
UNEQUAL BARGAINING? AUSTRALIA'S AVIATION TRADE RELATIONS WITH THE UNITED STATES

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ABSTRACT

International aviation trade bargaining is distinguished by its use of a formal process of bilateral bargaining based on the reciprocal exchange of rights by states. Australia-United States aviation trade relations are currently without rancour, but this has not always been the case and in the late 1980s and early 1990s, their formal bilateral aviation negotiations were a forum for a bitter conflict between two competing international aviation policies. In seeking to explain the bilateral aviation outcomes between Australia and the United States and how Australia has sought to improve upon these, analytical frameworks derived from international political economy were considered, along with the bilateral bargaining process itself. The paper adopts a modified neorealist model and concludes that to understand how Australia has sought to improve upon these aviation outcomes, neorealist assumptions that relative power capabilities determine outcomes must be qualified by reference to the formal bilateral bargaining process. In particular, Australia's use of this process and its application of certain bargaining tactics within that process remain critical to understanding bilateral outcomes.

For Australia, its economic relations with the United States have been important for almost all of this century, though rarely considered by commentators as important as the security relations. Of these economic relations, Australia's bilateral trade relations have dealt more with merchandise trade than services trade between the two countries though the potential, if not current importance, of Australia-U.S. services trade is beginning to be recognised.¹ See Table 1 for a review of the quantity of service exports and total exports in the 1990s.

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**Table 1. Australia's Services Exports as a Proportion of Total Exports
(Balance of Payments Basis AUD\$m at Current 1997 Prices)**

	<i>Services Exports</i>	<i>Total Exports (Goods & Services)</i>
1990	14,102	66,257
1991	15,085	69,959
1992	16,374	76,396
1993	18,539	82,361
1994	19,935	86,381
1995	22,416	96,600

Source: Yearbook Australia, 1997

Australia's trade relations with the U.S. have not been without their frustrations and U.S. protectionist policies in a number of trade sectors, most notably agriculture, have prompted strident comments by Australia's political leaders. Such comments have not, however, translated across into efforts by Australia to link these trade problems to other aspects of the overall political-economic or even strategic relationship.² The rhetorical flourishes against U.S. policies during the 1990s by Australian ministers from both sides of politics, as well as from prominent industry actors, should not blur the fact that Australia's approach to the U.S. on trade, as on other economic matters, has been generally conservative and predictable.³ Concern at U.S. treatment of Australia's trade interests has been tempered by regard to the U.S.'s uniquely important security role with the current Howard government deliberately enhancing the security aspects of the relationship. The importance given to the security dimension of the relationship together with the disavowal of issue linkage reveals an acknowledgement by Australian policy-makers of the overall weakness in Australia's bargaining power in relation to the U.S.

Against this background, it is all the more surprising that Australia has periodically sought to modify the structural weakness in its aviation trade relations with the U.S. and improve its bilateral trading outcomes. Central to understanding how Australia has sought to improve these sectoral outcomes is an appreciation of the bargaining process through which the two countries have formally traded their aviation rights.⁴ With aviation services trade effectively excluded from the Uruguay Round settlement, the bilateral aviation trade negotiations between Australia and the U.S. remain a more important focus than the multilateral approach taken by each country.

Recent years have seen changes in Australia's approach with efforts made to reform the sector while the U.S. has pursued a policy of promoting greater reform of international aviation through the negotiation of liberal

bilateral agreements. Despite global changes made in the direction of trade liberalisation, international civil aviation still retains overtones of state-based mercantilism with the balance of trading rights between countries still determined by a process of bilateral bargaining based on reciprocity rather than comparative advantage.

ARGUMENT IN BRIEF

In order to explain aviation trade outcomes between Australia and the U.S., reference can be made to the neorealist/neoliberal debate. In particular, neorealism and liberal institutionalism are presented as possible frameworks to explain aviation trade outcomes. The neorealist approach privileges the power-capable resources of states and argues that bilateral outcomes between asymmetrically powerful states will be determined by which state has greater resources.⁵ Liberal institutionalism, on the other hand, argues that in explaining outcomes, account must be taken of the influence of international institutions or regimes.⁶ These institutional arrangements are able to explain the complexity of interdependence; provide the means by which states co-operate with each other; and act to constrain the behaviour of the stronger state and assist the weaker state in securing favourable results. Another related approach, that of modified structural realism,⁷ argues that the co-operation developed by such arrangements comes to be seen as beneficial for states as they pursue their own interests.

This paper presents a modified neorealist explanatory model. This model posits that while neorealism offers the greater insights into Australia-U.S. aviation bargaining outcomes, the formalised bilateral bargaining process transmutes as well as transmits power-capable resources and should be seen as seriously qualifying the assumptions derived from the asymmetry of power relations. While power relations remain important in explaining outcomes, the formalised bilateral bargaining process provides the opportunity for the influence of non-power, or cognitive factors, notably the ideas and perceptions of policy-makers and negotiators. The intervention of this bargaining process relaxes the neorealist assumptions by allowing the weaker state to take advantage of the mutual need for a deal and apply these non-power resources towards an improvement in its outcomes.

Applying this model, the paper contends that the formal bilateral bargaining process, with its emphasis upon deal-making, has allowed weaker states to apply bilateral tactics to extract concessions from stronger states.⁸ In its aviation trade bargaining with the U.S., Australia has made use of three bargaining tactics which have served to improve its outcomes,

albeit each to a limited extent. These have been the withholding of agreement; the assertion of control over important aspects of the negotiations; and the demonstrating of commitment and determination.

NEOREALISM

A neorealist analysis argues that patterns of behaviour between states can be best understood as being derived from the structure of the international system with the state considered a rational actor motivated to apply its own power-capable resources to advance its own self-interest.⁹ As related to the bilateral relations between asymmetrically powerful states, this approach argues that the strong would prevail over the weak as measured by their respective power-capable resources. Domestic factors and non-power considerations are not considered relevant in helping to explain state behaviour. States are concerned more about relative gains and advantage than about absolute gains in their relations with other states and behave accordingly.¹⁰ How much power a state has in relation to its bargaining partners will determine how likely it will be able to satisfy both its demands and its national interests.

