic, they had no other options than to follow system organized by the ICAO<sup>26</sup>. Although, the “International Air Transport Association” (the IATA) exists on behalf of economic performance of member airlines, it has failed to provide more legal obligations than that of GATS and annexes.

Initially, WTO members are to assume that the existing international air transport regime may be the best option to promote liberalization of trading aviation services. As aircraft repair and maintenance services, selling and marketing of air transport services, and computer reservation system (CRS) services are applied under GATS, traffic right is omitted from subject of opening. Without substantial regulation for traffic rights, it is implied that aviation services are virtually omitted from GATS<sup>27</sup>. In this regard, the

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<sup>25</sup> Page 2, paragraph 2, Liberalisation of Air Transport and the GATS, IATA Discussion Paper

<sup>26</sup> Page 1181, Richard O. Cunningham and Peter Lichtenbaum (2005) - “The Agreement on Trade in Civil Aircraft and Other Issues Relating to Civil Aircraft in the GATT/WTO System” in A. Appleton, P. Macrory & M. Plummer eds., The World Trade Organization: Legal, Economic and Political Analysis, Vol. II, New York: Springer Verlag

<sup>27</sup> Page 190, paragraph 2 국제항공운송서비스시장에 대한 WTO GATS 협정의 적용가능성에 관한 연구

GATS obligations must be revised and study on legal issues. With only limited obligations from the GATS and its annex, the WTO system cannot govern the trade in aviation services effectively.

As previously mentioned, air transportation is not the only mean for trade between countries. Due to efficiency, price competitiveness and other many reasons to outmatch air transportation service, naval transportation has been dominating in the world trade. In this regard, it needs to be studied whether naval services are confronting analogous legal issues of aviation services under the WTO and other international legal systems. The International Maritime Organization which governs over naval services is also an affiliated organization to the UN and its main objectives are similar that of the ICAO. The IMO determined its slogan as, which is also quite similar to that of ICAO, “Safe, secure and efficient shipping on clean oceans” and focuses on legal issues arising from disputes regarding naval services. In addition, traditional major maritime states, such as the United States and European Union, have great influence on the organization. Currently the IMO have introduced numerous agreements and legal documents in order to secure its slogan. Korea, as one of major maritime state, is the member of the board for several years and have signed around half of contemporarily existing naval agreements.

As introduced, naval services and aviation services are quite similar to each other that they are governed by UN affiliated organizations and contributed by major member states. However the key difference is that the naval services particularly do not require privileges or rights in which aviation services require. In case of Korea, according to the article 4 of the Act on the Arrival, Departure, etc. of Ships, it is stated that when the captain of the ship is attempting to enter the trade port, he is to report to the Minister of Oceans and Fisheries as prescribed by presidential decree<sup>28</sup>. Similarly, the US code confines that either the master or other authorized officer to executed necessary documents properly to complete the entry<sup>29</sup>. Therefore, unlike traffic rights granted by state authority, naval transportation does not neither require particular authorization from the state nor have been a crucial dispute trigger. Hence aviation services, especially traffic rights are unique legal issue to be analysed by international organizations.

Trading aviation services are mainly a competition between airlines in the aviation market. There are additional ways to provide air transport services to customers by operating efficiently and economically. One of those methods is by making an airline

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<sup>28</sup> Chapter 2 Arrival, Departure and Anchoring, Act on the Arrival, Departure, etc. of Ships

<sup>29</sup> Title 19, Chapter I, Part 4, Section 4.3 Vessels required to enter; place of entry, Committee of Federal Register. US Code

alliance. An airline alliance is a type of agreement used by airlines to cooperate with the view to gaining long-term financial, operational or marketing advantages. Several reasons may trigger airlines to form alliances. Through this type of a cooperation agreement, airlines may achieve greater economies of scale, scope and density, and reduce costs by consolidating redundant operations. Alliances also respond to the need for increased revenue by reducing competition. In addition, they are an efficient tool for airlines to avoid restrictions stemming from nationality rules. Over the last decade, the numbers of alliances, whether bilateral or multilateral, whether domestic, regional or international, have increased significantly. Currently the three largest alliances are the Star Alliance, Sky Team and One World.

