POLITICAL ECONOMY OF AUSTRALIA'S AVIATION TRADE
WITH THE U.S.

Introduction

Australia's international aviation trade relations with the United States raise particular issues and problems which do not apply in the other sectoral studies. This chapter is unique in that in the international aviation sector Australia is in a more symmetrical position to the U.S. with each state having something (access to the other's market) sought by the other. The trading of economic rights in this sector has been determined by a bilateral bargaining process, a process which has both an equalizing effect while also providing opportunities for Australia, as the relatively weaker state, to apply sectorally-specific resources toward a favourable outcome.

In examining Australia's aviation trading relations with the U.S. over the past decade, this chapter considers how Australia has sought to improve its trading outcomes through bilateral approaches to the U.S.; through multilateral approaches in the GATT Round and; importantly, through a formal bilateral negotiating process. Service issues such as aviation rights have not been central to Australia's trade relations with the U.S. However, with the growing commercial importance of service issues for each state and globally, both states have given them a higher profile in their more recent trade discussions.

Australia has always sought to protect the market share of Qantas, the national carrier, on the Pacific routes while also promoting Qantas' access to the U.S. market. This policy has, however, been significantly changed in recent years and the Australian state actors, who have retained control over the making and direction of this policy, have included the pursuit of other economic interests within their policy aims (including the promotion of travel and tourism), effectively reducing their level of support for Qantas. This, together with the adoption of a multiple designation policy and the progressive sale of Qantas, has acted to change the nature of the domestic bargaining relationship between state and societal actors.
Australian policy, as a result of these recent changes, has been more susceptible to international influences favouring the liberalisation and deregulation of international aviation and this has, in turn, affected its approach to the U.S. The 1980s also saw the promotion of the U.S. pro-competitive policy with its emphasis upon the global liberalisation of international aviation. There has, however, been an important protectionist variant to this policy with the trading of rights being used to effectively minimise foreign carriers’ access to the U.S. domestic market.

The U.S. international aviation policy-making process is examined in order to ascertain the respective roles of state and societal actors in formulating U.S. policy and the extent to which it has offered opportunities for, and constraints upon, Australian efforts to change the policy and improve bilateral outcomes. This will be followed by a similar assessment of Australian policies and process and the changes that have occurred to each over the 1980s and early 1990s.

The most recent bilateral air services agreement of 1988 is then examined to highlight the differing approaches of the parties to the critical issues of capacity regulation and route entitlement and how they have been dealt with in both the 1988 negotiations and subsequent disputes. An important part of this study is to assess whether the bilateral bargaining process, conducted between Australia and the U.S., has provided opportunities for Australia, as the weaker party, to apply sectorally-specific resources to improve upon the outcomes which would otherwise be expected to result from the translation of the states’ differing power-capable resources.

The final section will examine how Australia has approached the solving of those problems which have arisen in Australia-U.S. aviation trade. While not as important as the formal bilateral bargaining process, Australia has also sought to promote a change in U.S. international aviation policy by bilateral approaches to U.S. policy-makers, independently of formal negotiations. Aviation services trade has been included within the current Uruguay Round of multilateral talks and the paper discusses Australia’s approach to these talks and whether they hold any opportunities for changing U.S. policy in such a way as to improve Australia’s sectoral outcomes.
Brief Postwar History

Relations between Australia and the United States over the trading of aviation rights and general negotiations relating to international air passenger transport date back to the establishment of the 1944 Chicago Convention. This Convention provided that there would be a fair and equal opportunity for carriers of the contracting parties to develop services but was unable to resolve the differences in approaches advocated by the U.K. and U.S. The result was that aviation rights were to be traded and relations determined by means of negotiated bilateral agreements.

The conference did, however, reach agreement on the exchange of the first two of the freedoms or privileges to be granted between sovereign states. These two ‘political’ or ‘technical’ freedoms, the right to fly across the territory of another government without landing and to land on that territory for non-traffic purposes, were considered essential to the operation of any service over or through a foreign city and required the prior permission of that other government. The third and fourth ‘freedoms’ give the right to carry passengers from the base country to another country and to the base country from that other country while the fifth ‘freedom’ gives the right to carry traffic to and from one country in the course of serving another. These third, fourth and fifth freedoms were to be exchanged by bilateral agreements.

At Chicago there was general agreement between the contracting parties over several objectives including the attainment of soundly-based and ‘economical’ air transport; the avoidance of ‘unreasonable competition’; and the affording of a ‘fair opportunity’ for all states ‘to operate their own international airlines’. However, it was left to the states, in dealing directly with each other, to work out the relative importance that each objective would be given in practice.

A 1946 Conference in Bermuda sought to establish the details of this regulatory system. A state’s sovereignty over its air space was the only multilaterally accepted principle and the matter of the exchange of traffic rights was left to be the subject of bilateral negotiations. The first set of Conference negotiations, between Britain and the U.S., resulted in an Agreement which was to be the model for all subsequent parties and
effectively established the ‘rules of the game’ such as the ‘five freedoms’. The Bermuda Agreement provided what one analyst has called a "fair and equal opportunity for all designated carriers and sufficient flexibility for give and take" between the parties.[Harbison, 1987, 4] This brought into existence a decision-making mechanism, the bilateral negotiation process, whereby each state was able to retain unilateral control over the trade relations of its aviation sector. This was reinforced by varying degrees of state intervention and/or direction by each government in the activities of its international carrier/s.

After the Bermuda Conference a network of over 1,000 bilateral agreements came into existence, all displaying certain common components.202 Of these common clauses, this study is concerned with Australia-U.S. negotiation of the Route Description and Capacity clauses. Despite the legalistic ancestry of this bilateral regulation of air traffic rights, the nature and content of negotiations over route and capacity clauses has revealed all the hallmarks of the interaction of political and economic interests.

The state has always played a dominant role in regulating its air transport operations whether it be the U.S. case of moderate economic regulation or that of most others, including Australia, where state sovereignty was enforced by government intervention in the operation of designated airlines.203 Each state has been anxious to preserve and advance the interests of its designated airlines above almost all other considerations. Airlines were seen, by most states, as tools of policy and not necessarily as vehicles for generating as much revenue as possible.[Golich, 1989, 19]

While there may have been a "spirit of compromise and good neighbourliness" in the reconciliation of exclusive interests [Kohona and Sadurska, 1988, 54], a mercantilist approach has continued to pervade government thinking on international aviation rights. The 1980s attempts at the liberalisation of the international aviation market should not be misinterpreted as meaning that the international market has moved substantially away from what has been described as a "series of protected national markets interconnected by international routes".[Kasper, 1988a, 91]
The two decades after the 1946 conference was a period of growth and the different views about capacity control were easily accommodated. However, by the late 1960s, both the advances in technology (most notably the wide-bodied jet aircraft) and the increase in the number of airlines had brought about a change in the situation. Pressures for market shares have since intensified and excess capacity has become common, producing reductions in load factors and very low profit levels.

A dispute between the U.S. and the U.K. brought to the fore the debate over whether international air services should properly be considered a commercial business or a regulated one between states.204 This was significant not so much for what it decided but for the subsequent effect it had upon the development of U.S. international aviation policy in the late 1970s and early 1980s. In 1978, the U.S. adopted a new pro-competitive international aviation policy.205 This policy aimed at the deregulation of the domestic U.S. market as well as the liberalisation of the international market. The policy changed the U.S.’s approach to its bilateral negotiations and resultant agreements as it sought to encourage deregulation of other domestic aviation markets and the liberalisation of international routes. The international aviation market was directly affected as U.S. domestic deregulation enabled U.S. carriers to capitalize on the size of the U.S. domestic market and expand their own international networks while foreign carriers lost competitiveness as U.S. carriers ceased to provide them with connections to and from gateway points in the U.S.[Golich, 1989, 14]

Australia has over 40 air service agreements with other countries, most of which are of the predeterminist (Bermuda I) type.206 In negotiating these agreements, the Australian government and the then sole designated airline, Qantas, were particularly concerned with two commercial elements: the airlines designated to fly on particular routes and the respective capacities to be allowed to each of the countries’ designated airlines on these routes. These concerns have been paramount in Australia’s negotiations with the U.S. over Pacific routes. In August 1988, a new Air Services Agreement between Australia and the U.S. was signed which both parties considered would provide the basis for the expansion of services. However, despite the improvements on previous agreements, disputes over route entitlement and capacity have continued.
The Pacific routes are far more important to Australia and Qantas than to the U.S. and its carriers. Trans-Pacific services have constituted something like 30 percent of Qantas' operations while they were only 2 percent of United Airlines' and 4 to 5 percent of Continental Airlines' entire operations. [Kohna and Sadurska, 1988, 56] The different and relative power-capable positions of the two states (and their airlines) on these routes has been the main reason for the different approaches that each has had to the regulation of the capacity and route entitlement clauses of the 1988 Agreement and its predecessors. There have been three issues of concern which have divided Australia and the U.S. in the negotiations and subsequent discussions. Chief amongst these have been that of capacity on the routes and specifically how many passengers (including the percentage of through traffic between Australia and the U.S.) each state's designated airlines are permitted to carry; the number and location of entry points into each other's domestic market; and the related issue of how many airlines are permitted to operate on each route.

**Multilateral Bargaining and the GATT**

The bilateral regulatory and legal structures which developed in the early postwar years have, in recent years, begun to show signs of strain as states attempt to come to terms with the great changes that have occurred in the international aviation industry over this period. Against a background of these growing problems and in the context of moves to reform services in the current protracted Uruguay Round of GATT talks, multilateral approaches to the reform of aviation services have been considered.

Aviation services (though not traffic rights) have been considered within the services trade group (Group Negotiating Services (GNS)) in the current Uruguay Round of multilateral trade talks. Despite recognized problems with the operation of the bilateral system, both Australian and U.S. officials have expressed doubts about both the feasibility and desirability of a multilateral regime being established out of this current GATT Round.[Interviews] A recent European analysis has specifically referred to the problems a multilateral regime would encounter in attempting to unravel the complicated network of bilateral deals as well as in seeking to overcome the many vested interests of governments in the aviation field.[Williams, 1988, 53] A further problem may arise
from the fact that aviation issues, like many other service issues, have only permitted forms of behaviour if specifically given by agreement. This contrasts with goods trade where all forms of behaviour have been generally permitted unless disallowed by agreement. This could create difficulties in attempting to include such a sector within an overall multilateral package.

Recent Developments in International Aviation

The late 1980s and early 1990s have seen the greatest change in international aviation since the major airlines were established. U.S. airlines have led the way with their rapid development and expansion of national route networks (based on hub-and-spoke systems) after the 1978 deregulation. Competition has grown and airlines have had to become more efficient. Many smaller U.S. airlines which began after deregulation, failed and were taken over by the larger airlines while airlines outside of the U.S. copied the use of the hub-and-spoke system and the computer reservation system (CRS) as they too sought to become global carriers. In the U.S., the strongest airlines (United, American and Delta) have been getting stronger while the weaker have either gone into bankruptcy (such as Continental) or disappeared altogether (such as Pan Am and Eastern).[The Economist, 1991, 57]

However, even the major U.S. airlines have been hit by the recession and the 1990-91 Gulf War and have had to scale back operations. Even though passenger demand increased from mid-1991 and many of the airlines managed to bring their costs under control, several global airlines remained heavily in debt. In the U.S., the major carriers engaged in a discounting fare war as they sought to recover from the recession but this has only served to exacerbate their financial problems. For global airlines as a whole, operating margins have remained poor [see Table Q] despite expensive restructuring programmes by many carriers and a rise in passenger traffic.

Pursuant to the ‘open skies’ policy of the Reagan and Bush Administrations, the U.S. recently promoted further liberalisation of the international aviation market, with particular emphasis upon the European market. The opening move was an ‘open skies’ agreement between the U.S. and The Netherlands. The then U.S. chief airline
negotiator was reported as stating that he hoped this Agreement would initiate the
deregulation of air traffic between Europe and the U.S.[The Economist, 1992d, 66]

Another recent global feature has been the moves by certain carriers to take a stake in
other airlines so as to become truly global airlines.214 Apart from the U.S. industry’s
own consolidation, the most recent and notable examples include KLM’s 49 percent
stake in Northwest Airlines, Air Canada’s stake in Continental Airlines and the British
Airlines bids for both a major holding in USAir,215 and the purchase of 25 percent of
Qantas.

Airline nationalism has been diminishing in significance as more airlines become
privatised and mergers and alliances completed to both stifle competition and provide
some economic security. However, bilateral regulation is still the primary means by
which rights are determined. Airlines, not the least the U.S. carriers, have continued to
place pressure upon their governments to use the bilateral negotiation process to hinder
the free operation of the market where they have feared it would act to their detriment.

**U.S. International Aviation Policy**

**History and background**

Having failed to establish a liberal multilateral regime for international aviation in the
early postwar years, the U.S. set about to maximize the returns for its carriers through
the bilateral trading of aviation rights. While the U.S. government joined other
governments in conducting bilateral negotiations, the U.S. industry was quite different
in nature from that in most other countries. Most importantly, there were no U.S.
government-owned airlines and, on the routes serviced, a number of private airlines were
designated U.S. international carriers.216

U.S. carriers had a clear comparative advantage over other airlines in the early postwar
decades. They were in a strong bargaining position not only because of their size but
also because access to the large U.S. domestic market was so eagerly sought after by
foreign airlines.217 While the bilateral system of negotiating aviation rights has served
the U.S. well over the years, the U.S. has consistently called for a more liberal, less regulatory regime. [Shane, 1987, 13]

The domestic deregulation aspect of the 1978 policy change sought to encourage greater competition with the entry of a number of new carriers. While many new carriers did appear as a result of deregulation, the overall result of the policy was the dominance of the U.S. industry by a few large carriers. Competition was heightened by the deregulatory policy and with a hands-off approach to airline mergers, the largest carriers developed extensive national and international networks through their own domestic growth and acquisitions. The result was increased concentration in the U.S. industry. 218

Domestic deregulation not only rationalised the U.S. industry but also placed those carriers which gained from that process in a stronger position to seek a liberalization of the international market, enabling them to expand on their share of that market. At this time, the U.S. government, acting in concert with U.S. airlines, also pressured a liberalization of the tariff or rate setting structures of the International Air Transport Association (IATA). U.S. industry pressure coupled with the new official policy resulted in the U.S. dispensing with the Bermuda II model and seeking more liberal bilaterals.

Improvements in technology such as the introduction of wide-bodied aircraft, which could be used economically on long-haul routes, provided further impetus to the U.S. to negotiate more liberal agreements within the bilateral framework. The dispute with Britain of the late 1970s gave the U.S. the opportunity to push ahead with its new policy which involved, together with U.S. domestic deregulation, the negotiation of more liberal agreements with several European countries to divert traffic away from more restrictive ones. 219

The U.S. Airline Deregulation Act of 1978 ended the regulatory role of the Civil Aviation Board (CAB) 220 and U.S. airlines responded by realigning their route structures (notably through the rapid growth of hub-and-spoke operations), developing new pricing strategies and activating a range of new competitive weapons. These
weapons included the computerized reservation systems (CRS)\textsuperscript{221} and the frequent flyer programs (FFP).\cite{Kasper1988b,29}.

The installation of the Reagan Administration coincided with increasing doubts by the U.S. industry as to whether the attempts to liberalize international aviation through liberal bilaterals (and especially on capacity and route issues) was working in its best interests. Citing criticism that the 1978 Netherlands Agreement had not provided reciprocal benefits to the U.S. in terms of European gateways, the new U.S. policy was that deregulation on a global scale was impractical and to protect U.S. carriers, each bilateral relationship would need to be considered on its merits.