The neorealist analysis is useful in helping to explain the asymmetrical bargaining context—the distribution of power capabilities favouring the U.S.¹¹ over Australia—within which these two states trade their aviation rights. However, neorealists seek to explain bargaining outcomes rather than simply the context within which such bargaining occurs. Such an explanation requires that we must be able to show that the relative power capabilities of the stronger state will consistently translate across into favourable bargaining outcomes. This translation of power into favourable outcomes depends, in turn, on the extent to which issues or sectors can be linked. In other words, power fungibility must exist in the sense that the asymmetry of power in one issue or sector can be found, in like measure, in another issue or sector.

As an explanation of Australia-U.S. aviation trade outcomes, neorealism should be able to show that their bilateral bargaining outcomes are determined more by Australia's position within the global political economy, and its relative power-capabilities vis-à-vis the U.S., than by its own actions or bargaining tactics. While the structural relationship may fall short of providing a complete explanation, there are certainly important external sources of influence upon Australia. Officials, for instance, will be influenced by the opportunities and constraints which confront the Australian economy as it engages with the global economy, while industry actors will be affected by the international market as they trade globally.

LIBERAL INSTITUTIONALISM AND MODIFIED STRUCTURAL REALISM

Liberal institutionalism is an international level approach arguing that conventions and expectations (institutions) can be as important as power-capable resources in understanding the relations between states. For the liberal institutionalists,¹² these institutions or regimes¹³ assist in explaining the complexity of interdependence which exists between states and serve as manifestations of the co-operation which states are capable of exhibiting towards each other for common ends.

Regimes are seen as accounting for the regularity of state behaviour¹⁴ and in not necessarily acting in response to the demands of the major trading states¹⁵; and may indeed act to constrain the self-seeking behaviour of major states and operate as mechanisms to structure states' preferences. The ability of such institutional arrangements to constrain state behaviour is enhanced the longer these regimes remain in existence and, over time, they can reveal an important normative dimension.

A modified structural realist approach¹⁶ argues further that co-operation is not only possible but necessary and that patterns of co-operation, once established, tend to persist and come to influence state behaviour. However, while regimes may well act as intervening variables and take on a 'life of their own', it should not be assumed that they necessarily constrain self-interested state behaviour and prevent stronger states from securing favourable outcomes. To test the explanatory power of regimes, political scientist Baldev Raj Nayar has suggested three qualifications to the hypothesis that regimes are necessary.¹⁷ The first of these is that the norms of the regime ought to be genuinely 'interdependence norms' and not simply reflect the international system of states in which the influence of the powerful prevails.¹⁸ Secondly, a regime must be shown to be a constraint on self-interested state behaviour; and thirdly, the regime must be shown to continue in existence despite changes in the balance of power or in national interests, particularly with respect to powerful states.

Therefore, if we take these reservations into account, we are more concerned with a regime's outcomes to assess whether its norms, which may ostensibly encourage interdependence (thereby constraining self-interested state behaviour), do in fact perform that role. The General Agreement on Tariffs and Trade (GATT) and its successor, the World Trade Organization (WTO) has arguably had a moderating effect upon the conduct of bilateral relations in the trading of goods and some services. However, these international institutions, with their advocacy of multilateral liberalisation, have continued to be excluded from considering the important economic issues relating to the conduct of aviation trade. In fact, trade in international air services reverses the usual means by which

the GATT/WTO has liberalised trade in goods with air services being 'prohibited unless specifically allowed' by the various 'freedoms of the air' in the Air Services Agreements (ASAs).¹⁹ Importantly, where the trade in goods and other services are conducted on the basis of the principle of comparative advantage, trade in air services occurs in the expectation of reciprocal benefits being granted between states.

There are two important international organizations that deal with international aviation matters. They are the International Civil Aviation Organization (ICAO), a United Nations agency with a membership of nearly two hundred states, with major safety responsibilities;²⁰ and the International Air Transport Association (IATA), a trade association which undertakes tariff-setting, policing of the industry, and facilitates the necessary financial transfers among airlines.²¹ While useful and relevant in terms of their technical and other functional services, these organizations have been of limited and declining importance in terms of the trading of economic rights.²²

Bearing in mind Nayar's three qualifications on the relevance of regimes, the above organizations do not present themselves as good candidates for explaining aviation trade relations by means of a liberal institutionalist or modified structural realist approach. With the continued importance of the bilateral ASAs, and their formalisation of the notion of reciprocity, the multilateral negotiation of economic rights and responsibilities promoted by the GATT/WTO has not had, and is unlikely to have, much impact in this issue area. While the GATT's Uruguay Round settlement has included a General Agreement on Trade in Services (GATS) which applies to a number of air transport services,²³ GATS' important Annex of Transport Services excluded the application of the multilateral agreement to the trading of traffic rights.

The five-year review of the operation of the Annex undoubtedly encourages those who argue that the WTO and its "generalized principles of conduct"²⁴ such as multilateralism and non-discrimination will, in time, replace the bilateral regulation of air transport services.²⁵ This is, however, highly questionable given that the U.S. and other major aviation powers have used the bilateral means of 'open skies' agreements to pursue their own policies of international aviation liberalisation since the 1970s. As to whether international institutions could act to weaken the structural power of strong states such as the U.S., it is sobering to remember that such institutions have been useful vehicles for powerful states to further their own particular interests. These may have been either for the support of protectionist instruments or towards the liberalisation of trade. There would seem little reason to believe that their application to international air transport services would be any different.²⁶

THE BILATERAL BARGAINING PROCESS

The Chicago Convention of 1944²⁷ failed to come to terms with the fundamental economic issues involved in international civil aviation due to the diametrically opposed positions of the two major participants, the U.S. and the UK. Thus, the bilateral system of regulation established before the Second World War prevailed and was able to develop independently of any multilateral framework. Apart from the first two ‘freedoms of the air’²⁸, the trading of aviation rights has continued to be regulated by means of state-negotiated bilateral air service agreements (ASAs).²⁹ This bilateral bargaining process has served to perpetuate the principle of state sovereignty and generally acted to protect the economic position of ‘national carriers.’³⁰ In essence, these bilaterals will regulate entry usually by identifying the number of carriers, routes and kinds of traffic allowed with such resultant bilateral agreements being usually based on the mercantilist concept of reciprocity. In other words, each bilateral partner has a critical role in determining the size of the total supply of the bilateral market and not just the level of its own output.