The vital change of business environment indicates the importance of traffic rights once more. Without legally permitted traffic rights, these alliances between airlines cannot operate. As the bilateral agreement is signed, distribution of traffic rights among airlines is conducted by accepting applications from business entities. The distribution of traffic rights refers to the setting frequency of aviation through allocation of flight rights. In case of Korea, it is legally supported by the Article 112 and 118 of the Aviation Act. Based on the distributed traffic rights, airlines can plot aircrafts unlimited, as long as minimum requirements are met. Thus, performance of an airline depends on the acquisition of traffic rights. Therefore, bilateral agreement between trade partners is in the form of trading traffic rights, which in other words, trading aviation service. One of the susceptible issues of the legal documents is regarding the ownership of an airline and allocation of traffic rights. According to the Aviation Act in Korea, it is stated as follows:

Article 112 (Domestic Air Transportation Business and International Air Transportation Business)<sup>30</sup>

(1) Any person who desires to engage in the domestic air transportation business or international air transportation business shall obtain a license therefor from the Minister of Land, Infrastructure and Transport: Provided, That when he/she has obtained a license for the international air transportation business, a license for the domestic air transportation business shall be deemed granted

(2) Where any person granted a license pursuant to paragraph (1) desires to operate regular flights, he/she shall obtain permission for a particular route from the Minister of Land, Infrastructure and Transport.

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<sup>30</sup> Chapter 6, Air Transportation Business ETC, Aviation Act

Article 118 (Allocation, etc. of Traffic Rights) (1) The Minister of Land, Infrastructure and Transport may set the frequency of aviation through aviation conference with foreign governments and allocate rights to operate aircraft (hereinafter referred to as "traffic rights") to international air transportation business entities within the frequency so established, upon request by such business entities.

As observed from the legal documents of Aviation Act, allocation of traffic rights are tradable service that leads to series of operation by airlines; in which, application of MFN, market access and national treatment may be possible. In addition, as for the inefficient obligations and lack of volition for improvement on the convention, the bilateral agreement on traffic rights cannot be progressed under the ICAO regime. Therefore, it is solely on the WTO by providing articles consist of traffic rights to be the upper hand than the ICAO.

## 2. Other Services

From the GATS, aviation services specifically mentioned in the annex are ‘repair and maintenance’, ‘selling and marketing’ and ‘computer reservations system’. Current progress of Doha Development Agenda (DDA) may not satisfy all WTO member countries as many individual interests collide between parties of subject. Hence, focus of those agreements is tending to shift from multilateralism to bilateralism. In spite of series of efforts to promote trading services through changes, deficiency of the multilateral agreement provisions may have been insufficient to member countries.

Before analyzing the legal issues on the excluded aviation services, study on the aviation services of the ‘repair and maintenance’, ‘selling and marketing’ and ‘computer reservations system’, which specifically mentioned in the GATS and its annex. Other than services mentioned in the GATS, there are equivalently important aviation services as well; these services are ‘ground-handling’ and ‘airport management’. Unlike the ‘ground-handling’ and ‘airport management’ services, it is unanimous that ‘repair and maintenance’, ‘selling and marketing’ and ‘computer reservations system’ fall into the WTO system and become source of trade dispute<sup>31</sup>. However, it is doubtful that the services mentioned in the GATS are only in favor of the US and EU. In other words, due to the domination of market share by the US and EU on the three services from the GATS, WTO may have found rest of aviation services less attractive to include. The exclusion of aviation services from the GATS and its annex have become one of legal issues. In the changing environment and trend of the industry, liberalization on the newly introduced industry and services that can be traded are now subject to analyze. Despite to the tradability of aviation services, Cunningham and Lichtenbaum (2000) consider that markets for civil aviation services are some of the least liberalized sectors under the WTO regime. Thus, study on other aviation services should be made and analyzed for acceptability.

First of all, the ‘ground-handling’ is a type of an aviation service that prepares an aircraft for the next flight including process of passenger boarding, baggage management and general preparation for further operation while positioned. In detail, there are four services included in the ‘ground-handling’ service; 1) passenger service, 2) ramp service, 3) cargo service and 4) aircraft cleaning service. Generally, the service is provided by specialized business entity that may be a subsidiary company from an airline. Providers of the service vary from different regions. In Europe, the ground-

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<sup>31</sup> Canada-Measures Affecting the Export of Civilian Aircraft, WT/DS70

handling service providers are mostly airport operators such as Fraport at the Frankfurt International Airport and City of Geneva at the Geneva Airport. On the other hand, service providers in the United States are airlines itself. In the Los Angeles International Airport, airlines have their own ground-handling services such as United Air Line. In Asia, situation is similar to the United States case but with additional independent ground-handling services providers. This type of service providers may be monopolizing on multiple airports due to efficiency and security reasons, however, there are arguments that the service provider should allow liberalization.