One of the key changes in the U.S. industry has been the increasing share of the total market at a particular airport held by airlines with hub operations at that airport. Through its hubbing operation a carrier was able to bring additional traffic to the airport. This allowed carriers to expand their networks and aggressively compete in both the domestic and international markets. In addition to the traffic generated at their hubs, the dominant position of these U.S. carriers in the ancillary markets at their hubs have served to enhance their position.\textsuperscript{222} While industry concentration has facilitated a pro-competitive stance by and amongst these U.S. airlines, the self-regulating nature of the market has also allowed the airlines to use economic power to preclude competition. Another effect of this industry concentration has been to reduce the ability of passengers to choose between competitive airlines, be they domestic or international.\cite{Fischer1986,8}

The deregulation and subsequent increased concentration in the U.S. airline industry placed the U.S. carriers in a more aggressively competitive position internationally and, together with the U.S. ‘trading rights’ policy, has made negotiations with the U.S. even tougher. Equally important has been the impetus U.S. deregulation and its results have given to changes in both the structure and operations of many foreign carriers. Partly prompted by the mergers of U.S. carriers into mega-carriers and their resultant market strength, a number of mergers have occurred between foreign carriers.\cite{Kasper1988b,41}
The Clinton Administration has exhibited a willingness, not seen with the previous Bush Administration, to go beyond mere expressions of sympathy for the economic problems being experienced by the U.S. airline industry. The Administration has expressed interest in finding ways in which it can aid the competitiveness of the industry. An independent commission has been established to examine the industry’s problems while the White House has also set up a working group, including the USTR, which has been charged with coming up with solutions to these problems.[Stutchbury, 1993b, 14]

**U.S. Negotiating Policy**

The present U.S. policy on the negotiation of aviation rights originated with the policy established by the Carter Administration in 1978.[President Carter, 1978] The policy sought to ‘encourage vigorous competition’ in the world market place by effectively exporting the competitiveness which the administration was encouraging through deregulation in the domestic U.S. market. American policy-makers believed at this time that increased competition would enhance U.S. international commerce and that their negotiations should encourage trading opportunities rather than restrictions.[Taneja, 1980, 56]

The Carter policy was predicated on the elimination of what was referred to as ‘unfair competition’. Emphasising a policy of fair and equal opportunity to compete with foreign airlines, these general U.S. goals were translated into specific policy objectives which called for the expansion of scheduled services through the elimination of restrictions on capacity, frequency, and route and operating rights. The policy aimed at maximising access to international markets by seeking to increase the number of gateway cities for non-stop or direct air services while providing for maximum flexibility through the multiple designation of U.S. airlines in international markets.

The policy sought the elimination of ‘unfair or destructive competitive practices’ if they prevented fair and equal competition from occurring. Identifying U.S. interests with a more liberal international aviation industry, any concessions made by the U.S. negotiators were to be of a liberalizing nature and would only be granted in return for progress toward competitive objectives by those with whom they negotiated.
The initial policy was to be effected by the negotiation of liberal agreements with other countries. While the focus was upon the European market, which the U.S. considered to be unduly restrictive, the policy was adopted for worldwide negotiations and was in effect for the 1980 and subsequent Australia-U.S. talks. Using the U.S.'s extensive route rights (especially Third and Fourth Freedom rights), its negotiators offered foreign states access to new U.S. gateways in exchange for Fifth Freedom rights for U.S. carriers. In other words, the large U.S. domestic market meant that the U.S. was both attractive as a source of passengers for foreign carriers as well as a popular destination. U.S. negotiators were thus able to trade these rights to discharge and pick up passengers in exchange for rights to discharge and pick up passengers in a third country.

In interstate bargaining, U.S. negotiators sought changes that would, in effect, eliminate government restrictions on price competition and on the capacity offered on U.S. international routes. This strategy was successful in persuading a number of European countries to negotiate more liberal agreements by threatening to divert a substantial volume of price-sensitive traffic away from restrictive countries. [Kasper, 1988b, 76]

U.S. Bilateral Approach

The U.S. has conducted its bilateral negotiations principally through a team of professional negotiators²²⁴ chiefly drawn from the U.S government. The lead has been taken by the State Department, through its Deputy Assistant Secretary for Transportation Affairs, but the Department of Transportation has performed a central role in the formulation of the U.S. approach in each set of negotiations. Also on the team of negotiators has been a representative of the U.S. Air Transport Association (ATA) (the airlines' industry body).

The U.S. bilateral approach to the Australia-U.S. negotiations has been both formulated (at least ostensibly) and executed by U.S. state actors. However, the influence of the U.S. carriers has in fact been critical to the determination of this approach.²²⁵ This can be explained by the fact that the U.S. so-called pro-competitive policy (a truly pro-competitive international aviation policy would not have been concerned with the exclusive promotion of the interests of U.S. carriers) and the trading rights variant (as
developed by the Reagan Administration) argued not only the removal of barriers to the operation of U.S. carriers but also the promotion of the airlines’ economic interests in the negotiation of aviation rights in bilateral negotiations. The influence of the airlines over government policy has been checked only where U.S. carriers have been in direct competition and government officials have been able to balance the influence of one carrier off against that of another. U.S. state actors have had some latitude in executing U.S. policy so long as they were not seen to be favouring one carrier over another or disadvantaging the interests of carriers generally. The carriers’ interests have also been enhanced by the fact that the Department of Transportation, the executive agency most closely aligned to the interests of the airline industry, took over most of the regulatory responsibilities of the U.S. Civil Aviation Board after the deregulatory changes of the late 1970s.

The U.S. negotiating team was required by the U.S. Federal Aviation Act to seek a balance of rights in the negotiations between the states. According to one U.S. negotiator, while open skies was considered the U.S. objective, achieving a balance of rights was vital and the maximisation of that balance represented the exchange between the states. [Interview with State Department official] As the chief U.S. negotiator of the late 1980s has argued, the balance between the interests of both states may be finely tuned. For example, in referring to the "doing business problems" such as ground handling, airport access and user fees, unless impediments to the efficient operation of U.S. carriers were removed by the other state, the carriers of that country would have difficulty gaining new opportunities in the U.S. market.[Shane, 1986a, 14-15]

The Reagan Administration’s policy sought "reciprocal exchanges of commercial opportunities" not "an absolute guarantee of equal market shares".[Shane, 1987, 1] In seeking such an exchange, each bilateral relationship was treated as being unique. As former Deputy Assistant Secretary Frank Willis has been quoted as saying, "our negotiators must assess each bilateral relationship in terms of the totality of U.S. transportation interests at play in the particular relationship."[Fischer, 1984, 16] This policy was continued by the Bush Administration.
The U.S., while having sought to maximize its gains from the regulatory nature of bilateral negotiations, has been concerned that these negotiations have constituted an impediment or trade barrier to both the liberalisation and expansion of international aviation services.²²⁶ U.S. negotiating policy over the past decade and a half has sought the eventual creation of a genuine marketplace for aviation services with government’s role being limited to establishing the “rules of the road and other safety standards”. [Shane, 1988c, 2] Other states, including Australia, would counter the U.S. approach by arguing that the global airline industry is some distance from being a perfectly competitive market and that an unregulated marketplace would necessarily assist strong aviation powers, such as the U.S., at the expense of the weaker ones, including Australia.

Congress, while not generally taking an interest in bilateral aviation negotiations, including those with Australia, has on occasion sought to influence the negotiations (at either the preparatory or execution stages) in response to approaches from the airlines. The adoption of the ‘trading rights’ approach by the Reagan Administration served to allay many of Congress’ concerns of the early 1980s that the interests of U.S. carriers were not being given high enough priority in the U.S. approach to negotiations. In general, in the absence of other political considerations, there has been little likelihood of Congress influencing U.S. negotiating positions.

The U.S. approach to negotiating aviation rights with Australia has represented its common approach of simultaneously seeking to trade and balance rights while moving for a further liberalisation of the international market. Bilateralism may have seemed unnecessarily regulatory to the U.S., but it has certainly produced favourable returns for its airlines. Bilateral bargaining has not, however, acted to stifle trade in aviation services and has, indeed, been recognized by the U.S. as a means by which it could push ahead with the liberalisation of international aviation.
U.S. Multilateral Approach

U.S. policy-makers have not given to multilateralism nearly the same importance as they have to the bilateral regulation of international aviation. One U.S. negotiator, when interviewed on the subject, argued that while a multilateral handling of aviation trade services was theoretically a possibility, its practical application had only been considered in response to developments arising out of the move for a single European aviation market.

The Office of the US Trade Representative (USTR), while more concerned with multilateral rather than bilateral negotiations in international aviation, has expressed uncertainty over whether aviation would be included in the final agreement to come out of the current Round of GATT talks. However, USTR officials considered that bilateralism was not comprehensive in that some barriers to aviation services trade were not covered and these could be handled more effectively through a multilateral agreement. The multilateral forum was, in the sense, seen as being able to perform a useful supplementary role to the bilateral regime.[Interviews]

Multilateralism was also considered by U.S. government officials as providing a means of solving certain problems arising out of the bilateral relationships. In particular, a liberalizing multilateral could, in including all states concerned, provide the opportunity for possible leverage against states taking advantage of the protectionism of a bilateral regime.

The multilateral approach was seen by U.S. policy-makers as being unlikely to produce significant results in the short to medium term. However, referring to the global developments in aviation, both in terms of changing economics (witness the growth in alliances amongst airlines) and technological innovation, some U.S. government officials were prepared to see an important role for a multilateral forum as part of a longer term scenario. They considered that, in time, rigidities in the bilateral regulatory regime may encourage the view that a different forum was required. For these officials, this forum would need to be one which encompassed more players and more issues and offered
improved returns for a U.S. government determined to promote the further liberalisation of international aviation.228

**U.S. International Aviation Policy-Making Process**

The U.S. international aviation policy process has been centred on the executive and its departments and agencies. The executive’s prominent position in the making as well as implementation of international aviation policy has remained virtually unchallenged despite Congress’ reassertion of power in other areas of trade policy-making.

The adoption of the pro-competitive policy by the past three U.S. Administrations was influenced by developments both within and outside the U.S. Frustration with bilateral negotiations, especially with the U.K., and the U.S. industry’s pressure for a policy strongly promoting liberalisation both played an important part in bringing about the policy change.

The international aviation policy process has been an example of U.S. export politics in practice. The process has attracted greater executive interest than that of U.S. import politics and has been heightened by the fact that agreements with foreign countries have been negotiated bilaterally on a government-to-government basis. These negotiations have been led by officials of executive departments and have been the principal means by which the U.S. government has promoted its policy, while at the same time adjusting it to meet varying circumstances.[Shane, 1988d] The importance of the negotiation process in both the formulation (individual bilateral negotiations can affect general policy positions) and implementation of policy has helped to confirm the executive’s control over the making of international aviation policy.229

U.S. societal actors (principally the private commercial operators) have also played an important part in the U.S. policy-making process. These commercial airline operators, while not actually present at any bilateral negotiations, have both directly and indirectly influenced policy positions adopted by U.S. state actors. Representations are made directly to members of Cabinet and government officials and indirectly through
particular members of Congress. These parallel modes of influence have been exercised before, during, and on occasion, after the bilateral negotiations.

While industry has undoubtedly exercised some influence over the making of policy during the 1980s and early 1990s, this has not been sufficient to change the general policy direction of each Administration. Nowhere has the limit of industry's influence been more noticeable than in respect of its unsuccessful attempts to have the Reagan Administration change the former Carter Administration's policy into a much more restrictive one.

Congress has performed a less important role in international aviation policy-making than in other sectors of this study. While there have been occasions when particular members of Congress have sought to influence the policy-making process (such as in the case of Japan), as a rule Congress has been prepared to leave this area of international economic policy-making to the executive branch. With so much of U.S. international aviation policy determined by the bilateral negotiating process and with the executive having been the principal participant in that process, the result has been that U.S. policy-making in this sector has been led by the executive.
Role of the Executive

U.S. international aviation policy has resulted from an interagency process between the Departments of State (State), through its Deputy Assistant Secretary for International Affairs, and Transportation (DOT), through its Assistant Secretary for Policy and International Affairs. This shared responsibility has been illustrated by the fact that while the DOT has been the primary policy-maker in international aviation matters, State has led the U.S. team in the bilateral negotiations. Relations between these departments have been both formal and informal and, as described by government officials, of a fluid nature over the past decade.

During bilateral negotiations, State officials liaised with industry officials over policy positions adopted and negotiating approaches taken. Outside of these negotiations, DOT officials have been charged with the ongoing responsibility for sounding out industry interests and informing them of government policy in this sector. U.S. government officials have stressed the importance of both keeping abreast of industry opinion as well as informing industry of impending policy changes. Industry consultation was more important during periods of bilateral negotiations and the close relationship was not surprising given that the government negotiators have had a legal obligation (from the U.S. Federal Aviation Act of 1978) to ensure that aviation rights were balanced between the two negotiating countries. The U.S. carriers who have operated (or have sought to operate) the routes at issue in a set of negotiations have made a necessary contribution to assessing the value of the rights being traded.

The USTR has also been involved in international aviation policy-making, though to a lesser extent than State and Transportation. USTR officials have principally been concerned with developing policy positions with respect to multilateral aviation developments rather than with bilateral aviation relations. As with other trade policy sectors which report to the Economic Planning Committee (EPC) of Cabinet, aviation policy-making has been subject to a formal hierarchical structure consisting of a Trade Policy Review Group (TPRG) at sub-Cabinet level and a Trade Policy Staff Committee (TPSC) which services the TPRG.²³⁰
Industry opposition to multilateral consideration of aviation issues as well as the fact that bilateral negotiations can be expected to remain the primary means by which aviation rights will be bargained, has meant that the USTR's role within the policy-making process has been of less immediate relevance than that of State and Transportation. As with a number of other less involved departments and agencies, such as the Departments of the Treasury and Commerce, the USTR was consulted by the principal players in the executive but has performed only a small direct role.

**Role of Congress**

While the role of Congress in international aviation policy-making has been less important than in other trade sectors of this study, many members of Congress have had either a generic interest or a constituency interest in policy outcomes in this sector.

Members of Congress with a constituency interest have usually been legislators with a major airline hub in their District or State. A symbiotic relationship has developed whereby these legislators can be expected to act to ensure that aviation policy does not disadvantage the carrier with operations in their electorate. In return, either through Political Action Committees (PACs) or otherwise, the airline has assisted in the re-election funding or promotion of the legislator. Likewise, a city or municipality which has been the base for a major carrier/s or has acted as an important destination or throughfare point for international carriers has a vital interest in such policy developments and has lobbied its representatives in Washington in pursuit of that interest.

Individual members of Congress have only had an indirect effect upon international aviation policy-making and the U.S. approach to bilateral negotiations. Their role has been exercised either through Senate confirmation hearings of executive appointments, or more importantly through the appropriation and authorization stages of legislative deliberations and at committee hearings. The last major U.S. international aviation statute was the 1979 International Air Transportation Competition Act and unlike much of the commodities trade legislation, was broad-based, leaving the details of implementation to the executive agencies. This 1979 Act was so broad that it not only
accommodated the then Carter Administration’s ‘open skies’ policy but also provided a legislative basis for the more narrow ‘trading rights’ policy of the Reagan Administration.\textsuperscript{232} [Fischer, 1984, 17] The scope of action provided to both the Reagan and Bush Administrations was so broad that their policy shifts were not considered by Congress to have been contrary to the spirit of the 1979 Act and thus no substantial amendment was considered necessary.

In the debate over whether the U.S. should be more or less liberal in the trading of aviation rights, Congress has moved towards a more restrictive approach over the 1980s. This was evident in committee deliberations and has reflected the close relationship between major U.S. carriers and certain influential members of Congress. In an interview, a senior congressional staffer saw the importance of the alliances, formed between certain members of Congress and the major carriers in the post-deregulation period, as having provided opportunities for information-gathering from, and the influence of, the industry directly into the congressional process.