The form of trade regulation that this lattice of bilateral accords represents is essentially discriminatory in nature and acts contrary to the multilateral principles of Most Favoured Nation (MFN) and National Treatment and has kept international air transport removed from the GATT/WTO’s liberalization developments.³¹ This does not mean that this bargaining approach cannot facilitate (perhaps even encourage) increasingly liberal economic regulatory arrangements, as evidenced by the series of ‘open skies’ bilaterals³² which the U.S. and others have used as instruments to advance liberalisation.

Both contextual (or systemic) factors and issue-specific capabilities influence the formal bilateral bargaining process that regulates aviation trade.³³ The process has the potential to translate as well as transmit power-capable resources towards certain specific outcomes with the issue or sectorally-specific resources at each state’s disposal being brought to the negotiations and offering opportunities to a weaker state to apply tactics to gain against a stronger partner.³⁴ For instance, it may be that in the process of making a deal, the weaker state will be able to show a determination to gain a certain result (even if that means making other sacrifices) which could force the stronger state to accede so as to reach an overall agreement.

As an intervening variable which may serve to prevent the direct transmission of power-capable resources into sectoral outcomes, the bargaining process has three important features: that both parties realise that there are gains to be made from the agreement; that mutual action is required for an agreement; and that there exists more than one possible

agreement.³⁵ Taken together, these place two asymmetrically powerful states in a more comparable (if not equal) relationship to each other while providing opportunities for the application of issue-specific resources and the use of tactics towards favourable outcomes. Importantly, the process provides a mechanism through which a weaker state can avoid focusing its bilateral bargaining directly upon the policy process of the stronger state, thus making it more difficult for the latter to apply its structural power towards a desired result. Instead, both parties are required to undertake a formal process towards a jointly agreed result.

HISTORY AND BACKGROUND TO AUSTRALIA-U.S. AVIATION BARGAINING

Australia-U.S. aviation trade relations over the postwar period has always been conducted against a background of U.S. dominance in the international aviation market and with the Australian government and its negotiators keeping close attention to the economic welfare of its international carrier, Qantas. For its part, Qantas was expected to pursue commercial objectives that were compatible with national ones.

As with most aviation bilateral negotiations, the major issues in contention between the U.S. and Australia were the levels of capacity on the specified contested routes—the South Pacific and North Pacific routes (see Table 2)—and the extent of access to each other's domestic market. While market access disputes have been decided to the U.S.' advantage due to its large domestic passenger market, disputes in Australia-U.S. bargaining over route capacity have been resolved through the negotiation process.

Each country has changed its approach to negotiating aviation rights with the other, as a result of variations in its own international aviation policy. Since the Second World War, the U.S. has consistently called for a more liberal, less regulatory regime and this was further promoted after its own 1978 domestic deregulation.³⁶ Concerned that this ideas-driven policy was not delivering satisfactory results for U.S. commercial aviation interests, the Reagan administration implemented a 'trading rights' policy that effectively meant the U.S. would no longer seek to promote global deregulation through bilateral negotiations. Rather the U.S. became more interested in promoting liberalization by trading access to the lucrative U.S. domestic market in return for greater liberalization from its negotiating partners.³⁷ Thus, liberalization came to be used as part of a mercantilist approach to advance U.S. carrier interests as well as more generally furthering global liberalization.

Table 2. Capacity Negotiated and Utilised Under Australia's ASAs with the U.S. (International Air Passenger Transport, as of February 1, 1998)

<i>Capacity (per week) – South Pacific route</i>		
	<i>Australia</i>	<i>United States</i>
Entitlement:	Market driven	Market driven
Utilised:	28 x B747 (10,020 seats excluding seats leased to American, British, Canadian airlines)	21 x B747 & 519 codeshare seats
Unutilised:	New carrier may commence operations at any time with up to 4 services – (conditions apply)	As for Aust.
<i>Capacity (per week) – North Pacific route</i>		
	<i>Australia</i>	<i>United States</i>
Entitlement:	3 frequencies with any aircraft type; maximum of 2 carriers	As for Aust.
Utilised:	Nil	Nil
Unutilised:	3 frequencies with any aircraft type; maximum of 2 carriers	As for Aust.
<i>Capacity (per week) – Guam route</i>		
	<i>Australia</i>	<i>United States</i>
Entitlement:	4 DC10	As for Aust.
Utilised:	Nil	Nil
Unutilised:	4 DC10 (conditions apply)	As for Aust.

Source: Productivity Commission, Draft Report on International Air Services, June 1998.

With little to be gained in terms of market access in Australia, the U.S. has not sought to offer Australia its more liberal 'open skies' agreement, though these agreements do, in fact, reveal similar restrictions to those faced by Australian negotiators.³⁸ The U.S. pro-competitive 'trading rights' negotiating policy, as applied to its bargaining with Australia, has been export-oriented. The focus of the U.S.'s bargaining approach has been upon improving U.S. market share on international routes and this was pursued vigorously in its negotiations with Australia in 1988 and 1993.³⁹

The changes in U.S. policy represent a curious mixture of ideas and interests and reveal a somewhat ambiguous approach to the formal process of bilateral bargaining. On the one hand, the U.S. has been concerned that such negotiations have constituted an impediment or trade barrier to both the liberalization and expansion of international aviation services. On the other, it has recognized the gains made by U.S. carriers from these negotiations and the valuable role they have performed in advancing the liberalization of international aviation. Given its economic strength, the U.S. prefers to negotiate agreements bilaterally on most trade issues despite its rhetoric in support of the periodic multilateral negotiations. Evidence of this preference in the aviation sector can be found in the U.S.'s lukewarm approach to the inclusion of aviation services within the Uruguay Round settlement of the GATT.⁴⁰

Until the late 1980s, Australian policy was based on the singular designation of Qantas as the international carrier; the separation of international and domestic aviation sectors; and the government ownership of airlines in both the domestic and international sectors. In negotiating with the U.S., Australia had adopted a pre-deterministic approach to the setting of capacity that was restrictive and highly regulatory and designed to keep U.S. demands for capacity increases in check. Australia was resistant to any increase in U.S. access to the Australian market without equivalent U.S. market access for Qantas.