Secondly, ‘airport management’ service may seem similar to the ‘ground-handling’ service since it includes passenger processing service, in fact, airport management is more of facility management as well as security and safety services. In addition, the airport operator has legitimate right to impose charges to the use of an airport. These charges are divided into two parts; Aeronautical and Non-aeronautical charges. Aeronautical charge is levied on the use of air traffic control and facilities of the airport. Non-aeronautical charge is levied on to business activities other than aeronautical activities<sup>32</sup>.

<Table 6> Charges for the use of airport facilities and services

<b>Aeronautical charge</b>	<ul style="list-style-type: none"> <li>- Landing(and/or take-off) fee</li> <li>- Passenger and cargo service fee</li> <li>- Parking and hangar fee</li> <li>- Security fee</li> <li>- Airport noise fee</li> <li>- Ground handling(ramp and traffic) fee</li> <li>- Terminal area air navigation fee</li> <li>- Route air navigation fee</li> </ul>
<b>Non-aeronautical charge</b>	<ul style="list-style-type: none"> <li>- Concession fee for aviation fuel and oil</li> <li>- Rentals for airport land, premises and equipment</li> <li>- Concession fee for commercial concerns catering to the public</li> <li>- Fees derived from airport’s own operation of shops and services</li> <li>- Fees charged for tours, admission to reserved area, etc</li> <li>- Fees derived from provision of services, utilities by the airport</li> </ul>

<sup>32</sup> Page 327, Airport Operation & Management (공항 운영 및 관리), 유광의, 유문기 (2004)

These charges are levied based on the perspective that the airport is a public infrastructure. Thus, central or local government should take responsibility on the airport development and efficient management in order to cover operational loss. As all the public business entities do, operational loss is not mandatory to cover; symbolizing the public interest would be larger. However, due to non-discrimination charging system that does not promote to recoup expenses has made airports to levy fees based on the average values rather than rationally charging by different size of an aircraft and selection of services. Although charging system based on the average value allows airport operators to levy fees more convenient, complaints and dissatisfaction rises among service users.

The main agent to provide airport management differs based on the region, current situation of the airport management service in Korea is that a public enterprise, Korea Airport Corporation (also known as KAC), exists to perform management of airports and additional facilities. There are 14 airports except the Incheon international airport, operating by the KAC not only for civil purposes but with other objectives. One of the international airports, located in Gimhae that operating on domestic and international routes, also serves as an air-force base. On the other hand, Incheon international airport is independently owned by separate public enterprise from the KAC. Not only maintaining the facilities within the airport, management of and airport requires navigation maintenance that externally installed from the airport. Therefore, due to the safety reason, such service remains as more close to the public service which requires sole monopoly. However, not all the airports are under the management of public enterprises. Airport of Paris (“Aéroports de Paris”), on the other hand, has been one of the leading enterprises to manage multiple airports. Although the company started as government funded enterprise, it has been privatized in 2005 to operate globally. Although the airport management requires sufficient amount of budget and experiences, it is undeniable duty of the central or local government to operate such facilities.

These other services have three crucial components; 1) Airport, 2) Airline and 3) User. Fail to satisfy these components may lead to phenomenon that negatively affect on the provision of aviation service. Such failures may be high operational costs transferred to the Users and inadequate facilities to ensure aviation safety. Therefore, the importance of other services can be best explained. In case of the annex, analysis can be made whether other services fall into the obligation of the GATS. However, one of the assumption on the exemption of other services are that other service suppliers generally

do not require acquisition of traffic rights to operate<sup>33</sup>.

Aircraft manufacturing industry would stand to benefit from the expansion of aviation services that can be expected to result from any greater WTO disciplines on national measures in this field. Aviation services, like any other services, are subject to WTO disciplines to the extent they are covered by the GATS and national commitments thereunder. All member countries of the WTO have necessarily accepted GATS, which is one of the multilateral agreements that form part of the Single Undertaking. Which implies that, by accepting the GATS, member countries are obliged to commitments including MFN and national treatment to the extent specified in a member country's GATS schedule. Violations of the GATS are subject to binding dispute settlement under the WTO's dispute settlement system. In this regard, aviation services are specifically addressed in the GATS Air Transport Services Annex, which describes the extent of GATS coverage of air transport services.

In such, those aviation services from the GATS: aircraft repair and maintenance services; selling and marketing of air transport services; and computer reservation system services are considered to be representing comparative advantage and business opportunities. In addition, Cunningham and Lichtenbaum argue that some aviation services are not "directly related to the exercise of traffic rights" and therefore excluded from the GATS and its annex<sup>34</sup>. The category of aviation service "directly related to the exercise of traffic rights" is also not defined in the GATS annex, and therefore it is unclear what is specifically excluded from the it. Such major aviation services excluded from the WTO regime are 1. ground-handling services, 2. airport management service, 3. air traffic control services, and etc. In assessing the scope of national commitments in any of these covered area, one must also consider which of the GATS "modes" of delivering services are covered by the national commitments.