There has been an unwillingness on the part of Congress to legislate on international aviation issues.\textsuperscript{233} This has been partly because Congress has remained in general agreement with the policy line of recent Administrations and partly because Congress has recognized that this is a policy area subject to rapid changes, at both the domestic and international level, which makes it a difficult area about which to legislate. In an interview, a Senate aviation subcommittee staffer suggested that both Congress and the industry considered Congress’ role over the past decade as being one of applying political ‘heat’ to the executive. How effective Congress was in promoting the interests of any particular U.S. airline to the executive, in turn, depended upon the level of competition among the carriers for influence with the executive.

Committee level consideration of international aviation matters within Congress has varied between the House and the Senate. With a greater number of members in the House, there have been opportunities for members to specialise which has resulted in members on the House aviation subcommittee having become active in the pursuit of particular issues. In contrast, senators have had to spread themselves across a greater number of issues in meeting both their state-constituency and committee responsibilities.
While a senator may have developed an interest by reason of his/her aviation committee responsibilities, it has more likely been the case that a strong and continuing interest in aviation matters has resulted from there being a major carrier’s base or hub within that senator’s state. Senators have, generally speaking, become less involved in international aviation policy-making. However, particular senators have taken a stand on such issues where it was believed their seniority would add necessary political pressure upon the administration.

Individual senators and members of Congress have sought to become involved when the international aviation policy-making process was dealing with specific countries, notably Japan. However, unless focusing on related trade issues, the congressional aviation caucus has not been very active over the 1980s and, as with congressional committees, has avoided becoming specifically involved in matters pertaining to individual routes.[Interview with aviation analyst, Congressional Research Service]

**Role of U.S. Societal Actors**

Industry influence upon the decision-making process has occurred at two levels of U.S. policy-making. U.S. carriers have lobbied both members of Congress, be they as individuals or as members of committees, and executive officials involved in determining U.S. policy positions. As well, the airlines have indirectly exerted influence over the U.S. state actors’ conduct of those negotiations in which they have had an interest.

The airlines’ industry body, the Air Transport Association (ATA), has had a representative on all the U.S. negotiating teams. In an interview, an ATA official stated that not only were representatives of the carriers advised at the end of each negotiating session of what had occurred, but more importantly, representatives were involved in what were referred to as ‘formal to informal’ reviews of the progress of the bilateral negotiations. These reviews provided ample opportunity for industry representatives to both inform and seek to influence those officials who were conducting the negotiations.
In seeking to influence the policy process at both the domestic level and during the course of bilateral negotiations, the incumbent U.S. carriers have been at an advantage over newer entrants into the industry. The negotiating process, conducted principally by the State Department, has become institutionalised in the sense that the same officials conduct all negotiations and a regular working relationship has developed between these state actors and representatives of the major U.S. carriers on the trunk routes. As well, the major airlines have experienced an enhanced profile since deregulation with their chief executives having become public corporate figures. The very size of these major incumbent airlines has meant that they have been capable of exerting considerable influence over officials with whom they have regularly come into contact.

Other societal actors with an interest in particular bilateral negotiations (such as municipal authorities) have been given opportunities to express their views in a formalised consultative process. Prior to each set of bilateral negotiations between the U.S. and another country, a public meeting was held in Washington D.C. These meetings, at which societal actors provided their views to state actors involved in the policy-making process, were used to assess public reactions to proposals. Each separate meeting provided opportunities for brokerage between the involved state and societal actors.[Interviews with U.S. Department of Transportation officials]

The influence of societal actors (and especially those from the aviation industry) over the making of U.S. policy has increased since the liberalization and deregulation of the late 1970s. Industry influence upon the Congress undoubtedly contributed to congressional pressure upon the Reagan Administration to move away from the more liberal policy of the previous Carter Administration. Industry actors (and particularly the major carriers) have been in a strong position to directly, and indirectly through the support of influential members of Congress, apply political pressure on the executive and its agencies.234

The U.S. policy process has provided many opportunities for important societal actors involved in the international aviation industry to attempt to influence U.S. policy outcomes. The success of such lobbying, especially by the major carriers, can be seen by the fact that much of the policy has promoted the commercial interests of the major
carriers. The 1978 Act itself referred, as the chief U.S. negotiator of the 1980s pointed out, to a "permanent linkage between rights granted and rights taken away" which, simply translated, means that the impact of any bilateral agreement upon U.S. carriers must be seen as an essential gauge of the agreement’s acceptability.[Shane, 1988d, 3]

While there has undoubtedly been a highly commercialised flavour to U.S. international aviation policy, it would be a mistake to conclude that policy has been directed by powerful industry interests. Government agencies and their officials have maintained control over the policy process and have not simply reacted to industry demands. U.S. state actors have obviously considered the promotion of the commercial position of the major U.S. carriers on the Pacific routes as being highly compatible with its policy objective of the liberalization of international aviation. However, U.S. state actors have also had the broader concern of ensuring that, as much as has been possible, a harmonious balance of trading rights has resulted from the bilateral negotiations with other states. State Department officials, who have led the negotiations, have also been keenly aware of the need not to allow bilateral aviation matters to impact adversely upon other aspects of bilateral political and economic relations.[Interviews with State Department officials]

Australian International Aviation Policy

History and Background

Australia’s international aviation industry goes back to 1919 when the first successful international flight was undertaken from northern Australia through to London. It was not, however, until after the Second World War that the then Qantas Empire Airways had become the ‘chosen instrument’ of the Australian Government and had become wholly-owned by the Australian Government.

At the 1944 Chicago Convention, Australia and New Zealand were fearful that the new global industry, as it was being developed, would become dominated by the major airlines, especially the U.S. carriers. As a result, Australia and New Zealand proposed that an international authority be established to own, operate and regulate air transport
services. This proposal, not surprisingly, failed to gain the support of the major countries and Australia was left to look to the negotiation of bilateral air service agreements as the means by which to secure its aviation rights.

Within the over 40 bilateral agreements which Australia has negotiated over the postwar period, capacity clauses (at the very heart of the agreements) have been determined by one of two approaches. The predeterminist approach, which has been applied in most of Australia’s bilateral agreements including those with the U.S., has provided for parties to agree in advance on the precise capacity to be offered by the airlines concerned. These agreements have normally provided that the capacity to be deployed was to be divided equally between the contracting parties.

The second approach used by Australia essentially allowed for the airlines to decide the frequency/capacity on a route on the basis of their judgment of the traffic market. Capacity would only then be controlled if there were complaints and a subsequent review found a revision was necessary. This was an ex post facto review which could be instigated by either party.²⁹⁶ [Findlay, 1985, 12]

The predeterminist formula suited what has been the regulatory approach of the Australian government to international aviation policy. The formula was extended through agreements with other countries by means of the authorization of direct understandings between the respective designated airlines subject to the overriding need for government approval of such commercial arrangements.[Pyman and Morris, 1984, 480]

It has always been a bipartisan policy that some regulation was necessary so as to maximise the benefits accruing from the exercise of aviation rights. With certain modifications, regulation was endorsed by a 1978 review committee³³⁷ which recommended a third and fourth freedom regime favouring the scheduled operators. Acting on the committee’s report, the Government’s new policy provided for higher load factors and thus lower fares while entrenching the officially perceived need to strictly regulate capacity.
The Australian government’s exclusive control over the right of access to air traffic has meant that certain national political and economic considerations, such as tourism promotion and improving Australia’s balance of payments, have been taken into account in determining general policy and bilateral negotiating approaches. The inclusion of economic factors has been emphasised by the fact that the Australian government, like most national governments, has maintained a direct financial interest in the designated international carrier. [Pyman and Morris, 1984, 470] However, the policy of privatising Qantas, and the eventual opening up of its routes to competition from other Australasian carriers, has been prompted by the prospect of even greater economic benefits (particularly an increase in inbound tourists) than those which have flowed or would be likely to flow from ownership of the one designated airline. [Keating, 1992] This recent change of policy in favour of the privatisation of Qantas has removed the important difference between the major Australian political parties on international aviation policy which had centred around the ownership and control of the single designated carrier, Qantas, rather than around capacity and route entitlement matters.

The 1992 Policy Changes

On 26 February 1992, Australian Prime Minister Keating, as part of a general economic statement, announced a program of accelerated reform of the Australian aviation industry. The important features of the statement which related to international aviation were the permission to Qantas to invest in a domestic Australian carrier and to be able to fly on Australian domestic routes; facilitation of the airlines’ sales process as a prelude to the privatization of Qantas; the renegotiation of bilateral air service agreements with a view to securing multiple designation agreements and a pro-competitive approach directed at achieving enhanced route and capacity arrangements; and the implementation (with the agreement of the New Zealand government) of a single Australasian market. As well, the Government sought, by 1994, to negotiate with other countries involving an exchange of stopover and/or interline rights. [Keating, 1992]

The genesis of this policy shift can be found in the drive for the deregulation and liberalisation of Australian industries as part of the Hawke and Keating Governments microeconomic agenda. Government agencies such as the then Industries Assistance
Commission had for some time targeted the government’s ownership of Qantas as an area ripe for reform.\textsuperscript{239} The recommendations of a 1989 Report on Travel and Tourism by the then Industries Assistance Commission (IAC) played an influential part in bringing about the 1992 policy changes. These recommendations included a questioning of the continued government ownership of Qantas and argued for the injection of private capital; the removal of the separation of domestic and international markets for Australian carriers which it considered would result in a progressive increase in competition in international airline services; and the designation of other Australian carriers as international carriers, allowing them to utilise landing rights presently available to Australia but not used by Qantas. The IAC also recommended that Australia should begin negotiating bilaterally to expand capacity and argued that these measures would enable Australian airlines to achieve economies of scale of aircraft, encourage more competition and efficiency and provide a wider range of choices for travellers as well as benefit tourists.[Industries Assistance Commission, 1989, 59-64] This policy change was specifically designed with a view to encouraging both domestic and international competitiveness and to stimulate inbound tourism and trade.[Department of Transport and Communications, 1992, 13]

Legislation which gave effect to this policy change established an independent statutory authority, the International Air Services Commission (IASC) which was empowered, from 1 July 1992, to determine the allocation of international aviation capacity and route entitlements among Australia’s international airlines.\textsuperscript{240} Importantly, the establishment of the Commission signalled the government’s gradual withdrawal from the exercise of a direct role in international aviation policy-making.[Brown, 1992b, 50s] However, the Australian government will also have some say in deciding capacity and route entitlements in the sense that the Commission’s ability to allocate these will be dependent, as always, upon the outcome of government-to-government bilateral negotiations.\textsuperscript{241}

The new policy reflected the dual aims of both protecting Qantas’ position and promoting new Australasian entrants into the market.\textsuperscript{242} Qantas was granted certain international route and capacity rights\textsuperscript{243} but after a period of time, these would have to be renegotiated, in line with the government’s policy of encouraging new entrants into
the market. Under the Act, only Australasian carriers were to be granted full cabotage rights.244

While the government has undoubtedly avowed a pro-competitive policy for this sector, its program of liberalisation is to be staggered, with international routes being made available to Australasian carriers (other than Qantas) on a piece-meal basis as relevant bilateral negotiations are concluded. This, as Ansett Airlines (the strongest potential rival to Qantas) has pointed out, makes it more difficult for it, as a new carrier, to secure sufficient capacity to make its proposed services viable.[Brown, 1992b, 61s]

**Australian International Aviation Policy-Making Process**

**Role of Australian State Actors**

State actors have always been dominant in the formulation and execution of Australia’s international aviation policy, and in the negotiation of aviation rights. This role has been enhanced by the executive’s effective control over Parliament and the government-to-government nature of bilateral negotiations.

The Australian Parliament’s role has been limited to its consideration of bilateral international aviation agreements once they have been ‘laid on the table’ in the legislature. Parliament’s other role has been in the passing of legislation and given the executive’s control over the House of Representatives, this has been little more than a formality in that chamber. In the Senate, while governments have invariably not enjoyed a majority, the bipartisan nature of aviation matters has meant that this chamber’s deliberations have not affected policy outcomes.

The principal department for the formulation and implementation of policy has been the Australian Department of Transport and Communications (DOTAC). An Aviation Policy, Security and Infrastructure Division of DOTAC, and specifically within that an International Relations Branch,245 has been responsible for the formulation of the Department’s international aviation policy.[Department of Transport and Communications, 1992, 7] While DOTAC has always been in charge of the policy-
making process and in leading Australian delegations during bilateral negotiations, its perceptions of its role have changed during the late 1980s. Both government officials and analysts have recognized that the current department had become much less of a constituency department, and thus less unquestionably supportive of Qantas' position, than its predecessor, the pre-1987 Department of Transport. Where the old department had unquestionably helped to provide the airline with a 'political in' to the policy-making circles, this could certainly not be said of the current DOTAC.

Likewise, DOTAC officials acknowledged that by the late 1980s there had been a change in their approach towards policy-making. They considered that they had broadened their view of aviation services trade issues, now seeing such issues as an integral part of national economic policy-making. [Interviews with DOTAC officials] Part of this shift in official focus has been because of a recognition of the importance of the different markets in which Qantas (soon to be joined by other Australasian carriers) has operated and the export gains that have begun to be made, directly or indirectly, through aviation services.  

DOTAC's position within the policy-making process has been strengthened by its recent change of policy. The adoption by the department of a broader view has enabled DOTAC officials to claim that they now addressed broader political and economic concerns rather than simply the commercial interests of Qantas. Officials considered that they had a primary responsibility to relate Qantas' interests to the 'full picture' and to balance all the interests with a stake in the prosperity of the industry.

The Department of Foreign Affairs and Trade (DFAT) has been the other important department involved in international aviation policy-making. Unlike its U.S. counterpart, DFAT has not led the negotiating team and in policy terms, especially as they have related to the bilateral arrangements, has had a subordinate role to DOTAC. DFAT has used essentially three avenues to attempt to influence the content and direction of the policy-making process. The first of these was through the coordinating mechanism in place between DOTAC and other departments with an interest in international aviation policy. Given that international aviation policy impinges directly upon foreign and trade policy issues, DFAT's involvement in the process has been both expected and important.
However, the fact that DFAT officials have been regularly moved from one policy area to another has detracted from their ability to gain a comprehensive understanding of the complexities of international aviation.

While there has been no formal interdepartmental process in place for the consideration of international aviation policy issues, DOTAC has consulted through what has been described as an 'ad hoc formalised consultative machinery' with officials of other departments, notably DFAT. [Interview with DOTAC officials] Such consultations have understandably been of a more substantial nature just prior to a set of bilateral negotiations or when government policy was experiencing an overhaul.

The second avenue of influence has been through DFAT's representation on the negotiating committee for the settling of bilateral aviation arrangements. While DFAT has accumulated general trade negotiating expertise (albeit by certain officials in only some of its divisions), according to U.S. officials involved in the negotiations for the most recent Australia-U.S. agreement, the role of DFAT officials was overwhelmed by both the knowledge and bargaining skills of the Australian DOTAC officials. [Interviews with officials at U.S. ATA and Department of State] Where DFAT has taken the lead has been in both formulating Australia's position on aviation services within the current Uruguay Round of multilateral trade talks and in negotiating within the services group of the GATT talks. With developments in international aviation having been determined by bilateral negotiations rather than by multilateral agreements, DFAT's lead role in GATT talks has not strengthened its position within Australian international aviation policy-making.

The third avenue of DFAT's potential influence over the making of policy, as it has related to Australia-U.S. relations, has been through the involvement of its officials in the Australia embassy in Washington D.C. However, senior DOTAC officials have argued that the extent of the embassy officials' influence over policy-making has depended upon two important matters. One was the nature of the bilateral relations and possibly the stage at which bilateral negotiations had been reached, while the second matter related to the level of knowledge and interest of the responsible embassy official. [Interviews with DOTAC officials]
Other departments have had only a minor role in the policy process. However, some like the Department of Tourism have a watching brief because of the importance of international aviation to the development of tourism. This department's role has been enhanced in recent years by the Australian government's recognition of the economic gains to be had from increased tourism. In a 1989 Ministerial Statement, the then Minister for Transport and Communications, Ralph Willis argued that Australia's negotiating strategy must have as an important objective the need to "increase net earnings from inbound tourism along with the flow-on benefits to industries servicing the tourism sector."[Hansard, House of Representatives, 1989, 3539] To date, the input of this department into the international aviation policy process, together with other tourism authorities, has been informal. Their importance to this policy process has been identified, however, by analysts as providing counterweights to what are seen as protectionist forces supporting Qantas' commercial position.[Castle and Findlay, 1988, 122]

Treasury, as with all areas of trade policy-making, has retained a watching brief over international aviation. It has become involved at times when sizeable budget outlays were being considered, such as with the purchase of aircraft by Qantas. The Department of Prime Minister and Cabinet, an important policy coordination department of the 1970s and early 1980s, has performed only a minor international aviation policy role over the past decade.