Negotiating with the U.S., with its dominant market position and promotion of aviation liberalisation, had always constituted a form of pressure upon Australia for a change in policy. However, when the policy changes did come in the late 1980s and early 1990s, it was for domestic economic reasons rather than as the result of external influences. The Hawke and Keating governments' policy changes were a direct response to a perceived need to bring the aviation sector into the mainstream of national economic policy-making and make aviation policy-making subject to the same impulses as most other sectors.⁴¹ In 1989, the government changed its negotiating policy to become a "...more hard-headed economic approach...and fuller analysis of where to capture the economic and other benefits for Australia...[and]...what is in it for Australia as a whole will be the dominant consideration".⁴² Importantly, this represented the beginning of a new approach aiming for a 'balance of overall benefits', an approach which was more accommodating of the pressure for liberalisation coming from the U.S. and elsewhere. (For a summary of points or gateways available, see Tables 3 and 4).

This change was followed with a more substantial policy change in 1992 when the then Prime Minister Paul Keating announced, as part of a general economic statement,⁴³ a program of accelerated reform of the Australian

Table 3. Points Available to Australia and the United States on the South Pacific Route as Negotiated in ASAs (International Air Passenger Transport, as at February 1, 1998)

Australia

Australia via New Zealand, New Caledonia, Fiji, American Samoa, Canton Island, French Polynesia, Mexico, Canada to the gateway points of Honolulu, San Francisco, Los Angeles, New York and three points to be selected by the government of Australia and to an additional eight points (which may be changed from time to time) in the U.S. only via one or more of the specified and/or selected gateway points and beyond to Canada, Mexico, the UK, and Europe and beyond.

United States

a) United States (excluding Guam and the Commonwealth of the Northern Mariana Islands) via Canton Island, French Polynesia, Fiji, New Caledonia and New Zealand to Sydney, Melbourne, Darwin, Perth, Brisbane, Cairns and another point to be selected by the Government of the U.S. and beyond to New Zealand, Southeast Asia, South Asia, Africa, Europe (including the UK) and beyond.

b) An additional eight points in Australia may be served only via any one or more of the specified and/or selected gateway points in Australia set forth in sub-paragraph (a). These eight one-stop points may be changed at any time.

Source: Productivity Commission, *Draft Report on International Air Services*, June 1998.

Table 4. Points Available to Australia and the United States on the North Pacific and Guam Routes as Negotiated in ASAs (International Air Passenger Transport, as at February 1, 1998)

Australia

Australia via any two points in Asia (including Hong Kong, Japan, Korea and Taipei and may be changed from time to time) to any three points in the United States to be chosen from Honolulu, Los Angeles, San Francisco, New York and one other point selected by the Government of Australia.

Guam and the Commonwealth of the Northern Mariana Islands:

Australia to Guam and the Commonwealth of the Northern Mariana Islands and beyond to any two points to be chosen from Tokyo, Nagoya, Fukuoka, Seoul, Taipei, Beijing, and one additional point to be specified (the beyond points may be changed from time to time).

United States

United States (excluding Guam and the Commonwealth of the Northern Mariana Islands) via Canada, Japan, Southeast Asia including the Republic of the Philippines to any two points in Australia chosen from Sydney, Melbourne, Brisbane, Cairns.

Guam and the Commonwealth of the Northern Mariana Islands:

Guam and the Commonwealth of the Northern Mariana Islands to any two points to be chosen from Sydney, Melbourne, Perth, Darwin, Brisbane, Cairns or a point to be selected by the Government of the U.S.

Source: Productivity Commission, *Draft Report on International Air Services*, June 1998.

aviation industry.⁴⁴ These reforms also signalled the government's gradual withdrawal from the exercise of direct control in international aviation policy-making. An International Air Services Commission (IASC) was created to determine the allocation of international aviation capacity and route entitlements among Australia's airlines. However, despite this deregulation, the Australian government's direct involvement in the determination of aviation outcomes has been guaranteed by its continuing dominance in bilateral negotiations. For instance, the Commission's ability to allocate capacity and route entitlements remains dependent upon the outcome of government-to-government bilateral negotiations.⁴⁵

Whether or not the changes have been sufficient to meet the government's objectives remains in doubt while it is difficult to gauge the economic effect of those changes that have been implemented, despite the growth in Australian international air traffic over the 1990s.⁴⁶ With Australia's unilateral move to increase capacity and to provide for multiple designation, its negotiating approach became one of taking a broader economic view. This view took note of the needs of all interests, including those in the tourist industry, the regions, industry and business, consumer groups, as well as the Australian carriers. This new policy aimed to 'balance overall benefits' rather than remain strictly based upon bilateral reciprocity. While generally more liberal, it reflected the dual, and often conflicting, aims of the government: to protect Qantas' position and its potential to earn export revenue while also promoting new Australasian entrants into the market.⁴⁷

Australia's approach to dealing with the U.S. changed accordingly and from the early 1990s, as evidenced by their 1993 negotiations over the North Pacific route,⁴⁸ Australia sought to negotiate enhanced route and capacity entitlements ahead of demand. The move towards deregulation (though less so than in the U.S.) and greater liberalisation has meant the Australian government has refashioned its role as being independent of any Australian carriers-no longer are Qantas' interests to be paramount. Despite the policy changes, Australia continues to see the bilateral negotiation of aviation rights as extremely important: it is both the avenue through which international liberalisation will occur; and the means by which it can advance its carriers' interests in any such liberalisation.

AUSTRALIA'S AVIATION BARGAINING WITH THE U.S.