While observing the context of the GATS annex, study of the legality whether to add those aviation services excluded should be processed. In this regard, this thesis has conducted research on the legality of the excluded aviation services and reached following conclusion. As mentioned previously, two core excluded services are ground-handling and airport management service. Ground-handling service is typically provided by an airline itself while airport management service by the public enterprise. Firstly the

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<sup>33</sup> Page 2, Ibid

<sup>34</sup> Page 1181, Richard O. Cunningham and Peter Lichtenbaum (2005) - "The Agreement on Trade in Civil Aircraft and Other Issues Relating to Civil Aircraft in the GATT/WTO System" in A. Appleton, P. Macrory & M. Plummer eds., *The World Trade Organization: Legal, Economic and Political Analysis*, Vol. II, New York: Springer Verlag



ground-handling is divided into two parts; aircraft related and processing baggage and cargo. Since both services require close handling with the aircraft, most airlines perform ground-handling services by themselves. However, not all airlines have specific teams or subsidiary companies for the provision of ground-handling services due to budget problem. In case of low cost carriers (or LCC) often reduce unnecessary costs by minimizing or outsourcing the ground-handling service. Therefore, ground-handling service can be a considerable subject of liberalization similar to those three services from the annex.

In this regard, ICAO's imperfect guidance on the aviation industry and services may be next opportunity for the WTO and GATS to take the lead. Not only the obligations from the GATS are applicable to the aviation services, the WTO dispute settlement procedures may be more efficient than that of ICAO provision.

Recalling the explanation of GATS obligations, it can be assumed that two services in question do not fall into any obligations mentioned. It is mainly due to the fact that such services are considered as public services that can efficiently handling safety and security issues by the governmental authority. From the other point of view, a trade negotiation procedure for broad multilateral or multilateral air transport agreement is conducted to liberalize aviation services. Especially, air transport services have been nevertheless subject to a regular review by the Council of Trade in Services, with a view to considering the possible further application of the GATS to the sector. However, despite to the importance of services, progress has been slow. Council of Trade in Service's first review took place in 2000-2003, while the second review is still ongoing<sup>35</sup>. In addition, inclusion of ground-handling and airport management services may still require further research on behalf of national security right or free trade aspects. In addition, the question still remains whether those services can be liberalized. Therefore, due to nature of aviation services and changing trade negotiations, further researches need to be conducted.

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<sup>35</sup> [https://www.wto.org/english/tratop\\_e/serv\\_e/transport\\_e/transport\\_air\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/transport_e/transport_air_e.htm)

## Chapter V. Conclusion and Discussion

As the market trend progresses, legal documents are also required to co-op with the changing environment of the industry. This thesis aimed to make comparison between legal documents provided by the WTO and ICAO, analyze impact on trading aviation services. Although, WTO's attempt to provide specific articles for tradable aviation services, it can be assumed that obligations from ICAO agreements more validate. However, features of the WTO, such as dispute settlement system, distinguishing from other international organizations make the GATS unique. In addition, comparison with other services has made aviation services clear that need to be dealt uniquely.

From the analysis, it is confirmed that traffic rights and other tradable aviation services have a lot of influence on the national economy. It is undeniable that once a bilateral or multilateral open skies agreement is signed, it greatly affects the operation of an airline and related industry in the nation. International routes cannot randomly determine the opening of the route or the increase in the number of flights without an open skies agreement. Thus, the adverse conclusion of the aviation agreement could have a significant impact on not only international competition, but also on the operating activities of airlines, and, more importantly, the growth of airlines. That is, the aviation agreement created by diplomatic negotiation is a precondition for the development of the nation's aviation industry, as well as a factor that determines the performance of the international air transport business. Moreover, it can be interpreted that most countries focus on the aviation services is distinct to each other. Of course, each country has exclusive sovereign rights to govern aviation services and market; however, still it is true that the objectives of those acts and policies are to promote better aviation services to customers. In order to promote more vivid service trade, advantages of foreign investment cannot be overlooked. Current changes in the air service sector are building a joint venture among themselves in order to secure greater market share. Alliances between American Airlines-Japan Airlines and United Airlines-All Nippon Airways for pacific route between the US and Japan are examples. One of noticeable facts is that these joint ventures are excluded from the US antitrust law. Therefore, in order to reflect the fluctuating market trend and policy making, the WTO GATS should attempt to broaden the boundary of the aviation service.