While international aviation policy-making is seen as being increasingly a part of national economic policy-making and of relevance to general foreign and trade policy formulation, DOTAC has skilfully argued that this has been a policy area which has called for specialized knowledge and skills which only that department has possessed. It may be that international aviation policy is no longer seriously referred to as a discrete issue but in interviews with senior officials of other departments, it was clear that the formulation and execution of this area of policy-making was seen as being within the almost exclusive province of DOTAC. Officials of DOTAC have been keen to portray an understanding of general economic developments and to eschew a narrow sectional interest for the department.

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The highly regulated manner in which aviation rights have been traded has encouraged the development of a dominant role for government. The establishment of the IASC will in the medium to long term remove government from some aspects of international aviation policy-making. However, government can be expected to perform at least an indirect role in policy-making through its conduct of bilateral negotiations.

**Role of Qantas and Other Societal Actors**

Until the late 1980s, Qantas was the only significant societal actor involved in the making of Australia’s international aviation policy. In the absence of formal arrangements for consultation by Australia’s state actors with those involved in the industry, Qantas’ influence over policy has (unless involved in bilateral negotiations) been exercised on an informal and ad hoc basis. The recent policy changes and the establishment of an independent regulatory body, the IASC, have acted to lessen the influence of Qantas, or any carrier for that matter, in the policy-making process. Australian state actors now consult with a broad range of societal actors, both within and outside the aviation industry.

By Australia’s standards, Qantas has become a major commercial undertaking and in terms of export income earned, has been viewed as a leading player in an important service industry. In 1991-92, the airline posted a pre-tax profit of AUD$262 million which after-tax amounted to AUD$137 million.[Qantas, 1992, 7] Facing increased competition on its routes during the 1980s, the airline has recently experienced a major restructuring and rationalisation which it hoped would bring its costs under control and improve its financial viability.²⁵⁰

Despite efforts by Qantas to maintain its image as a global airline, it has become more of a regional player and the focus of its operations has been directed towards the Asia-Pacific region. In its latest Annual Report, in what would seem to be a parallel with official Australian trade policy, the airline identified this as the area in which it was likely to see the greatest growth.[Qantas, 1992, 10] It has been this regional focus which has seen the airline make a number of strategic investments in other carriers, notably a 19.9 percent stake in Air New Zealand and a 10 percent shareholding in Fiji’s
Air Pacific, as well as a number of commercial agreements with Japan Airlines and American Airlines.\textsuperscript{25}[Falvey, 1992, 8]

Qantas’ influence in Australian policy-making has been largely defined by the nature of its relationship with the Australian government. Since the late 1940s, the Australian government and Qantas have enjoyed something of a special relationship. While management of the airline remained outside of the arena of government control, complete ownership of this the only designated Australian international carrier until December 1992, meant that the government had an immediate commercial and political interest in the airline’s continuing viability. Successive Australian governments have sought to use the regulated nature of the international civil aviation industry and the established method of negotiation (bilateral between governments) to promote Qantas’ commercial development. During this time, the government’s and Qantas’ economic interests were considered to be coterminous.

The diminution of the importance of Qantas’ role has resulted from the change in government policy which now considered any support for Qantas’ position on routes into and out of Australia as determined by the economic benefits which could be derived from the airline’s operation (such as from travel and tourism) rather than simply in terms of enhancing Qantas’ economic viability. Qantas had become, so government officials considered, just one of many interests to be taken into account in the making of international aviation policy.[Interviews with Australian government officials] According to government officials, Qantas has always lacked a political base and has had to rely on the DOTAC for necessary support within the Australian policy-making process. With Qantas’ interests no longer considered by DOTAC officials, and state actors generally, as being vital to Australia’s aviation interests, the airline no longer had the ‘political in’ to the policy-making process that it had once enjoyed.

Senior officials of Qantas have seen the airline’s privatisation in a positive light as providing the airline with a much-needed injection of capital considered necessary for it to meet its international competition. [Interview with senior Qantas officials; Gray and Moffet, 1990, 3] Both government and industry officials considered that privatisation would not lead to a diminution in the importance of the airline to the Australian
government. This was because of its commercial value as an export income earner and its role in promoting Australia as a tourist destination.

The viability of Qantas has remained important to the Australian government despite the change in policy. However, with the sale of 25 percent of Qantas to British Airways in December 1992 and the remaining 75 percent to be sold in a share float in late 1994 or early 1995, the link between the government and Qantas can be expected to become more tenuous in the years to come.[Department of Foreign Affairs and Trade, 1993b, 10; Thomas, 1993v, 5]

The government has moved to strengthen Qantas in a number of ways in the period leading up to the share float of Qantas and taking account of Qantas’ indebtedness. Permission was given for the airline to buy the government-owned domestic carrier, Australian Airlines, in September 1992 for AUD$400 million (which was under value). This provided Qantas with an established network of domestic routes and the expertise of dealing with the Australian domestic market. In late 1992, the Australian government provided Qantas with a AUD$1.35 billion recapitalisation to make the airline more attractive to British Airways for the trade sale and to place it in a healthy financial position for the share float.

The government has optimistically sought to gain something like AUD$2 billion from the trade sale share float and has thus been anxious to not only place Qantas in as good a commercial position as possible but also to control all aspects of the sale process.[Brown, 1992a, 50s] Even after Qantas has been completely privatised, the Australian Government intends to retain a formal interest in the airline’s future through what Prime Minister Keating has reportedly referred to as a ‘golden share’ which will act as a national safeguard.[The Dominion, 1992a, 18]

The decline in influence of Qantas in international aviation policy-making has been evidenced by the fact that the government, in implementing its more deregulatory approach to international aviation, had not consulted with Qantas and had opened up both the trans-Tasman market and international routes at a pace that had suited itself.[Interviews with DOTAC officials] The government’s move towards deregulation
and greater liberalisation has effectively meant that, for the time being, the government has re-emphasised a role independent of any industry actors in international aviation (while at the same time withdrawing from domestic aviation). The government's deregulatory moves have been accepted as necessary by Qantas which has, at least publicly, considered these developments in a positive light seeing the commercial advantages (such as the removal of government constraints on borrowing) as outweighing the problem of greater competition on its routes.

The 1992 policy changes, with their stated aim of providing the opportunity for competition among Australian carriers in the operation of scheduled international air services, will mean that what influence Qantas had been able to exercise in international aviation policy-making will have to be shared with those other airlines who are selected by the IASC to fly routes into and out of Australia. Pre-eminent amongst these is Ansett Airlines which has been seeking to move beyond its domestic Australian operations and has already submitted bids to fly, in particular, to Asia.256[Brown, 1992c, 61s]

The principle that most route allocations would be valid for three to five years has provided Qantas with some protection and there some continuing Australian government concern for Qantas' viability as illustrated in the recent dispute between the Australian Government, Northwest Airlines and the U.S. Administration. Australian Minister for Tourism Michael Lee, while denying that Australia's stand against the U.S. carrier had been driven by the need to protect Qantas, affirmed that it was a "matter of ensuring we strike the right balance between ensuring that Qantas earns export earnings...and the tourism industry benefits from the maximum possible number of tourists coming to Australia."[Thomas, 1993q, 3] This level of government support is likely to diminish, however, after the share float and is not expected to translate across into influence for Qantas in the policy-making process.

A number of smaller carriers have appeared which are seeking designation rights for particular routes.257 Some of these airlines are yet to prove themselves financially viable and are not expected to play a significant role in the development of the industry under the new policy regime.
Australia-U.S. Negotiations and the 1988 Air Services Agreement (ASA)

The nature of Australia-U.S. aviation relations are currently governed by their most recent ASA of 1988. This Agreement sets out the aviation rights of both parties and, importantly for the purposes of this study, provided the capacity and route entitlements for each party: matters which have been crucial to the determination of their traffic rights.

The Problem of Capacity on the Pacific Routes

The U.S. has always approached capacity issues from a position of strength believing that its carriers had suffered from unnecessary capacity constraints which had been imposed through bilateral agreements. The U.S. has thus avoided, wherever possible, making special allowances on capacity and negotiations over capacity on Pacific routes were not considered an exception.

Australia and Qantas, conscious of the relatively weaker position of the Australian airline to that of the U.S. carriers [see Tables R, S and T], have had a very different view about the merit of regulating capacity on the Pacific routes. The problem of excess capacity and the intensified pressure for market share on these routes brought difficulties in Australia-U.S. aviation relations to a head in 1970. Where the U.S. government had argued that the Bermuda I Agreement allowed for airlines to be free to determine for themselves the capacity offered on the agreed routes (with the only remedy being for the government to seek redress by means of an ex post facto review), Australia argued that each government had an obligation to scrutinise airline decisions.

The compromise result reached in 1971 amounted to what has been described as a "gloss" on the original Agreement and provided for problems over capacity to be left to be matters for consultation between the parties.[Pyman and Morris, 1984, 483] Under this arrangement, the U.S. government agreed to review any plans for increased capacity on the Australian route and to make a decision as to whether to approve such a proposal. Once in receipt of this advice, the Australian government would have the opportunity to comment on the proposed increase in capacity. However, should Australia
raise an objection, then the U.S. government would consider the objection, but if unmet then the increase would go into effect subject to review if so requested by either party after a lapse of 6 months. This ex post facto review became the only means by which a state could control capacity. While this result did not represent an endorsement of the Australian government’s preferred official policy, it did mean that governments took responsibility for scrutinising the proposals of airlines for capacity increases.

The 1980 MOU was particularly defective in failing to take account of the different priorities and objectives of the parties. It put into place a less restrictive ex post facto review mechanism for capacity increases which assisted the U.S. policy of satisfying the requests of U.S. carriers to increase the number of flights without being subjected to intergovernmental negotiations. Without a provision allowing one government to veto schedules for capacity increases transmitted by the other government, Qantas felt under increasing pressure from the large U.S. carriers which were regularly filing for increases on the Pacific routes.

The 1980 Agreement was predicated on an assumption that the parties would cooperate in good faith to ensure that the commitments contained in it would be given due effect.[Kohona and Sadurska, 1988, 57] Australia became frustrated with the ineffectiveness of the 1980 MOU to maintain some control over capacity increases and believed that the increasing demands for capacity increases by U.S. carriers (United and Continental Airlines) during the 1980s, continually breached the original understanding. Australia believed that the U.S. carriers were exploiting the inadequacies of the MOU and blatantly dumping capacity on the Pacific routes.258 [Interviews with Australian government officials]

In the late 1980s, Qantas was maintaining market shares on the routes serving Australia and the U.S. only by incurring losses and believed that the essential understanding underlying the 1980 MOU no longer contained any currency in terms of U.S. practice.[Interview with Qantas official] In 1987, Australia formally terminated the Agreement so that the U.S. Government and the U.S. carriers would take Australia’s objections more seriously and a new Agreement could be negotiated.
The 1988 Air Services Agreement (ASA) between Australia and the U.S., as with previous ASAs, contained a capacity control clause. This clause, inserted at Australia’s insistence, represented an example of Australia’s favoured predeterminist approach to the setting of capacity and was much more precise than its predecessor. Certain guidelines were provided but precise capacity for each designated airline would be determined by the governments through negotiation and not by the carriers, exercising their commercial judgement.

In a departure from the previous Agreement, competition between the Australian and U.S. carriers was made subject to a form of regulation which could only be adjusted through bilateral governmental negotiations. U.S. government and industry officials have expressed their concern at the existence of the provision and have denied that Australia (read Qantas) was in such a weak position as to require this form of regulation. In their view, the capacity clause was contrary to U.S. international aviation policy and represented a bargaining victory for the Australians.[Interviews with U.S. government and industry officials]

Integral to any agreement on capacity was consideration as to the number of designated airlines and the capacity that each would be permitted both initially and during the life of the Agreement. Until a recent policy change, Australia had always designated Qantas as the sole carrier while the U.S. had continued to insist that any agreement should include the right for each party to designate more than one airline to operate on the routes between the two countries.

The 1970 agreement included a multiple designation clause which enabled the U.S. to introduce a second U.S. carrier, American Airlines, on the South Pacific route and in 1974, Continental Airlines introduced services after American Airlines withdrew.259 Australia reluctantly accepted the introduction of multiple U.S. carriers but concerns over financial viability have remained and were again aired in the 1988 negotiations.

It was decided at the 1988 negotiations that for the first three years, each party would be limited to one new designated airline. Any such new airline (not including an airline

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which already served a trans-Pacific route) would be permitted to have an entitlement to four services per week (without a limit as to aircraft type) on the South Pacific route.

The nature of this clause with its gradual relaxation on the number of new entrants into the route was to the long-term advantage of the U.S. carriers which had excess capacity which they were keen to apply to this, the most direct route between Australia and the U.S. Qantas was concerned that the three year period would only be an exception with, at the expiration of this period, there being no such limit upon the number of new carriers which could enter the market. There have been changes in the designation of U.S. carriers with Northwest, American (for the second time) and Hawaiian Airlines having entered the market in the late 1980s. For principally financial reasons, the latter two carriers have since withdrawn. While there has been a new and aggressive player in the form of Northwest Airlines, Qantas' concerns on this matter were exaggerated given both the financial problems of a number of U.S. carriers and the recession-induced reduction in passenger demand for travel on this route. The more recent adoption by Australia of its own multiple designation policy indicates a greater preparedness on its part to let the market decide the question of financial viability.

A related matter, the specification of routes between Australia and the U.S., has also been a complex and contentious matter. Australia, located at the terminal point of long-haul routes, has had to negotiate rights to pick up traffic and transit stops at the intermediate points, where applicable, on the routes between the two countries. The strong bargaining positions of the countries controlling those points has been reflected in their access to fifth freedom traffic (being the right to carry traffic to and from one country in the course of serving another), which has served to diminish Australia's overall share of the market on the route/s.

Australia has also been concerned over the substitutability of routes. In terms of the 1988 Agreement with the U.S., one case which has been highlighted was Continental Airlines' services between Guam and Australia. These linked with its Tokyo-Guam route and thereby challenged Qantas' lucrative Australia-Japan market.²⁶¹
Capacity on the South Pacific Route

As to existing carriers on the South Pacific route, the Agreement provided that there could be capacity increases so long as they did not result in that airline receiving 62 1/2 percent or more of the traffic offered jointly by the U.S. and Australia. As well, capacity increases could be disapproved if the revenue passenger traffic of the other party had not increased by 6 percent or more over the recent twelve months. The capacity mechanism also stipulated that each designated airline was entitled to four round trip frequencies per week without any limit on the type of aircraft used. A designated airline would be entitled to operate any level of capacity that it had operated on the South Pacific route over the past 18 months.

Another capacity provision on the South Pacific route stipulated that a designated airline would be entitled to operate any level of capacity necessary to reduce its load factor to 70 percent of regularly scheduled services on this route. This was provided that an average 55 percent or more of the revenue of the passenger traffic aboard was U.S.-Australia uplift or discharge traffic. Results providing a residue of 50 percent or more of the seat capacity of the aircraft would entitle that airline to operate an additional weekly frequency. Subject to maintenance of percentage of traffic requirements, capacity can also be increased by the existing designated carriers within any 12 month period (so long as they have had 4 years’ continuous service) by 2 additional B-747 equivalent round-trip services per week; or by the total percentage growth in revenue traffic on this route during the most recent 12 months.