In contrast to other bilateral trade sectors (notably agricultural trade), much of the heat has gone out of the aviation bargaining between Australia and the U.S. This has been because capacity has been liberalised and, importantly, because no U.S. carrier appears interested in pursuing

entrance or expansion into the Pacific routes to Australia. This has not always been the case and as recent as the late 1980s and early 1990s, difficulties between the two parties had to be resolved by means of the bilateral bargaining process.⁴⁹ The determination of capacity has traditionally been at the heart of Australia's ASAs.⁵⁰ Along with Australia's concern over route entitlements and access to gateways in its bargaining partner's country, Australia saw the tight regulation of capacity entitlements as a means of containing the liberalising advances of strong aviation countries such as the U.S. What caused Australia to accede to automatic capacity increases in its negotiations with the U.S. was the belief amongst senior ministers and officials, that liberalisation together with the restructuring and deregulation of the aviation industry, would enhance its commercial returns.⁵¹ Yet, the move towards liberalisation was not without mercantilist or regulatory overtones and the Australia-U.S. ASAs have continued to constrain unilateral capacity increases while disallowing cabotage rights.

While Australia's liberalizing impulses have served to accommodate most of U.S. carrier demands from the mid-1990s onwards, the more interesting story is how Australia used the bargaining process to apply certain tactics to address the U.S.'s structural power in this sector. It is not claimed that these tactics are peculiar to this sector but that the formal aviation bargaining process made their application possible. The first of these tactics has been Australia's preparedness to walk away from an agreement. Australia applied this tactic in 1987 when it terminated the then existing bilateral memorandum. Australia correctly saw the U.S. to be just as keen as Australia to reach an acceptable agreement and just as likely to incur costs (notwithstanding the possibility of gains) from the inability of the parties to reach an agreement.⁵²

Even if an agreement with Australia failed to be completely satisfactory, the U.S. would see some value in it for high costs would attach to the alternative no-agreement result. An agreement would serve to regulate the aviation rights between the two countries plus holds value for the U.S. in being a potential (if not an immediately realisable) vehicle for increased liberalisation of international aviation. The regulatory nature of this bilateral bargaining process is also useful to the U.S. in providing stability while conforming with its preference to negotiate bilaterally rather than multilaterally. Of related importance is the recognition by both parties of the iterative nature of the negotiating process. With or without an agreement, both the U.S. and Australia know that they will need to deal again with each other in order to trade aviation rights and that reaching a satisfactory agreement can significantly reduce future conflict in this sector.

Another tactic applied by Australia in its aviation trade bargaining with the U.S. has been the assertion of a level of control over the nature of the negotiations and their subsequent agreement. The joint need for an agreement places the two states in a more equal bargaining relationship and provides opportunities for the weaker state to project its own agenda and interests. Each player has mixed motives (a mutually agreeable result while advancing the position of its carriers) while both have common and competing interests (aviation liberalization but also a greater share of traffic rights). In such a relationship, there is some room for a weaker party to ensure that its interests are taken into account in the final settlement.⁵³ Australia achieved this in its negotiations with the U.S. in the late 1980s and early 1990s through being able to maintain a regulatory approach to the determining of capacity, despite the U.S.'s desire to achieve an open-ended capacity agreement.⁵⁴

For Australia, another bargaining tactic has been a preparedness to show determination or commitment in its bargaining, especially if it desired the inclusion of provisions objected to by the Americans. A committed approach to its bilateral bargaining has been used to help overcome Australia's relative economic weakness. While changes in Australia's negotiating policy have been towards providing greater liberalisation of the airways, its negotiators have indicated to the U.S. that any expansion of capacity is likely to be unacceptable if it means that Qantas or another Australasian carrier will have a reduced market share. However, in the 1993 Northwest airlines dispute, the Australian government showed ambivalence in its attempts to control capacity so as to maintain Qantas' market share on the North Pacific route. In acquiescing to increased capacity by Northwest Airlines, it appeared to have 'painted itself into a corner' as it agreed to remove capacity limits.⁵⁵

In its negotiations with the U.S., Australia had also sought to trade, as far as possible, U.S. access to the Australian aviation market for greater access to the U.S. market. The enduring effectiveness of this strategy has been questioned with one senior Qantas official seeing it significantly reduced by the mid-1990s, with Australia having virtually opened up the whole of its aviation market to U.S. carriers. U.S. access to the Australian aviation market may have been traded away to either assist in the liberalisation of Australia's aviation market; promote other economic interests such as inbound tourism or; simply to reciprocate for increased access to the U.S. market. Regardless of causation, there remain few existing concessions that Australia could now make for increased benefits from its bargaining with the U.S.

The 1992 U.S. Open Skies policy,⁵⁶ promoting liberal ASAs as it does, is more restrictive than others (such as that of New Zealand). It neither

grants cabotage to foreign carriers nor gives foreign carriers the right to increase their ownership of U.S. carriers beyond a maximum of 25 percent of airline voting stock. The pursuit of these more liberal 'open skies' arrangements, particularly since 1995, has resulted in the U.S. signing over 30 such agreements with countries from around the globe.⁵⁷ Until very recently, the U.S. did not consider that Australia embraced liberalisation to the same extent and had not sought to sign such an agreement with it.

In mid 1999, the Australian government, in seeking to balance the costs and benefits of the bilateral negotiating system while promoting liberalisation, responded positively to the recommendation of its Productivity Commission that Australia should seek to "negotiate reciprocal open skies agreements with like minded countries."⁵⁸ Importantly, Australia gave itself an escape clause by stating that such agreements would only be made if they were in the 'national interest'. In effect, Australia was announcing that it would seek its own restrictive version of 'open skies' agreements which, like that of the U.S., do not grant cabotage to foreign carriers (except New Zealand) and limit foreign ownership of Australia's international carriers.⁵⁹

Against this background and that of subtle U.S. pressure provided through the negotiation of other 'open skies' agreements, it should come as little surprise to learn that Australia and the U.S. entered into an open skies agreement on cargo in late 1999.⁶⁰ This agreement removes restrictions on all-cargo air services between and beyond the two countries but, more importantly, the talks included an undertaking by both parties that they would meet again early the following year to discuss removing all restrictions on passenger services between the two countries.⁶¹ Agreement has yet to be reached. With 'unlimited' capacity agreements now covering Australia-U.S. aviation trade in the important Pacific routes and less demand by U.S. carriers for those route entitlements, the principal restriction on U.S. access to Australia, being the carrying of passengers on Australian domestic routes, may well be the focus of imminent talks. However, as a 1999 government decision indicates, restriction may still be the order of the day as this remains an area where Australian carriers, Ansett Australia and Qantas, continue to exercise influence.⁶² The overall result is that while bilateral negotiations no longer contain the previous rancour, they offer little hope of Australia seeing much, if any, progress, in terms of market access to the U.S. The time looks ripe for Australia to consider whether an 'open skies' agreement with the U.S. may provide the improved access that is otherwise unavailable.