Apart from the traffic rights, it is unclear that the possibility for including other aviation services into the WTO system still exist. For the providers of ground-handling and airport management does not solely rely on the public enterprise, interference by the WTO may be acceptable. However, such legal issues are controversial whether it should be under which authorities.

As previously mentioned, the provisions of the Chicago convention and its Annexes do not contain any express responsibility on the matter of traffic rights or aviation services to obligate, in spite of provision of dispute settlement procedures. Countries are individually responsibilities when signing bilateral or multilateral open skies agreements. However, it can be argued that although the actual provision of services may be delegated to the government, the responsibility remains with airlines. It therefore follows that if a country cannot provide the foundation necessary to ensure a private entity's compliance with its international commitments, that country will ultimately be forced to step in. In other words, the failure of a private security company, airline or airport operator to provide adequate security in compliance with the international standards will result in a breach of the government's international obligations. Therefore, lack of legal binding of the Chicago convention levies WTO and GATS more responsibility in terms of trading aviation services.

From the analysis, application of the basic GATS principles to traffic rights remains a complex and difficult issue. In addition, since aviation services "directly related to the exercise of traffic rights" services are excluded, with specified exceptions, there must be intensive research for the GATS or the Aircraft Code to cover such services. Even though WTO's effort of promoting free trade among member countries may be deficient, however, its attempts of transparency and ban on government subsidy must be spotlighted. As the Aircraft Code has been a minor issue until nowadays, the study was to shed light on how comparison between the different agreements by international organizations can be made. Thus, it is expected to conduct further research and analysis; following result may require amendment of agreements.

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## 국문 초록

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20세기 초에 항공기의 도입은 세계의 산업과 무역을 극적으로 변화시켰다. 항공 산업은 기계, 전자, 정보 기술과 같은 다른 많은 첨단 기술과 많은 관련이 있고 항공 수요가 늘어나고 있기 때문에 이에 비례하여 그 중요도도 급속히 증가하고 있다. 이 처럼 항공산업은 다른 첨단 산업들과 얽혀있으며 그 상호 관계는 국제적으로 경제 발전을 촉진하기 위한 시너지 효과를 만들고 있다.

본 논문은 WTO와 그 부속서에 포함되지 않은 항공서비스와 파생된 법적 문제에 관한 연구를 수행하는 것을 목표로 했다. 비록 항공서비스의 중요성은 충분히 입증되었지만, 국제 기구들에게는 항공 서비스 거래에 관한 법률적 문제의 중요성이 간과되었다. 그러한 법적 문제들은 세계 무역 기구 회원국들 사이에서 거래가 가능한 핵심 서비스 중 하나인 운수권과 기타 항공 서비스가 여전히 과소 평가되고 있다는 것이다. 이에 따라, WTO에서 제외된 항공서비스에 대하여 이 논문에서 연구하였다. 연구를 수행하면서, 국제 기구들의 법률 문서와 공공 기관들의 보고서와 연구결과서 등을 조사하였다. 이 연구를 진행하면서, 항공서비스, 특히 운수권에 관하여 WTO와 ICAO, 두 국제기구 문서에서는 서로 중복되는 현상이 발견되었다. 특히, ICAO와 시카고

협약은 항공서비스의 발전에 큰 영향을 미쳤지만 통상분야 등 다른 분야에서는 그다지 효과적이지 못했다.

또한, 항공 서비스의 중요성에도 불구하고, WTO와 그 부속서들은 항공 서비스의 무역에 대한 규정이 없거나 미흡했다. 따라서, 본 논문은 추가적인 연구를 위해 WTO에서 제외된 운수권(하늘의 자유)와 특정 항공 서비스들을 연구 주제로 선정하였다. 연구를 진행하면서 발표된 자료를 분석하였을 때, 운수권과 기타 항공서비스가 항공산업과 국가 경제에 미치는 영향은 충분히 입증되었다.

최종적으로, 이 연구에서 중요한 발견은 ICAO나 WTO 등 국제기구들의 합의서, 법적 문서들이 변화하는 산업 환경과 시장 동향을 따라잡지 못하고 있다는 것이다. 그러므로, WTO가 항공서비스에서 주도적인 위치를 고수하기 위해서 GATS에 운수권을 추가하는 것은 매우 긍정적이다. 그러나 운수권 이외의 기타 항공 서비스를 WTO 체계 내 포함 여부는 여전히 불분명하다.

주요어: 서비스 무역에 관한 일반협정, 국제민간항공기구, 시카고 협약, 운수권, 항공서비스

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