The South Pacific route was the fastest route between the two countries and attracted the most public demand. In Australia’s view, a capacity mechanism was required which would ensure that no airline was penalised as carriers sought to meet any increased demand. In replacing the ex post facto review of the 1980 MOU, this new mechanism allowed for an objecting party to prevent the introduction of any new service, should such an increase in capacity not be otherwise provided in the Agreement and after consultations had been held.
Applications for increased services by designated U.S. carriers appeared soon after the signing of the Agreement. In October of 1988, Continental and United Airlines were granted permission to put additional capacity on the South Pacific route. This moved Continental’s total frequencies per week to 19 (11 of these were B-747 aircraft) and United’s to 14 B-747 frequencies per week (United increased this by an additional 4 B-747 services from June 1, 1989), while Hawaiian provided 210 seats per week and Qantas had 22 B-747 frequencies.263

Capacity increases on the South Pacific route have been solely to the advantage of the U.S. carriers. The U.S. carriers, in contrast to Qantas, have had excess capacity, (generated from their domestic market operations) which they have sought to dispose of on the Pacific routes. The entry of two other U.S. carriers, American and Northwest, on to the South Pacific route has exacerbated Qantas’ problems. However, partly due to overcapacity on the route and resultant unprofitability, March 1, 1992 saw American Airlines cease operations to Australia while Continental and Northwest have both reduced their services on the South Pacific route.264 United Airlines increased its services having opened up Brisbane as a gateway with 3 new weekly services to the U.S. Both Australia and the U.S. have continued to voice their different concerns over capacity on the South Pacific route.265 These differences over capacity on the South Pacific route have not, however, been as great as those found with respect to capacity issues on the North Pacific route.

**Capacity on the North Pacific Routes**

Capacity increases on the North Pacific route were regulated in similar fashion to those on the South Pacific route. However, in contrast to the South Pacific route, there was no minimum capacity provision in the Agreement and the proposals of all new entrants as well as proposed increases had to be justified. This has reflected Qantas’ sensitivity to traffic increases on the Japan-Australia route,266 given that it has constituted the most lucrative of all Qantas routes and its profitability has been important in balancing losses Qantas has made on other routes. Principally for this reason and partly because Japan has been reluctant to increase the number of designated airlines picking up and discharging passengers on this route, Qantas has been able to secure more restrictive
provisions than was the case with the South Pacific route. Where, for example, on the South Pacific route, an airline could increase capacity by the equivalent of 2 B-747 round-trip services per week, on the North Pacific route capacity can only be increased at most by the equivalent of 1 additional B-747 round-trip service per week.

As in the case of the South Pacific route, capacity increases on this route would be disapproved if they would give that carrier 62 1/2 percent of total capacity offered on the route by Australia and the U.S., and if the revenue traffic of the other party had not increased by 6 percent or more on that route in the most recent 12 months. Likewise, the same load factor percentage limits and Australia-U.S. uplift and discharge factors also applied. As well, a designated airline was permitted to operate any level of capacity that it had operated on that route in the previous 18 months.

The Agreement also provided a capacity mechanism for the Guam and Commonwealth of the Northern Mariana route (the Guam route). Each party was permitted to designate an airline which would provide 3 DC-10 round-trip frequencies or their equivalent per week operating from April 1, 1989 with another becoming available on April 1, 1990. A further increase was not available in 1991 but would be so in following years if certain conditions were met. Most importantly of these, the airline seeking the increase must have operated in its own right over the preceding 12 months at an average revenue passenger seat factor of 67 1/2 percent or more and 70 percent or more when the total number of services on the route reached 7 per week.

To qualify for an increase on this route, an applicant was required to show that not less than 55 percent of its passenger traffic carried on the Guam route over the most recent 12 months was Australia-Guam/Northern Mariana uplift or discharge traffic. The Agreement explicitly excluded from consideration traffic between Australia and third countries which used Guam or the Northern Marianas as a stopover of less than 2 consecutive nights.

The new capacity mechanism was a direct result of the 1988 negotiating process between Australia and the U.S. Australia considered it to be an improvement on the old provision which had so obviously failed to contain the ambitions of the U.S. carriers and
which had in turn placed heavy strains upon Qantas' ability to compete. The 1988 mechanism was, however, a compromise and Qantas has become increasingly dissatisfied with the effect of its operation. The Australian carrier has found itself faced with an increased number of U.S. airlines on trans-Pacific routes. In July 1991, Northwest Airlines began 4 services per week to Sydney from Honolulu replacing Hawaiian Airlines. In October 1991, Northwest began through services (thrice-weekly flights) from the U.S. to Australia via Japan. Also in October 1991, United Airlines received a further approval to operate 2 services per week to Australia via Japan but, arguing that twice-services were uneconomical, has not commenced this service.

Dumping of capacity may have been prevented by this new mechanism but provisions in the Agreement have acted to force Qantas to increase its capacity so as to maintain market share on both the South and the North Pacific routes. Since the late 1980s, Qantas has been losing overall market share on these routes. Given that the Pacific market constituted 30 percent of Qantas' total operation, the losses have prompted moves by the Australian government to have the Agreement strictly adhered to by the U.S. carriers.

**Disputes over Capacity on North Pacific Routes**

The most serious of the disputes between Australia and the U.S. has been about whether the ASA provided for the U.S. airlines to have unlimited access to the air corridor between Australia and Japan. It involved Northwest Airlines and its New York-Osaka-Sydney route which it commenced on a thrice-weekly basis in October 1991, not long after it began flying on the South Pacific route.

From the beginning of these services, the Australian government has been concerned that Northwest was breaching the 1988 Agreement with less than 50 percent of its passengers being through traffic to either Australia or the U.S. on the Osaka-Sydney route, thus effectively taking valuable business away from Qantas. In December 1992, the Australian Government gave Northwest notice that it was in breach of the 1988 ASA and that from February 1, 1993 it would be banned from picking up passengers for the Osaka-Sydney leg on one of its 3-weekly flights and that there would
be a 50 percent limit on such passengers on the 2 other weekly flights.[Thomas, 1993k, 7] As a result of this notice, Northwest filed a complaint with the U.S. Department of Transportation which was subsequently upheld by the U.S. Transportation Secretary.273

Talks between Australia and the U.S. in early February and late March 1993 failed to produce a resolution to the problem. The talks produced an offer by Australia to take the matter to international arbitration.274 However, before arbitration was begun, the Australian Government announced that the sanctions would apply against Northwest as from June 30.275 Northwest had already sought an injunction against the Australian Government directive in the Australian Federal Court while the U.S. Government retaliated by announcing that Qantas must drop 3 of its 10 weekly non-stop Sydney-Los Angeles flights as from the same day. Northwest, while not denying that the 1988 ASA contained provisions restricting the airline’s access to the Australia-Japan route, has been reported as arguing that an Australian government official gave Northwest verbal assurances that the 50 percent condition would not be applied.[Thomas, 1993o, 7]

The U.S. Transportation Department’s decision to curtail 3 Qantas Sydney-Los Angeles non-stop flights brought a strong condemnation from the Australian government.276 Australian societal actors generally supported the Australian government’s stand with Qantas calling for the government to maintain its stance and the head of the Australian Tourism Industry Association referring to the bully-boy tactics of the U.S. Government.277

By mid-June 1993 and before sanctions could be imposed, Australia and the U.S. struck a temporary truce. A new agreement between the parties provided Northwest Airlines with a 6-month extension subject to the 50 percent rule together with a temporary freeze on further U.S. services on the North Pacific route until the end of 1993. While Northwest has given a written assurance that it would seek to build the proportion of through passengers on the route (partly through switching the U.S. departure point to Detroit), significantly, both the airline and the U.S. government have continued to regard the 50 percent requirement as ‘impermissible’ under the bilateral air services agreement.[Thomas, 1993r, 4]
Australia has not gained anything from this agreement and questions have been raised as to why the Australian government suddenly withdrew from what seemed a highly committed position and agreed to a truce. This decision was made without any great likelihood that further negotiations would solve the central problems (interpretations of the 1988 ASA and the restrictions to Northwest’s flights) of the dispute. There is a good chance that the dispute will resurface and escalate as before. The U.S. did not back down over this provision for fear of setting a precedent for other Asia-Pacific states, notably Japan\textsuperscript{278} and there is no guarantee that Northwest Airlines will meet the 50 percent condition (as averaged) over the 6-month period. The U.S. has gained from this new agreement by having managed to stop Australia from taking the matter to international arbitration. Attempts at settling the dispute will now be made bilaterally, something which the U.S. has always preferred.

The brinkmanship practised by both the Australian government, Northwest Airlines and the U.S. government in this dispute have revealed more fundamental disagreements about the interpretation and application of the 1988 ASA. Northwest’s provocative action,\textsuperscript{279} in particular, has encouraged the view that there may be more broader calculations behind Northwest’s moves on this matter. This dispute may well be being used as a means of pushing relations between the U.S. and Australia to a point where a new agreement would have to be negotiated.\textsuperscript{280} Such calculations by Northwest may be partly based on the belief that with the new Clinton Administration, the political climate is conducive to the making of a new, more favourable ASA. General Clinton Administration statements about aiding the competitiveness of U.S. industries and the hardline taken by U.S. Transportation Secretary Frederico Pena\textsuperscript{281} in this dispute and in United’s dispute with Japan have certainly encouraged U.S. carriers.\textsuperscript{282}

The other dispute, concernining United Airlines flights between New York-Tokyo-Sydney, has been simmering for a number of years and has involved Australia, both directly and indirectly. Soon after the 1988 ASA was signed, United Airlines had sought to offer a twice weekly service on this route. Like the Northwest dispute, the issue has been about the picking up of traffic for the Sydney-Japan route, effectively taking business away from both Qantas and Japan Airlines. Despite Qantas’ expressed concerns, the Australian government approved a 2-day per week service by United believing that Qantas and
Japan Airlines would be only marginally affected because United would be unable to offer Tokyo-only flights. While United has argued that these frequencies would be insufficient to operate the service profitably, Australia has refused to grant further frequencies. For Australia, this dispute has been less important than that with Northwest but has the potential to create similar problems for Australia on the principal North Pacific route, the Japan-Australia corridor. Australia’s dispute with United Airlines has, however, been pushed into the background during the late 1980s and early 1990s by the aviation dispute between Japan and the U.S.

The matter came to a head in September 1992 when Japan set limits on the percentage of passengers that could be picked up by United in Tokyo and transported to Sydney. [Reuters, 1993d] Negotiations had failed to resolve the matter and United responded in November of that year by filing a complaint against Japan with the U.S. Department of Transportation. The Department ruled in February 1993 that Japan’s restriction constituted a violation of the Japan-U.S. ASA, arguing that the ASA gave United the right to serve markets beyond Japan and threatening to retaliate against Japan’s flights to the U.S. [Trautman, 1993a]

As with the other case, this dispute is unlikely to be either quickly or cleanly settled with both sides having too much at stake to give in to the other easily. Japan runs a deficit with the U.S. in the aviation sector and this dispute has represented an attempt by Japan to reduce it. United Airlines, experiencing fare wars in its domestic market and the general impact of the recession, combined with the importance of the Japanese market to its general operations, also has much tied up with a satisfactory result. [Carlson, 1993] In terms of Australia-U.S. relations, this dispute is important for if United should succeed in establishing its service, this would then place pressure on Qantas’ operations on this route and would undoubtedly resurrect the Australia-U.S. dispute which had been overtaken by the Japanese action of September 1992.
Routes Entitlements

Restrictions on the three trans-Pacific routes served by the Australian and U.S. carriers was also on the agenda of the 1988 negotiations. The bilaterally defined and imposed routes and gateways constituted an issue not unrelated to capacity and was the next most important matter for discussion.

Negotiations over routes, or rather which airlines were entitled to fly on which routes, through which points and to which destinations were matters keenly fought over in 1988 and since then fiercely maintained. The Australians and the Americans were both aware that gaining access to purely domestic traffic as well as international routes behind the homeland could enhance an airline’s international competitiveness.

The entitlement to fly on particular routes was a matter related to the issue of landing rights for those airlines granted the route entitlement. Derived from a state’s sovereign legal right of control over the airspace within its borders, landing rights have been properly considered by states as bargaining chips in any route negotiations. The trans-Pacific routes have been considered by both states to be growing markets (with demand exceeding capacity) and this has enhanced the bargaining power of associated landing rights. States have valued landing rights not only in terms of their economic benefits, but also because they can be used to limit capacity and the degree of competition their designated carrier/s would face on a particular route.[Centre for International Economics, 1988, 32]

Australia and the U.S. stand in quite different positions not only in terms of economic power but also in terms of geographical location. On the related issues of routes and landing rights, Qantas officials considered the airline was particularly vulnerable because of Australia’s geographical position, being most often at the terminal point of long-haul routes. To gain transit stops and rights to pick up traffic at intermediate points, Australia has in turn had to grant landing rights to the designated carriers of those states in which it has secured landing rights. In effect, Australia has thus had to cede bargaining power to these other states over access to fifth freedom traffic for their airlines.
The U.S.'s geographical position is different in that it has often been a market through which foreign airlines have wished to travel and pick up traffic thus providing U.S. negotiators with a very effective bargaining chip in the form of the large U.S. domestic market. The U.S.'s central position on the globe's trunk routes has meant many more states have sought to gain access to U.S. airspace and gateways than has been the case with Australia. The large land mass of the U.S. and its dispersed population (more so than Australia) has placed it in a stronger position than Australia when dealing with states at intermediate points on the trans-Pacific routes.

The U.S. has made full use of the bargaining resources of its large domestic market and central geographical location, making it difficult for Australia to negotiate access to U.S. gateways. In fact, most foreign carriers have less than 10 gateways to the U.S., the exceptions being British Airways (which has 18) and KLM (which benefits from an 'open skies' agreement between the U.S. and the Netherlands). Qantas has in fact been restricted to operating through only a very few gateways and has also been prevented from picking up any U.S. domestic traffic while on route. Australian negotiators suggested, in interviews, that access to the U.S. domestic market was seen as the main regulatory issue between the parties. The chief U.S. negotiator of the late 1980s has also readily acknowledged the importance of access to the U.S. market as a negotiating weapon.[Shane, 1988d, 6]

**U.S. Route Entitlements**

In the 1988 Agreement, the trans-Pacific routes were considered separately. On the South Pacific route, the U.S. carriers received Brisbane and Cairns as 2 new gateways and were entitled to an additional 8 points (or destinations) to be served from any of the specified gateways, being Sydney, Melbourne, Darwin, Perth and, of course, Brisbane and Cairns. These 8 additional one-stop points could be changed at any time.

On the North Pacific route, about which Australia was especially sensitive because of the huge growth in traffic on the Japan route, U.S. carriers were granted any 2 points in Australia chosen from Sydney, Melbourne, Brisbane and Cairns. Continental Airlines was quick to take advantage of the decision and started services from Brisbane.
and Cairns to the U.S. while United Airlines, the other major carrier then serving the routes, opted to concentrate on Sydney and Melbourne. All of these flights could have been routed through either Japan, Canada or Southeast Asia.

With respect to the Guam/Northern Marianas route, the Agreement provided U.S. carriers with an entitlement to fly from Guam or the Northern Marianas to any 2 points to be chosen from Sydney, Melbourne, Perth, Darwin, Brisbane, Cairns or a point to be selected by the U.S. government. Beyond rights were also granted but these were to be without traffic rights.