CONCLUDING COMMENTS

This paper has sought to apply a modified neorealist analytical model which has called for the neorealist explanation of Australia-U.S. aviation relations to be qualified by an understanding of the dynamics of the bilateral bargaining relationship. In so doing, the paper sets out to show how Australia attempted to modify the structural weakness in its aviation trade relations with the U.S. so as to improve its economic outcomes. Neorealism is considered more useful than liberal institutionalism in explaining Australia-U.S. aviation trade outcomes with relative power-capabilities proving a good indicator of likely results while also explaining the international context within which Australia-U.S. bargaining is conducted. Liberal institutionalism, manifested by international regimes, have, on the other hand, had little impact in determining the nature of these trade relations, as evidenced by the exemption of aviation from the Uruguay Round settlement of the GATT/WTO.

Where the neorealist explanation is found wanting is in explaining this particular sectoral relationship and the dynamics of the bilateral bargaining upon which the trading of rights depends. In contrast to other trading sectors, Australia and the U.S. have stood 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. As such, the bargaining process may provide opportunities for a weaker state to exploit towards an improvement in outcomes.

In seeking to exploit such opportunities, Australia sought to apply certain tactics through the bilateral bargaining process: the withholding of agreement; the assertion of control over important aspects of the negotiations; and the demonstration of commitment and determination. The effectiveness of Australia's prosecution of these tactics has also been influenced by cognitive factors such as ideas and the perceptions and belief systems of policy-makers and negotiators. Australia's adoption of a more liberal approach in the 1990s has acted, importantly, as a form of self-denial from the application of a restrictive capacity mechanism. On the other hand, Australian negotiators' perceptions of the U.S.'s need for an agreement (or perhaps the cost of not reaching an agreement) in the late 1980s, enabled Australia to retain an element of control over the conduct of the negotiations during this period. As with Australia, the bilateral bargaining process requires that the U.S. bargains (possibly even making

concessions) and does not simply rely upon the application of its greater power-capable resources to secure desired outcomes.

Encouraged by U.S. carriers, the U.S. government has used the regulatory nature of the bilateral bargaining process to both maximise the benefits to U.S. carriers while also promoting the liberalisation of global aviation. The major exception to this liberalising policy has, of course, been access to the U.S. market. The export competitiveness of U.S. carriers has been emphasised with the U.S. domestic market used as a lever to gain U.S. carriers' access to other markets. For Australia, it has made liberalising concessions so as to gain favourable access to the U.S. market. Gaining such access has proved, however, to be increasingly difficult given that Australia has little left to concede which the U.S. either wants or needs. U.S. liberalising moves have become more acceptable to Australia as the 1990s progressed. This has been largely due to Australian policy changes that sought to position Australia so as to derive greater returns from its international aviation activities. International developments (including domestic U.S. deregulation and liberalisation as well as a new U.S. international negotiating policy) have been influential. However, domestic influences have been more important with the government seeing the removal of the protection traditionally given to Qantas as part of a more assertive policy to promote travel, trade and tourism: a policy shift consistent with its broader economic reform agenda. This new policy framework is not without its problems for the Australian government as it seeks to reconcile the desire to maximise export revenue received from increased travel and tourism to Australia while ensuring Australasian carriers maintain, if not increase, their market shares.

The liberalisation of the international aviation market obviously offers a mixed picture for relatively weak traders such as Australia. The U.S. has most certainly used liberalisation to serve nationalistic and mercantilist ends. Australia too has come to view aviation liberalisation as a means of providing a boost to its balance of payments. In respect of its aviation relations with the U.S., Australia has been keen to promote a translation of ideas of free trade and liberalisation across into a policy of liberalisation of the U.S. domestic market. However, it has remained concerned that global liberalisation of aviation may allow those with a comparative advantage in international aviation to dominate the marketplace. Australia's pursuit of a more liberal policy has resulted in virtually unlimited capacity for U.S. carriers on Pacific routes. Yet, the recent withholding of cabotage from U.S. carriers (and others) reveals continuing shades of mercantilism in Australian policy and ongoing concerns about the complete liberalisation of the Australian aviation market.

Recent developments have shown Australia unable to use the bilateral negotiating process to successfully check the pressures of U.S. carriers on Pacific routes or gain greater access to the U.S. market. This helps to explain why Australia is now beginning to consider the possibility of an 'open skies' agreement with the U.S. on passenger traffic. However, in focusing upon episodes of tension in Australia-U.S. aviation relations, this study has shown how Australia, as the weaker state, has been able to apply specific tactics towards modifying results that would otherwise have favoured the U.S. Even in the possible future context of an 'open skies' negotiation, the provision of the above opportunities for the weaker state means that formal bilateral talks remain the best possibility for Australia to seek to improve upon those outcomes normally expected from such a case of unequal bargaining.

ENDNOTES

1. As Table 1 shows, the proportion of services exports to total exports has gradually increased over the 1990s. Transportation services have constituted just under a third of total services exports during this period.

2. The 'flashing' of the security card in the early 1990s, and its hasty withdrawal by the then Trade Minister over frustration with certain U.S. trade policies illustrated the delicate manner in which Australia has approached the U.S.: John Lyons, "Cook retreats from warning over U.S. ties" in *The Weekend Australian*. June 12-13 (1993), p. 4.

3. J.D.B. Miller captured the essence of this when he commented that it has been "derivative, cautious, capitalist, bourgeois and anti-revolutionary": "Reflections on Australian Foreign Policy" in P. J. Boyce, and J. R. Angel, (eds.), *Diplomacy in the Marketplace. Australia in World Affairs 1981-90* (Melbourne, Longman Cheshire, 1992) p. 117.

4. The 1944 Chicago Convention established the current bilateral regulatory framework for international air transport and while privileging state sovereignty, posed the continuing problem of how states could avoid being dominated by others without resorting to protectionism. For a discussion, see Ruwantissa I.R. Abeyratne, "Would Competition in Commercial Aviation Ever Fit Into the World Trade Organization?" *Journal of Air Law and Commerce*, Volume 61 No. 4 (May-June 1996), pp. 793-857.