**Australia's Route Entitlements**

On the South Pacific route, Australia was granted landing rights to Honolulu, San Francisco, Los Angeles, New York and three points (or 'primary gateways') to be selected by the Australian Government and beyond to Canada, Britain and Europe and beyond. These can be exercised through either New Zealand, New Caledonia, Fiji, American Samoa, Canton Island, French Polynesia or Canada. Qantas was granted an additional eight points (or destinations). While these could only be served through one of the specified gateways and may operate beyond the U.S. without traffic rights, they could be changed at any time.285

Qantas faced certain restrictions on the South Pacific route between 1991 and 1993. Unless Qantas used San Francisco and New York beyond Los Angeles to Britain and Europe and beyond, it could only operate to Europe and beyond but not to Britain from September 1991; to Europe and beyond and up to 4 flights per week to Britain from September 1992; and to both Britain and Europe and beyond without restriction from September 1993.

On the North Pacific route, Qantas could operate via any one point in Asia (including Hong Kong, Japan, Korea, and Taipei and these could be changed) to any 2 points in the U.S. chosen from Honolulu, Los Angeles, San Francisco and New York. However, Qantas services could only begin when the U.S. carriers on the route were operating a total of 8 weekly frequencies. Qantas has strongly criticized this aspect of the
Agreement claiming that the U.S. carriers could determine when and if Qantas would have access to these routes. While Qantas has not been so constrained, the U.S. carriers could conceivably prevent Qantas from taking advantage of these rights by keeping their total frequencies on these routes to less than 8 per week.

The Agreement gave Qantas 15 landing points which access approximately 10 percent of the U.S. market. In return, the U.S. carriers were effectively given access to the total Australian market. These differences in coverage were not surprising given the huge population disparity between the countries. However, the different proportions were distorted by the fact that the U.S. policy of equivalence on landing rights was the product of a restricted route mechanism which has effectively amounted to limiting the access of foreign carriers to the U.S. domestic market as much as possible.

On the Guam and Northern Marianas route, Australia was also given access to these islands and beyond to any 2 points to be chosen from Tokyo, Nagoya, Fukuoka, Seoul, Taipei, Beijing and one additional point to be specified. These beyond points could be changed at any time. Despite Qantas concerns over encroachment by Continental Airlines on Japan-Australia traffic (which already had flights to Tokyo from Guam through its subsidiary Air Micronesia), Australian government officials have argued that the Guam route was not sufficiently developed to raise concerns.[Interviews with Australian government officials]

Australia’s Bargaining Approach to the U.S.

The Bilateral Approach

As with the making of Australia’s international aviation policy, the government takes the lead in formulating Australia’s approach to particular bilateral negotiations. However, as government officials readily admitted, Qantas and other industry interests have had an important, though indirect, influence over the formulation and execution of Australia’s position in any set of bilateral talks. [Interviews with Australian government officials] In particular, Qantas has been consulted by DOTAC as the government developed a line of argument for forthcoming bilateral talks. Once established, the
approach to be adopted was, in general terms, referred to other government departments for comment.

In its bilateral bargaining with the U.S., Australia has adopted a more restrictive approach to the central issue of capacity determination than that of the U.S., though the U.S. has itself been highly protective of its own domestic market. Australia's initial approach overtly sought to protect the market position of Qantas. However, in recent years, and especially since the 1989 change in negotiating policy and the adoption of its multiple designation policy in 1992, the Australian government's position has reflected a desire to ensure that Australia received what it perceived as its fair share of the market returns from travel and tourism.

In June 1989, the then Minister for Transport and Communications, Ralph Willis formalised a new Australian approach to international aviation negotiations. These new 'riding instructions', as they have been called, reflected changing government objectives in relation to the negotiation of aviation rights. In effect, this new approach sought to replace the old emphasis upon trading 'like for like' with a broader approach which sought, so the Minister argued, to encourage new services by foreign carriers where these would lead to improved tourism and trade opportunities for Australia. As well, the new policy sought to develop arrangements with other countries to give airlines greater commercial freedom to respond quickly to market demand. This broader view entailed seeing Qantas' economic interests as only one of many interests (including the tourist industry) to be taken into account in negotiating aviation rights. However, Minister Willis added that while the approach would be more liberal, the benefit to Australia from a trading arrangement would be the dominant consideration. [Hansard, House of Representatives, 1989, 3539-40]

The latest 1988 round of negotiations between Australia and the U.S. were concluded less than a year before the announcement of this new approach. While this change of policy was undoubtedly already in the 'policy pipeline' and the 1988 Agreement contained some liberalising provisions, it is doubtful whether it had any effect upon the approach taken by Australia in these negotiations. Australia's chief aim had been to negotiate a more secure capacity regulatory mechanism which would check the strong
expansionist thrust of the U.S., derived as it was from both the Reagan Administration’s pro-competitive policy and the powerful influence of U.S. industry interests over that policy. The established ‘trading of rights’ approach was then considered the best way of ensuring that the U.S. carriers did not gain an undue advantage over Qantas from the negotiations.

The new more liberalised negotiations policy began to appear in Australia’s approach to its international aviation dealings with the U.S. even before a new bilateral agreement was negotiated. The most obvious example of this new policy was that of Northwest Airlines’ application to fly a New York-Osaka-Sydney route. In October 1991, when Australia granted Northwest conditional approval to fly 3 times a week on this route, the new approach, emphasising general economic benefits to the Australian economy over that of protecting Qantas from competition, encouraged Australia to accede to Northwest’s request.\(^{286}\)

Australia’s approach to the 1988 negotiations with the U.S. had undoubtedly been affected by the fact that the negotiations had been brought about as the result of an Australian complaint over U.S. dumping of capacity and the perceived imbalance of rights (between 3rd and 4th and 5th freedom traffic) on the Pacific routes.\(^{287}\) Equally important, the U.S. carriers had themselves begun to call for changes to the then existing arrangements, believing that a new ASA would better cater for growth on the Pacific routes.

Qantas initially took a leading role in the 1988 talks, partly because the then existing Australian approach was still primarily concerned with maintaining Qantas’ market share. In particular, with the talks centred around the issue of capacity and with Qantas as the party aggrieved by the capacity increase of U.S. carriers, the airline was involved in supplying the commercial information for the Australian case. Government representatives (jointly from both DOTAC and DFAT) took over the lead shortly after the commencement of the talks and moved the negotiations beyond capacity issues to include other issues such as that of finding ways of meeting the increased tourist demand for air travel.
Australia’s approach to its aviation negotiations has been, and is likely to continue to be, dominated by state actors. Qantas has been influential to the extent that it has performed a valuable advisory role to government in the development of Australia’s bilateral approach. However, Qantas, and obviously less important societal actors, have not been so influential as to be ascribed a role in determining the approach taken by Australian state actors.

The strength of the U.S. negotiating position (derived from the sheer economic power of the carriers and the important bargaining advantage of a large and geographically centrally-located domestic market) has been interpreted by Australian negotiators as meaning that Australia must likewise show determination especially if it desired the inclusion of provisions objected to by the Americans. The Australian view was that the U.S. would not move on such proposed provisions unless they were considered absolutely necessary to the making of an agreement. Recognizing Australia’s relative economic weakness, Australian officials have realised that to secure a favourable trading outcome in such negotiations a committed approach in their bargaining was required. In interviews with Australian aviation negotiators, they conceded that bargaining with the Americans over aviation rights also entailed a good deal of ‘damage control’ as Australia sought to secure the best possible capacity route entitlement provisions in the face of U.S. pressure for increased capacity and landing slots.

The changes in Australia’s negotiating policy have been in the direction of providing greater liberalisation of the airways. While this has encouraged a view favourable to the expansion of capacity on routes into and out of Australia, such expansion of capacity is unlikely to be acceptable to Australia if the result means Qantas or other Australasian carriers will have a reduced market share. This Australian position was clearly in evidence in the Northwest dispute of 1992-93.

The mercantilist strains in Australia’s negotiating approach are unlikely to be completely or hastily removed as it edges towards a more liberalised aviation market. These policy lines have been obvious in Australia’s dealings with the U.S. given what Australian negotiators have considered to be the U.S.’s own regulatory and protectionist policy positions.289

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Australia and the U.S. enjoy a good political relationship with each other. As in the other trade sectors of this study, this relationship has assisted by providing Australia with a high-level hearing within U.S. policy making circles. However, as with the other trade sectors, it has not ensured that Australia’s interests have been seriously considered in the making or execution of U.S. international aviation policy. Australian government officials no longer consider aviation issues to be distinct or discrete from other trade issues though they are still principally handled by DOTAC rather than by DFAT. While references to the broader relationship, or to other trade issues, may in fact assist rather than hinder Australian negotiators in dealing with the U.S., (as was evidenced by the ‘please explain’ notes sent to the U.S. negotiators from their political masters during one stage of the 1988 negotiations.\textsuperscript{290}) there has been no evidence of any direct references to the Australia-U.S. political relationship as serving to either enhance or diminish Australia’s trade outcomes in the aviation sector.

Australia’s bargaining approach to the U.S. over aviation rights has become a broader one, incorporating non-aviation issues, and like the formulation of international aviation policy, can no longer be considered in isolation from general trade policy. However, the policy change has not meant that in bargaining, and especially with a relatively stronger state like the U.S., Australia has completely dispensed with its protective stance towards its own designated carriers.

**The Multilateral Approach**

In marked contrast to Australia’s strong stand on commodities trade reform (especially in relation to agricultural commodities) in the Uruguay Round of GATT talks, its approach to multilateral services trade reform has been very low key. While aviation services trade is one of the matters being considered by the Group Negotiating Services (GNS) in the Round, Australian government officials conceded that neither they nor Qantas expected it would appear in the final package. Even if multilateral reform was produced in other areas of services trade, Australian government officials saw bilateralism as having too tight a hold over the regulation of aviation rights for states to allow it to be overtaken by Uruguay Round developments.[Interview with Australian government officials]
As with other trade matters on the table in the GATT talks, the Department of Foreign Affairs and Trade (DFAT) has handled Australia’s approach to reform of aviation services trade. Apart from important exceptions such as Australia’s aviation trade with New Zealand, DFAT officials stated that all aspects of Australia’s aviation services trade had been brought under the purview of the GNS in the GATT Round.[Interviews with DFAT officials]

Australia’s approach to the reform of services trade has generally called for a strong but broad agreement which would outline key principles and provide a few specific rules (on matters such as subsidies and dispute settlement). Australian government officials have anticipated that individual states would be left with sufficient latitude to ensure that such a package would be consistent with its presently existing bilateral arrangements. Both Australian and U.S. officials have emphasised that any GATT agreement on aviation services trade should not have a ‘grandfather’ clause which would affect existing bilateral arrangements.[Interviews with Australian and U.S. officials]

A liberalisation package coming out of the GATT talks would only improve Australia’s trading outcomes with the U.S. if, in return for general liberalisation, greater access to the U.S. market was to result. The extent to which this could occur and be consistent with current bilateral provisions is not something that Australian officials have seriously considered.[Interviews with government officials]

DFAT officials charged with responsibility for conducting Australia’s negotiations in the GATT Round, have understandably argued that the reform of aviation services trade is a relevant matter to be considered multilaterally. Officials for the Department of Transportation and Communications (DOTAC), on the other hand, have given the matter a very low profile but have differed over whether multilateralism is a future possibility. While some government officials considered multilateralism would only be of relevance to international aviation regulation on a regional basis, if at all, others argued that multilateralism may come to have an effect by the late 1990s as states, such as Australia, sought to retain some control over developments arising from the many changes occurring within the international aviation industry.
Conclusion

This study has concerned Australia's access to the U.S. aviation market as well as its competitiveness with the U.S. on the trans-Pacific air routes. Its importance has been in revealing particular opportunities as well as problems for Australia as it seeks an improvement in its outcomes in each of these two dimensions of Australia's aviation trade relations with the U.S. In contrast to the other sectoral relationships of this study, Australia and the U.S. stand in not only a more competitive but also a more equal bargaining relationship. Each has sought increases in capacity and improvements in route entitlements while bargaining access to its own domestic market. This has meant that the bargaining process, mainly though not exclusively conducted through formal bilateral negotiations, has been capable of taking on a dynamic of its own, largely independent of the respective power-capable positions of the states.

Capitalising on the strong international position of major U.S. carriers, the U.S. has been the leader in promoting the deregulation and liberalisation of national airline industries and the privatisation of airlines. Such ideas for reforming the international aviation industry have been in line with the ideology of economic rationalism, so dominant in many western countries and beyond over the period of the 1980s. The Australian government, and to a lesser extent Qantas, have responded positively to these ideas and to the global developments which accompanied them, though imperatives have related to domestic economic adjustment as well as trade expansion.

The U.S. pro-competitive policy has made the U.S. a more aggressive partner to Australia in bilateral negotiations and more successful in negotiating increases in capacity on the Pacific routes as well as greater access to the Australian market and to those of third countries on route. While critical of the regulatory nature of the bilateral bargaining process, U.S. state and societal actors have used the process to maximize their benefits through the trading of aviation rights and to promote a liberalising tendency (albeit protectionist in terms of the matter of access to the U.S. market) in the resultant agreements.
Where the U.S. executive’s concern with aviation policy matters has been directed towards the economic welfare and competitiveness of U.S. carriers (as revealed in the recent Northwest Airlines dispute with Australia), Congress has remained largely unconcerned with such policy matters unless they have involved a major economic power. Thus, the trading of aviation services between the U.S. and Australia, has not presented itself as an issue of foreign policy significance for either the U.S. executive or legislature such as to assist Australia in seeking to influence the U.S. policy-making process.

Emphasising the export competitiveness of U.S. carriers, the U.S. policy has used the U.S. domestic market as leverage to promote this interest. There are no opportunities within this policy for Australia to negotiate favourable access to the U.S. market unless it can make liberalising concessions in return. Australia has little to concede which the U.S. would be prepared to accept (or does not already have) in return for a relaxation of U.S. policy.

The U.S. industry has been opposed to the multilateral liberalisation of international aviation (fearing an imbalance as foreign carriers move into the U.S. domestic market), while many U.S. state actors have questioned the feasibility of solving the problems of international aviation through multilateral means. Serious doubts have been raised as to whether the GATT regime, with its norms such as Most Favoured Nation (MFN) treatment, would be appropriate to regulate trade in aviation services.

While the executive and the Congress have both been generally receptive to industry appeals for policies and negotiating positions that support their economic interests, the U.S. policy of liberalisation has not been simply the result of U.S. industry pressure but the result of a separate and genuine commitment to the liberalisation of the international aviation market by U.S. state actors. U.S. airlines have undoubtedly been influential in having the policy objective of global liberalisation translated into a policy of access to the U.S. domestic market by foreign carriers and used as a bargaining tool to lever reform from negotiating partners.
International developments, including U.S. deregulation and liberalisation and its impact upon U.S. carriers, have placed additional economic pressures upon Australia and its designated carrier/s to compete in the world market. These developments have prompted Australian state actors to broaden the range of economic interests to be taken into account in formulating their negotiating positions and have thereby affected the domestic relationship between Australian state and societal actors.

Seeking greater economic returns from its international aviation activities, the Australian government has moved beyond a policy approach which sought to protect Qantas’ market position to one which has encouraged new Australasian entrants into the industry and has more generally sought to promote travel, trade and tourism. While it is inconceivable that an Australian approach would be adopted which ran contrary to the vital interests of important societal actors, there has been a loss of influence by the airline industry as state actors, perceiving aviation services trade as a potential area to improve Australia’s balance of payments, have taken cognizance of other economic interests. However, Australian state actors have still been unable to effectively reconcile the desire to maximize the export revenue received from increased travel and tourism to Australia with the other goal of ensuring that Australasian carriers maintain, if not increase, their market shares.

The changed domestic bargaining relationship, with its strengthening of the role of Australian state actors and lessening of the importance of state-industry actor bargaining in determining Australian policy outcomes, has, in turn, influenced the nature of the strategies which Australia has adopted in seeking to maintain, if not improve, its competitive market share as against the U.S. A greater preparedness by Australia to allow U.S. carriers to develop new markets on particular Pacific routes, even if there was no reciprocal benefit for an Australian airline, was one result of the changed Australian approach. While Australian negotiators may have considered that they had little option but to concede this concession at the time, there is little doubt that in light of developments on the North Pacific routes, Australian negotiators would now be more concerned in extracting greater reciprocal access to the U.S. market.
The political relationship between the two countries has been a sound one which, as in the case of the other sectors examined, has provided Australia with access to top U.S. decision-makers. While the centralised nature of U.S. international aviation policy-making has certainly made access to the decision-makers easier than in other sectors, the nature of the U.S. policy has meant that Australia, understandably viewed by the U.S. as a competitor, has been unable to influence a favourable change in that policy. Both countries have been wary of making linkage from aviation policy issues to other trade and foreign policy issues and the bilateral negotiating framework has enabled the countries to keep the determination of aviation trade relations largely discrete. Where Australia was not able to take advantage of its good political relationship with the U.S. to secure more favourable outcomes, this lack of linkage to other foreign or trade policy issues has helped Australia to keep the matter of aviation trade at least partially insulated from the U.S. promotion of global liberalisation and given the Australian government more control over the pace of reform in the sector.

The bilateral negotiating process has allowed Australia some element of control over the determination of aviation rights (and the opportunity for the exercise of skill by its negotiators) towards the improvement of its trade outcomes. The bilateral mechanism has, in particular, provided opportunities for Australia to apply its high level of commitment to capacity regulation. This occurred in the 1988 formal negotiations where a favourable predeterminist capacity regime was established.

Yet, the issue must be addressed as to why Australia has not received a better share of the U.S. domestic market and why Qantas is under pressure from U.S. carriers on, particularly but not solely, the lucrative North Pacific route to Japan. Certainly, the strength of the U.S. carriers (with their abilities to cross-subsidize routes from the domestic U.S. sector and to offer cheap U.S. connections) and the U.S. negotiators’ bargaining power because of the sheer size of the U.S. domestic market and its geographical location have been important reasons for Australia’s problems.

Another factor, however, was Australia’s obvious preparedness in the late 1980s and early 1990s to go some distance towards embracing liberalisation of international aviation and apply it in negotiations with the U.S. U.S. carriers were given extensive
access to the Australian market without a commitment from the U.S. negotiators that their advocacy of such international liberalisation would be applied in the U.S. domestic market and in Australia’s interests. This raises the question as to whether Australia has used its bargaining resources as efficiently as it could have in both the 1988 negotiations and subsequent talks. Australia does not appear to have ensured that Qantas gained the equivalent in effective (that is, affordable) access to the U.S. domestic market in exchange for virtually total access to Australia by U.S. carriers.

Australian state actors have identified the principal regulatory problem in negotiating with the U.S. as the U.S.’s restrictive approach to access to the U.S. domestic market. The other major problem that Australia has experienced with the U.S. in this sector has been the alleged dumping of capacity on the Pacific routes by U.S. carriers.

The international aviation sector offers Australia greater bargaining leverage for an improvement in trading outcomes than either the agricultural or steel sectors. This is because of the importance of the formal bilateral negotiation process to the determination of outcomes: a process which allows Australia some control over sectoral outcomes. Like Australia, the U.S. must bargain and make concessions in order to secure desired outcomes and cannot simply rely upon the application of its greater power-capable resources. The fact that the U.S. perceives a cost in not reaching an agreement with Australia, not to mention the possibility of a full or partial denial of market access to U.S. carriers, has assisted Australia.

Neither the bilateral lobbying nor, and to an even lesser extent, multilateral negotiations, offer the same potential for Australia to apply its sectorally-specific resources to exact any benefits. The difficulty for Australia is that U.S. international aviation policy effectively applies a protectionist approach to U.S. market access in order to lever increased access to other states’ markets and while conducted by U.S. state actors, is directed at maximizing returns for U.S. carriers.

Australia has few resources capable of effective application in its bilateral lobbying to change this fundamental U.S. policy approach: it has difficulty in showing any cost to U.S. taxpayers or consumers of any denial of U.S. market access to Australian carriers;
there are no U.S. domestic actors with whom Australia could form a coalition; and little
remaining Australian market access with which to bargain with the U.S.

The regulatory framework which has governed bilateral aviation negotiations between
these two countries over the postwar period has allowed Australia to apply a level of
commitment to some form of capacity control and to bargain for benefits in return for
access by U.S. carriers to the Australian market. At the same time, Australian state
actors have been able to selectively moderate this commitment so as to encourage the
international competitiveness of Australian airlines and the promotion of other Australian
economic interests.

This sector has provided a unique example of where bilateral negotiations can act as an
intervening variable and provide opportunities for a weaker state to apply sectorally-
specific resources to lever an improvement in sectoral outcomes. Australia’s trade
outcomes have derived from its bargaining leverage provided by means of the formal
negotiating framework and the bargaining chip of access to the Australian aviation
market. It is unlikely that Australia could achieve similar outcomes in other sectors
unless there was a formal framework for negotiations with the U.S. through which a
tradeable item, sought by both countries, could be bargained.

In like fashion to Australia’s attempts to gain improved import access to the U.S. in
other sectors of this study, Australia has been concerned to promote a translation of
ideas of free trade and liberalisation, held by many within U.S. international aviation
policy-making circles, across into a policy of liberalisation of the U.S. domestic market.
However, Australia has been concerned that global liberalisation in this sector, as
promoted by the U.S., may allow those with a comparative advantage in international
aviation, such as the U.S., to dominate the marketplace. Thus, even at the cost of
undermining its argument for the opening up of the U.S. domestic market as part of
global liberalisation, Australia has continued to push a protectionist approach to capacity
regulation when dealing with the U.S.

Liberalisation of the international aviation market thus obviously offers a mixed picture
for relatively weak traders such as Australia. Australian state actors, while moving the
local aviation sector in this direction, remain unconvinced that global liberalisation of
the sector will necessarily offer improved outcomes for Australasian carriers. While
aviation, as with a number of other service issues, had been included within the
multilateral talks of the Uruguay Round, it was expressly excluded from the final
Agreement.

States with developed aviation industries, such as Australia and the U.S., have grown
accustomed to bargaining for their economic rights without external interference. In
Australia’s case, its low key approach to multilateral reform of aviation in the
Uruguay Round was indicative of the lesser importance given to multilateral reform as
a means of improving trading outcomes with the U.S. It was, to some extent, a reflection
of the limited success that Australia has achieved through bilateral negotiations.

There is, thus, little prospect that a multilateral forum, such as the GATT, would be
given the role of conducting the exchange of economic rights between states even
though multilateral organizations covering technical, safety and pricing aspects of
international aviation have existed for some time. However, the multilateral reform
process does hold some appeal for Australia as it may facilitate the removal of certain
trade barriers as well as the resolution of problems more amenable to being dealt
with globally. It may also, in the future, provide a means of regulating developments
arising from the changing economics and technological innovations of international
aviation.

Direct appeals by Australia to U.S. international aviation policy-makers or to the GATT
forum for reform have not, and cannot, at least in the medium term, be expected to
produce improved outcomes for Australia in this sector. Bilateral negotiations with the
U.S., and the mechanism they have provided Australia to either maintain or increase
Qantas’ share of the traffic on the Pacific routes have produced some favourable
outcomes. On the other hand, the attempt to use the bargaining mechanism to influence
a change in U.S. policy so as to improve Australia’s access to the U.S. domestic market,
has met with the same resistance found in other sectors and has not been successful.
However, despite these problems, both Australian state and industry actors consider
that the bilateral negotiating process has provided Australia with greater control over the trading of its aviation rights.

While the competitive bargaining with the U.S., as conducted through the bilateral negotiations process, has not resulted in entirely satisfactory outcomes for Australia, it has (specifically) provided the best means of checking the competitive pressures of U.S. carriers on the Pacific routes. More generally, this process has provided Australia with opportunities to apply sectorally-specific resources towards improved trading outcomes. Whether conducted formally or informally, these negotiations have remained the best possibility for Australia to improve its outcomes from its aviation services trade with the U.S.
NOTES

199. In 1991-92, Australian services exports totalled AUD$14,135 million (with another AUD$15 billion coming from the export of services embodied in manufactured goods) which was 20 percent of its export income, and equalled the proportion of exports that came from manufactures. The largest contributor to Australian services revenue has been tourism, a service industry closely related to the aviation industry. In 1991-92 travel expenditure earned export income of AUD$5.5 billion which amounted to 39 percent of Australia’s service exports.[Department of Foreign Affairs and Trade, 1993b, 5]

200. This recent liberalizing process in Australia has paralleled a similar, but more extensive, process which began in the U.S. in 1978.

201. The British had sought a regime which would allow a certain degree of government intervention while the Americans wanted the adoption of an ‘open skies’ policy which would have guaranteed commercial landing rights everywhere to the world’s airlines without restriction.

202. The common clauses of these agreements were the Administrative and Technical Clauses (such as the mutual recognition of licences and qualifications and the exemption from taxes) and the Tariff Clause as well as the more contentious Route Description and Capacity Clauses. Another Clause of importance was the one which stipulated that designated carriers would be under the ‘substantial ownership and effective control’ of nationals of the designating country.

203. While state ownership has been significant in understanding the state’s involvement in aviation policy, it does not fully explain the protective approach of governments to their designated airline/s. The privatization of airlines and the subsequent emphasis upon the need for the airlines to be profitable has meant governments have had to negotiate agreements which would facilitate this goal.

204. The Bermuda I type of Air Services Agreement was subject to differing interpretations and these came to a head in 1976 when Britain formally denounced it as providing an ‘imbalance of benefits’ in favour of the U.S. In particular, Britain argued that British carrier access to U.S. gateways was too limited and that U.S. carrier capacity and Fifth Freedom rights for the U.S. had been too generous. The subsequent 1977 agreement between the U.S. and the U.K. (Bermuda II) was more in line with Britain’s regulatory approach and included limitations on designated airlines and controls on price and capacity.

205. The impetus for this new policy came from both the free market ideology and strong commercial position of the U.S. carriers as well as the personal philosophy of President Carter. It was given statutory form with the Airline Deregulation Act of 1978.

206. The predeterministic type of agreement is one which only allows those route and capacity entitlements, and increases thereto, as prescribed in the agreement.

207. These changes relate to the structure of the industry, size and nature of the key players, and the marketing and information technologies applied in the industry.
208. Services trade issues were included on the agenda of the Uruguay Round of talks as a result of pressure from the U.S., the EC and Japan. However, their chief concerns to have services trade reformed related to services such as investment trade and intellectual property rights.

209. Tables M and N show the general increase (apart from 1991) in international air passenger traffic over this period.

210. Continental Airlines emerged from two and a half years of bankruptcy protection on April 27 1993. Importantly, Continental has been strengthened by the injection of US$450 million of investment funds from Air Canada and Fort Worth investors Air Partners LP.[Zellier et. al., 1993, 69]

211. Refer to Table O for the effect of this War on passenger load factors.

212. The International Air Transport Association (IATA) has been reported as stating that financial recovery for the airline industry is unlikely before 1994 with losses in 1992 around SUS2 billion despite a rise in passenger traffic of 8 percent. [The Australian Financial Review 1992, 60s]

213. This September 1992 agreement provided airlines of both countries the freedom of the Atlantic Ocean, in effect allowing them to operate whatever services they liked between the two countries, and to set their own fares without government interference.

214. The world's largest carriers are listed in Table P and their rise to prominence is outlined in Chart E.

215. The British Airways bid to invest US$750 million for a 44 percent stake in USAir, which would have effectively made it the world's biggest airline, faced rejection by the U.S. Government as it came under pressure from the major U.S. carriers who have argued that a successful bid would be unfair given their limited access in the U.K. [The Economist, 1992c, 10] While the U.S. "hard-ball" approach occurred in the last days of the Bush Administration, there was every indication that U.S. industry opposition to the deal would be heeded by the Clinton Administration and the deal would only be allowed if there was a reciprocal lifting of restrictions to U.S. carriers operating in the U.K.[Durie, 1992c, 34] In December 1992, British Airways abandoned this deal and struck a new deal to invest US$300 million for a 24.6 percent stake in the airline.[Markillie, 1993, 17]

216. These U.S. carriers were able to service the U.S. domestic market as well as fly on international routes.

217. Even in the late 1980s, about 40 percent of all passengers in the world who get on a plane on any given day, do so in the U.S.

218. In the 9 years to 1987, the market share of the 5 largest U.S. carriers increased from 63.5 percent to 71.7 percent.[Kasper, 1988b, 37]

219. The first of these 'open skies' agreements with the Netherlands in 1978 and others which followed included provisions such as the elimination of capacity controls

235
and the designation of several carriers for the same route or routes.[Fischer, 1984, 13]

220. The CAB’s economic regulatory functions over entry (including the old distinction between trunk and feeder services), pricing, route and other restrictions were left to be determined by the forces of marketplace competition.

221. Airlines ascribe great importance to their computer reservation systems (CRS) (which each airline has usually owned or part owned) as they have provided each with a means to gain a priority listing with potential customers (through the use of their CRS by travel agents) and enabled an airline to maximise the yield it gains on each flight.[The Economist, 1992e, 23-24] Each CRS has an inbuilt potential for bias (such as the use of the "first screen" by the airline owning the system) which could act against efforts to liberalize international air passenger transport.[Centre for International Economics, 1988, 11]

222. These ancillary markets included the provision of airport facilities and services.

223. Reference was made to such matters as discriminatory airport charges.

224. They have been referred to as ‘professional negotiators’ in the sense that their sole responsibilities have been to negotiate aviation agreements with other states.

225. An example of the influence of U.S. carriers in the making of U.S. policy can be found in the fact that in negotiations, any problems affecting the incumbent U.S. carriers have had to be dealt with before consideration would be given to new entrants. While this may be a logical policy, it has reflected the political power of the incumbent airlines.

226. Former chief negotiator Jeffrey Shane has referred to the paradox where "a global enterprise boasting some of the world's most advanced science and engineering...operates according to a set of anachronistic, mercantilist rules."[Shane, 1988a, 1]

227. Examples of such barriers included what have been generally termed the ‘doing business’ type of arrangements (such as baggage handling and catering) which may act to disadvantage the operations of certain carriers at airport terminals in foreign countries.

228. Another possibility, to which U.S. government officials referred, was the negotiation of a services plurilateral, encompassing several but not all states. This was only considered a possibility if the Uruguay Round failed to adequately deal with services trade issues.

229. It should also be noted that the U.S. President holds a national security veto over all aviation legislation.

230. Each of these committees have subcommittees on services policy which covers aviation. All 18 industry sector advisory committees dealing with services were serviced by the USTR.
231. Bilateral aviation agreements are considered to be treaties and, as such, are not subject to Senate ratification.

232. The Carter, Reagan and Bush Administrations have all referred to their policies as an 'open skies' approach. However, that of the two most recent Administrations has been somewhat more restrictive. Foreign countries have become concerned that the recently-installed Clinton Administration may be even more restrictive.[Carlson, 1993, 4; Durie, 1992c, 34] In the Asia-Pacific region, concern about "lop-sided agreements" which have enabled U.S. carriers to build substantial market share across the region prompted the Orient Airlines Association, a regional grouping which includes Australia, to urge member countries to push for "new, fairer" air service agreements with the Clinton Administration.[Thomas, 1993a, 8]

233. For example, Congress has not provided a regulatory solution to possible competitive problems arising from the increased concentration of the U.S. industry in the post-deregulation era, preferring to leave the matter of anti-trust issues to be dealt with by the courts.[Fischer, 1986, 9]

234. The important position of the airlines has been enhanced due to the fact that U.S. civilian airliners may be requisitioned should U.S. national security be threatened.

235. The capacity is itself determined by reference to the aircraft size multiplied by frequency in a given time period.

236. A third approach, 'free determination' which is of recent origin and has involved controlling neither the number of carriers on a route nor the capacity they offer, has not been favoured by the Australian government.

237. The review committee report, the International Civil Aviation Policy (ICAP) Report, constituted the first comprehensive postwar consideration of Australia’s international aviation policy.