5. Kenneth Waltz, "Realist Thought and Neo-Realist theory", *Journal of International Affairs*, Vol. 44 No. 1, (Spring 1990), pp. 21-37.

6. Donald J. Puchala and Raymond F. Hopkins, "International Regimes: lessons from Inductive Analysis" in Stephen D. Krasner (ed.), *International Regimes* (Ithaca, Cornell, 1983), pp. 61-91.

7. Robert O. Keohane, *After Hegemony* (Princeton, New Jersey, Princeton, 1984).

8. Habeeb considers weaker states may gain in negotiations through showing a level of commitment, a range of alternatives and/or a degree of control over the negotiations: William Mark Habeeb, *Power and Tactics in International Negotiation: How Weak Nations Bargain with Strong Nations* (Baltimore, Johns Hopkins, 1988), p. 130. Zartman sees weaker powers exercising procedural power in the negotiations through provoking an encounter; influencing

the agenda of negotiations and; importantly, using their 'power to agree' to resolve a dispute to their liking: I. William Zartman, *The Politics of Trade Negotiations Between Africa and the EEC: The Weak Confront the Strong* (Princeton, New Jersey, Princeton, 1971), pp. 227–8.

9. See for example, Kenneth Waltz, "Realist Thought and Neo-Realist Theory", *Journal of International Affairs* Vol. 44 No.1, (1990), p. 34.

10. Michael Mastanduno, "Do Relative Gains matter? America's Response to Japanese Industrial Policy" in David A. Baldwin (ed.) *Neorealism and Neoliberalism: The Contemporary Debate* (New York, Columbia, 1993) p. 255.

11. Susan Strange has argued that structural power (the power to shape or determine the structure of the global political economy) is more important than relational power (the power of one party to determine the surrounding structure of the relationship): *States and Markets* (London, Pinter, 1988) p. 26.

12. See for example, Donald J. Puchala and Raymond F. Hopkins, "International Regimes: Lessons from Inductive Analysis" in Stephen D. Krasner (ed.), *International Regimes* (Ithaca, Cornell, 1983), pp. 61–91.

13. Krasner's definition of a regime has been accepted by most scholars regardless of theoretical allegiance: sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge: Stephen Krasner (ed), *International Regimes*, (Ithaca, Cornell, 1983) p. 2.

14. Donald J. Puchala and Raymond F. Hopkins, "International Regimes: Lessons from Inductive Analysis", p. 63.

15. Oran R. Young, *International Cooperation: Building Regimes for Natural Resources and the Environment* (Ithaca, Cornell, 1989), p. 64.

16. See for example, Robert O. Keohane, *International Institutions and State Power*. (Boulder, Westview, 1989) and *After Hegemony* (Princeton, New Jersey, Princeton, 1984).

17. Baldev Raj Nayar, "Regimes, power, and international aviation", *International Organization*, 49, 1, Winter 1995, p. 144.

18. Nayar has borrowed the language of Jock Finlayson and Mark Zacher: "The GATT and the Regulation of Trade Barriers: Regime Dynamics and Functions" in Stephen Krasner (ed), *International Regimes*, (Ithaca, Cornell, 1983) pp. 273–314 at p. 277.

19. Productivity Commission, *International Air Services*, Draft Report (Melbourne, June 1998), p. xxi.

20. For a discussion of the history and role of ICAO, see Ruwantissa I. R. Abeyratne, "Would Competition in Commercial Aviation Ever Fit Into the World Trade Organization?" pp. 808–816.

21. Nayar, "Regimes, power, and international aviation", p. 145.

22. For instance, IATA's traditional price setting role has declined over time.

23. These are computer reservations systems in air transport; the selling and marketing of air transport services; and aircraft maintenance.

24. As Ruggie argues, multilateralism is not just about coordinating national policies in groups of three or more states but in specifying certain conduct without reference to each state's particular interests: John Gerard Ruggie, "Multilateralism: the Anatomy of an

Institution” in John Gerard Ruggie (ed), *Multilateralism Matters* (New York, Columbia, 1993) p. 14.

25. For a discussion, see Ruwantissa I. R. Abeyratne, “Would Competition in Commercial Aviation Ever Fit Into the World Trade Organization?” pp. 832–843.

26. See, for example, Vicki L. Golich, “Alternative Paths to Competitiveness: US Trade Policies in International Transport Services and Commercial Class Aircraft Manufacturing” in David A. Rapkin and William P. Avery (eds.), *National Competitiveness in a Global Economy*, (Boulder, Lynne Rienner, 1995), pp. 179–198.

27. The Chicago Convention, the first international civil aviation conference recognising the commercial as well as military significance of civil aviation, could not agree between the contending U.S. (more laissez-faire) and UK (some government intervention) approaches to structuring a regime. While creating an international body, ICAO, the conference made its operation subject to the principle of national sovereignty over airspace.

28. The first freedom is the right to fly over another nation without landing, while the second freedom is the right to land for purely technical reasons.

29. The other five freedoms form the basis upon which states negotiate their capacity rights. These are the right of an airline of one country to carry traffic from its country to another; the right of an airline of one country to carry traffic from another country to its own country; the right to carry traffic between two other countries providing the flight originates or terminates in its own country; the right to carry traffic between two other countries via its own country; and the right to operate flights between two other countries without the flight originating or terminating in its own country.

30. For a discussion, see Vicki L. Golich, “Liberalizing International Air Transport Services” in Dennis J. Gayle and Jonathon N. Goodrich (eds.), *Privatization and Deregulation in Global Perspective* (New York, Quorum Books, 1990), p. 163.

31. Eugene Sochor, *The Politics of International Aviation* (Houndmills, Basingstoke, Macmillan, 1991), p. 216.

32. Even a strongly liberal Australian government agency, in a recent draft report, has acknowledged that liberalisation is both available and preferable through the existing bilateral system: Productivity Commission, *International Air Services*, Draft Report.

33. Issue-specific resources are derived from domestically based factors in each party.

34. William Mark Habeeb, *Power and Tactics in International Negotiation How Weak Nations Bargain with Strong Nations* (Baltimore, Johns Hopkins, 1988), pp. 130–131.