238. Implementation of the policy was to be in 3 stages with the immediate 1992 changes allowing Qantas to buy Australian and implementing a multiple designation policy and the opening of new bilateral negotiations for better route and capacity entitlements; the second stage in 1993 was to provide Qantas with domestic market access and multiple designation across the Tasman Sea to New Zealand (Ansett Airlines will probably take this up in November 1993 with flights between Sydney and Wellington); and the final stage was the implementation of a single Australasian aviation market by November 1994.[Department of Transport and Communications, 1992, 12]

239. The recommendations of a 1989 Report on Travel and Tourism by the then Industries Assistance Commission (IAC) played an influential part in bringing about the 1992 policy changes. Significant amongst the IAC recommendations was a questioning of the continued governmental ownership of Qantas and the need to allow the injection of private capital; the removal of the separation of domestic and international markets for Australian carriers which it considered would result in a progressive increase in competition in international airline services; and the designation of other Australian carriers as international carriers, allowing them to
utilise landing rights presently available to Australia but not used by Qantas. The
IAC also recommended that Australia should begin negotiating bilaterally to
expand capacity. The IAC argued that these measures would enable Australian
airlines to achieve economies of scale of aircraft, encourage more competition and
efficiency and provide a wider range of choices for travellers as well as benefit
tourists. [Industries Assistance Commission, 1989, 59-64]

240. Under the International Air Services Commission Act, the Commission is required
to report to Parliament annually on its determinations. The Department of
Transport and Communications has the responsibility for developing and
maintaining a register of available capacity on the routes that the Australian
Government has negotiated with 41 other countries. [Department of Transport and
Communications, 1992, 11]

241. It should be noted that the Australian Department of Transport and
Communications has the power, by virtue of each bilaterally-negotiated agreement,
to grant a temporary permission for a designated Australasian airline to operate on
a particular route. In July 1993, DOTAC exercised this power in respect of Qantas
flights to Seoul.

242. Qantas, in its latest Annual Report, has argued that the new policy was biased
towards new entrants, while admittedly recognizing that there remain real
difficulties for new players in the international market. [Qantas, 1992, 17]

243. The International Air Services Commission Act guarantees for Qantas 5 years
那些 international route and capacity rights it was using as at 26 February 1992,
after which they could be contested at the renewal stage by new entrants to the
industry. Those rights granted to Qantas in 1992 but after 26 February of that year
would be contestable after 3 years. [Department of Transport and Communications,
1992, 11]

244. Cabotage is the right to pick up and set down domestic traffic.

245. Within this Branch, an Americas and Pacific Section has the principal
responsibility for Australia's relations with the U.S. Other sections, International
Policy Coordination and Multilateral Relations, have also exercised policy
responsibilities which impinge on these relations.

246. In a recent speech, DOTAC Associate Secretary Roger Beale referred to the real
potential for growth in terms of visitors to Australia from overseas and highlighted
the importance of inbound tourism which had generated foreign exchange earnings
of AUD$17.9 billion (up 14.5 percent on 1990) and accounted for 10 percent of
Australia's total export earnings. [Beale, 1992, 11-12]

247. Interviews with both past and present occupants of this embassy position as well
as with officials of DOTAC and DFAT provided no evidence to suggest that the
Washington embassy had been influential in the making of Australia's
international aviation policy over recent years.
248. In recent years, the advice of the Department of Tourism (now with a Minister of Cabinet rank) has been taken more seriously in the making of both domestic and international aviation policy. A section of the department deals with aviation matters and an aviation advisor has responsibility for ensuring that aviation policy is not made without considering the implications for tourism.

249. The recent dispute between Australia and Northwest Airlines involved a direct appeal from the airline company to the Australian Prime Minister. While his Department had undoubtedly been monitoring developments in the dispute, there was nothing to suggest that the Australian approach, led by the Minister for Transport and Communications and his department, was in any way challenged by the Prime Minister and his department.

250. Just as analysts have argued that the profit level from the 1991-92 year has been exaggerated, so the cost-cutting has been considered to have provided only one-off benefits to the airline and the more difficult decisions on staff reduction have not been broached. More importantly, Qantas’ share of total available seats was reported as having slipped from 44 percent to 38 percent over the previous decade. With growth in the total travel market (into and out of Australia) this has meant that Qantas had fallen behind.[Chapman, 1992, 38]

251. Qantas has referred to growth from the Asia-Pacific region as being almost double its global network average and this was expected to increase.

252. The code-sharing arrangement with American Airlines was Qantas’ principal response to the restrictiveness of the U.S. domestic market and has enabled the Australian carrier to link its trans-Pacific routes with the domestic network of the U.S. carrier. The arrangement was considered to be important for Qantas’ development of its trans-Pacific routes as was its continued participation in the extensive American Airlines’ ‘AAdvantage Frequent Flyer Program’.

253. In so doing, the Government considered the fact that Qantas had posted losses in recent years as well as the uncertainty of the international market. While Qantas’ debt-capital ratio was higher than that of the major Asian airlines, it compared well as against the major U.S. carriers. The takeover of profitable Australian Airlines was itself expected to pull back Qantas’ ratio from 86 percent to 70 percent.[Thomas, 1993h, 8]

254. This amalgamated Qantas group brought together staff of 27,000 (many of whom have been or will be retrenched as part of a rationalisation), annual revenue of more than AUD$5.6 billion and more than 125 aircraft.[Chapman, 1992, 38] Australian Airlines has provided Qantas with a domestic network of over 100 destinations.

255. The Australian Government has been reported as effectively giving Qantas a "AUD$200 million balance-sheet windfall" by removing $1.55 billion off its debt as well as the $1.35 billion boost to shareholders funds.[Thomas, 1993h, 8]

256. Ansett Airlines has already been considered an important, though potential, player in certain markets. This was recently illustrated by the fact that Ansett’s chairman Ken Cowley felt entitled to comment on the Australia-U.S. dispute over
Northwest’s New York-Osaka-Sydney flights, viewing the broader dimensions of the dispute as possibly affecting Ansett’s future operations in Asia. [Falvey and Della-Giacoma, 1993, 7]

257. These new carriers include Indian Ocean Airlines, Air Australia, Bentide, Australia World Airlines, Pel Air, and the Northern Territory Department of Transport and Works.

258. Australian government officials saw Continental Airlines as an aggressively competitive airline and became concerned at the capacity of this carrier and the volume of traffic (mostly local) it was carrying between third countries, especially New Zealand and Fiji.

259. Australia had continued to argue that financially viable operations under the U.S. multiple designation proposals would be impossible because of an ‘excess’ capacity situation. The U.S. responded by arguing that the introduction of services by a second carrier, then American Airlines, would promote traffic on the route. [Pyman and Morris, 1984, 478]

260. Continental Airlines’ Tokyo-Guam and Guam-Australia flights have not constituted a threat to Qantas given that these flights have been catering to a certain niche market: Japanese honeymooners who spend two nights on Guam before flying on to Australia.

261. Passenger load factor is passenger-kilometres expressed as a percentage of available seat kilometres. Passenger-kilometres flown is obtained by multiplying the number of revenue passengers carried on each flight stage by the flight stage distance. Available seat-kilometres is obtained by multiplying the number of passenger seats available for sale on each flight stage by the stage distance. [IATA, 1992, 95,96]

262. These calculations have been complicated by the fact that Australia and the U.S. have calculated the revenue passenger seat factor differently. Where the U.S. has referred to the total traffic on board into and out of Australia, Australia has referred to the total traffic on board between the two given destinations.

263. This contrasted with 1987, before the new Agreement, when Qantas had 21 flights per week while Continental had 18 and United 8. [Interviews]

264. Continental Airlines, which had been in Chapter 11 bankruptcy in the U.S. over the past two and a half years, dropped services to Cairns and reduced those to Brisbane. Northwest has reduced the number of its Sydney-Los Angeles non-stop services which were launched with what Qantas has referred to as unprecedented low fares. [Qantas, 1992, 11]

265. As at the end of 1991, Qantas share of traffic on the South Pacific route was less than that carried by the U.S. carriers. With fare discounting among the fiercely competitive U.S. airlines, the share of traffic carried by the U.S. airlines was expected to increase, placing additional cost pressures on Qantas.
266. The Japan-Australia route has been the most profitable of all sectors for Qantas with the airline expected to secure AUD$670 million or about 15 percent of its total revenue from this route in its 1992-3 financial year.[Melbourne Age, 1993, 15] Not surprisingly, Qantas has become very concerned at the slowdown in the growth of Japanese travellers to Australia as a result of the recession being experienced in Japan.

267. Australia has not, in fact, sought strict compliance with this capacity limit.[Beale, 1992, 5-6]

268. In terms of the different methods of calculating the revenue passenger seat factor, the U.S. has referred to the total traffic on board into and out of Australia while Australia referred to the total traffic on board between Australia and Guam/Northern Marianas.

269. This provision permitted Continental Airlines, which operated Japan-Guam flights, to connect on to flights to Australia. Qantas has expressed its concern that Continental was using its position on Guam in order to take a share of the lucrative Australia-Japan traffic. Continental was granted 3 services per week to Guam/Northern Marianas and a fourth in April 1990.

270. The trans-Pacific services were, in contrast, only about 2 percent and 4-5 percent respectively, of United and Continental Airlines’ total operations.

271. The Australian Government has subsequently argued that Northwest was given approval to fly to Australia through Japan so that the airlines could develop markets between the U.S. east coast and Australia and not the regional Japan-Australia market. [Melbourne Age, 1993, 15]

272. It should be noted that a provision stipulating a condition of at least 50 percent through traffic on these routes was not included in the 1988 Agreement between Australia and the U.S. A written acceptance of the condition was given to the Australian government by Northwest Airlines on October 24, 1991.

273. Northwest’s specific response was that the proposed restriction would jeopardise the airline’s entire Australian service and that Australia’s action had gone against a commitment not to unilaterally enforce compliance with the restriction.[Reuters, 1993a]

274. This right to take a dispute to a third party for international arbitration was established by Article 12 of the 1952 Australia-U.S. ASA but had fallen into disuse. The U.S. government has been reportedly concerned about involving a third party to find a solution through arbitration as it could set a precedent for dealing with future disputes on bilateral issues.[Thomas, 1993j, 8] An independent arbiter (the president of the World Travel and Tourism Council) was appointed to attempt to reach a settlement between the parties.

275. Northwest had been asked by the Australian Government to refile a schedule for one less weekly service on the Sydney to New York via Osaka route by June 30, 1993 as punishment for breaching the terms of its approval.[Gill and Thomas,
1993, 1] The remaining 2 services would also be cancelled if Northwest failed to comply with the 50 percent rule limiting Osaka-Sydney passengers to half the total traffic on the route.

276. Australian Foreign Minister Gareth Evans accused the U.S. of falsely claiming its position in the dispute was based on free trade principles when it was really "based on an unashamed and unblushing protection of U.S. commercial interests." Evans also stated that the U.S. Government had taken an "extremely hard-headed and self-interested approach" to aviation issues in the past and that the attitude taken by the U.S. government in aviation negotiations over the years has not been a particularly defensible one.[Middleton, 1993b, 3] Australian Transport Minister Bob Collins referred to the U.S. retaliatory proposals as "unfair and disproportionate".[Thomas, 1993p, 3]

277. With the Australian Opposition parties supporting the Government's line against the U.S., the only voice of opposition among state and societal actors to the Australian moves came from the Inbound Tourism Organisation which said it opposed any moves which reduces the number of tourists to Australia.[Middleton, 1993b, 3]

278. In fact, U.S. Transportation Secretary Pena has been reported as acknowledging that the U.S. "get tough" policy in the dispute with Australia was aimed at sending a signal to Japan in respect of forthcoming bilateral negotiations.[Thomas, 1993t, 8]

279. Northwest Airlines has recently applied to fly 4 times per week between Detroit (Northwest’s U.S. hub) or New York and Brisbane via Tokyo from July 4, 1993. With the problems over the New York-Osaka-Sydney flights, this new application is likely to be rejected, something which Northwest would undoubtedly have anticipated.[Falvey, 1993a, 5]

280. The view that Northwest’s motivations include a desire to see a freshly negotiated ASA is strengthened by reports that the other 2 U.S. airlines flying to Australia, United and Continental Airlines, have not come out in support of Northwest’s argument that the dispute was simply about the access of U.S. carriers to the Japan-Australia route.[see for example, Thomas, 1993d, 4] However, this does not mean that a viable operation on the U.S.-Japan-Australia route is not of great importance to Northwest Airlines. In fact, Northwest argued that the proposed restrictions made the operation no longer a viable one and given Northwest’s general economic problems, (it has been reported as having had to cancel or defer US$6.2 billion worth of aircraft orders and has recently shed 1,000 staff: Thomas, 1993e, 7) it could be expected that the airline would be determined to avoid revenue losses on this service.

281. Secretary Pena was quoted as saying that "Northwest has an absolute right to continue its flights without the restrictions imposed by Australia."[Ballantyne, 1993, 5] Secretary Pena was also reported as stating that the U.S.'s tough policy, and specifically the retaliatory threat to axe 3 of Qantas' non-stop Sydney-Los Angeles flights, was a key factor in the eventual settlement of the dispute.[Thomas, 1993t, 8]
282. The U.S. carriers were concerned at what they saw as the commercial consequences of the ‘open skies’ policies of the former Bush Administration. They are keen to take advantage of any difference in approach by the Clinton Administration and have been reported as asking Transportation Secretary Pena to re-regulate the industry and establish a Commission of Experts to examine ways of providing assistance to the industry.[Dabkowski, 1993, 16]

283. This contrasts with overall Japan-U.S. trade where Japan has experienced a surplus currently running at about US$43 billion.

284. At the time of the Agreement, Qantas was operating more flights per day to Japan than it was to London. Japan has become the largest source of incoming traffic for Qantas.[Qantas, 1992, 11]

285. For example, as a result of the dispute with Northwest Airlines and the threat of retaliatory sanctions against Qantas (the loss of 3 of its non-stop Sydney to Los Angeles services), Qantas sought to use this provision to replace the three ‘slots’ at Los Angeles with three at San Francisco. However, before the dispute was settled, the U.S. Government appeared intent on blocking this move and demanding that these services be applied for separately as new services requiring notice.[Falvey, 1993b, 1]

286. On October 1991, there was no direct service between Australia and Osaka, Japan’s largest business centre. There were also no take-off and landing ‘slots’ at Osaka available for Qantas and Northwest’s service not only opened up a new source of Japanese tourism for Australia but also new Australian freight export potential.[Dorman, 1993, 22]

287. Australia’s concerns over increasing loss of market share by Qantas were supported by the breakdown of traffic statistics on these routes.

288. This advice has chiefly concerned matters of commercial intelligence relating to traffic flow, load factors, market shares and profitability on particular routes.

289. In particular, Australian negotiators have identified the U.S. protectionist position over access to its domestic market.[Interviews with Australian government negotiators]

290. According to Australian negotiators, these ‘please explain’ notes were delivered during the negotiations and sought an explanation of why the U.S. negotiators had refused to compromise on a particular issue.

291. For example, in the final stages of the Northwest Airlines dispute of 1993, Australian Trade Minister Peter Cook said the dispute (plus problems for Australian agricultural exports due to U.S. barriers and export subsidies) with the U.S. called into question the continued alliance between Australia and the U.S. but then reportedly backed down by claiming he referred to the trade alliance (which in fact does not exist) rather than the security alliance.[Sheridan, 1993, 9; Stutchbury, 1993b, 5]
292. Australia’s call for international arbitration in the recent Northwest Airlines dispute should be seen as reflecting the exceptional circumstances of the dispute rather than as part of a policy shift.

293. Such problems include those relating to the facilities available at airports for foreign carriers.

294. Other Australian societal actors, such as those in the travel and tourism industries, in calling for a more liberal approach to trade in aviation services, have remained largely unconcerned as to whether the traffic to Australia is carried by Australasian or foreign airlines.