35. Christer Jonsson, *International Aviation and the Politics of Regime Change* (London, St. Martin’s, 1987), p. 61.

36. Importantly, with the U.S. Airline Deregulation Act of 1978 came the end of the regulatory role of the Civil Aviation Board (CAB); U.S. airlines developing hub-and-spoke operations on domestic routes; new pricing strategies; computerized reservation systems (CRS); and the frequent flyer programs: Daniel M. Kasper, *Deregulation and Globalization: Liberalizing International Trade in Air Services* (Washington D.C., American Enterprise Institute, 1988) p. 29.

37. Each bilateral relationship was assessed by negotiators in terms of “the totality of U.S. transportation interests in any particular relationship”: John W. Fischer, *Airlines Under Deregulation at Mid-Decade: Trends and Policy Implications*. CRS Report No. 86–67 E (Washington D.C.: CRS, 1986), p. 16.

38. 'Open skies' agreements do not, however, include cabotage rights, have not relaxed the limits on foreign ownership of U.S. carriers, while also not allowing foreign carriers to establish within the U.S.

39. Interviews with U.S. Department of State officials, 1989 and 1996.

40. Interviews with officials of the U.S. Trade Representative. However, these same officials saw some "doing business" issues, such as baggage handling and catering, being usefully dealt with in a multilateral agreement.

41. The Hawke government's policy change is revealed in Transport Minister Willis' Statement of June 1989: Hansard, House of Representatives, Ministerial Statement, *International Aviation: Maximising the Benefits* (June 15, 1989), p. 3539; while that of its successor appears in Bob Collins, *Australian Aviation: Towards the 21st Century*. A Policy Statement by the Minister for Shipping and Aviation, February 27, 1992.

42. Ministerial Statement, *International Aviation: Maximising the Benefits*.

43. Hon. P.J. Keating, *One Nation*, February 26, (Canberra, AGPS, 1992).

44. These reforms included the removal of the international/domestic divide between Australian carriers; facilitation of the privatization of Qantas; the re-negotiation of bilateral air service agreements to secure multiple designation agreements; and a pro-competitive approach to enhance route and capacity arrangements.

45. For instance, the Australian Department of Transport 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.

46. These outstanding changes include the privatisation program and the establishment of the multiple designation regime for Australasian (including New Zealand) carriers: Productivity Commission, *International Air Services*, Draft Report, p. 60.

47. This partly explains the staggered nature of the liberalization with international routes being made available to Australasian carriers (other than Qantas) on a piece-meal basis as relevant bilateral negotiations were concluded. This made it more difficult for new entrants, such as Ansett, to acquire sufficient capacity to make their proposed services viable.

48. While Australia considered Northwest Airlines had an insufficient proportion of through passengers on its New York-Osaka-Sydney route, in the negotiations, Australia withdrew in the face of a tough U.S. stance. Northwest Airlines gained a 6-month extension despite little evidence of a guarantee to build up its through passenger numbers: Ian Thomas, "Air truce as Australia backs down", *The Australian Financial Review*, June 18, 1993, p. 4.

49. Interviews with U.S. and Australian transport officials.

50. The other important issues found in most of Australia's ASAs are the substantial ownership and control of the airlines by a country's nationals; the restriction of cabotage; the restriction of market access; and the government's approval of tariffs.

51. Interviews with Australian government officials. See also statements in 1992 by Prime Minister Keating, *One Nation*, and Minister Collins, *Australian Aviation: Towards the 21st Century*.

52. Interviews with former negotiators in the U.S. Department of State and the Australian Department of Transport.

53. For a useful discussion, though on a different sector, see Helen Milner, "The Interaction of Domestic and International Politics: the Anglo-American Oil Negotiations and the International Civil Aviation Negotiations 1943-47" in Peter B. Evans, Harold K. Jacobson & Robert D. Putnam (eds.), *Double-Edged Diplomacy* (Berkeley, University of California Press, 1993), p. 225.

54. Interviews with U.S. Department of State and Department of Transportation officials. For a policy overview, see Jeffrey N. Shane, "The U.S. Perspective on the International Air Transport Regulatory Environment", Speech to the Air Canada/AMDA Conference, Montreal, May 27, 1987.

55. These particular negotiations saw Australia concerned to be seen to be promoting market access, thus allowing a U.S. carrier to develop new markets on particular Pacific routes despite any reciprocal benefit for an Australian airline.

56. The U.S. 'Open Skies' policy includes open entry on all routes between the bilateral partners; unrestricted rights to operate between any international gateways in both countries; unrestricted capacity, frequency and aircraft on all routes; flexibility in setting fares within certain guidelines; open code-sharing opportunities; non-discriminatory computer reservation systems; and optional 7th freedom all-cargo rights: Fact Sheet, Office of Aviation Negotiations, Bureau of Economic and Business Affairs, U.S. Department of State, "Open Skies Agreements", March 1, 2000. <http://www.state.gov/www/issues/economic/tra/>

57. Productivity Commission, *International Air Services*, Final Report (Melbourne, June 1999), p. 57.

58. Productivity Commission, *International Air Services*, Final Report, p. 229.

59. Media Release, Joint Statement of the Australian Minister for Transport and Regional Services and The Treasurer, "International Air Services", June 3, 1999, http://www.dot.gov.au/media/anders/archive/1999/jun_99/a79_99.htm

60. A more liberalised cargo agreement does not impinge on sovereignty in the same way as such an agreement in respect of air passenger transport. It would also be seen as encouraging mutually beneficial commerce and, importantly, be a sign of generally more liberalised bilateral trade in aviation services.

61. U.S. Department of State. Press Statement by James P. Rubin, "U.S. and Australia Agree on Open Skies for Cargo", Office of the Spokesman, December 15, 1999. <http://secretary.state.gov/www/briefings/statements/>

62. Steve Creedy, "Airports open to foreign airlines" in *The Australian*, June 1, 1999, page 3. The significance of the decision is much diminished by the fact that the unlimited access to airports which it grants to foreign carriers does not include the most important gateways of Sydney, Melbourne, Brisbane and Perth.