



**ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE STUDIES
SCHOOL OF LAW GRADUATES PROGRAM**

Master of Laws (LL. M) In Public International Law

**ASSESSMENT OF THE NEW ETHIOPIAN INVESTMENT LAW
IN LIGHT OF ETHIOPIA'S ACCESSION TO THE WTO: THE
CASE OF THE AIR TRANSPORT SECTOR**

**A Thesis Submitted in Partial Fulfillment of the Requirements for
the Award of Master of Laws (LL. M) in Public International Law
at School of Law, College of Law and Governance Studies, Addis
Ababa University**

By: Gidey Asgedom

Advisor: Martha Belete (Assistant Professor)

Addis Ababa, Ethiopia

September 2021

**ASSESSMENT OF THE NEW ETHIOPIAN INVESTMENT LAW
IN LIGHT TO ETHIOPIA’S ACCESSION TO THE WTO: THE
CASE OF THE AIR TRANSPORT SECTOR**

**A Thesis Submitted in Partial Fulfillment of the Requirements for
the Award of Master of Laws (LL. M) in Public International Law
at School of Law, College of Law and Governance Studies, Addis
Ababa University**

By: Gidey Asgedom

Advisor: Martha Belete (Ass. Professor)

September 2021

Declaration

I, **GIDEY ASGEDOM**, hereby declare that the thesis titled “ASSESSMENT OF THE NEW ETHIOPIAN INVESTMENT LAW IN LIGHT OF ETHIOPIA’S ACCESSION TO THE WTO: THE CASE TO AIR TRANSPORT SECTOR” is my original work and that it has not been submitted for any degree or examination in any other university. I also pledge that all sources used in any form are duly acknowledged.

Gidey Asgedom

Signature:  _____

Date: November 05, 2021

Addis Ababa University



College of Law and Governance Studies

School of Law

Graduates Programs Board of Examiners

Thesis Approval Sheet

Gidey Asgedom's thesis, titled: "ASSESSMENT OF THE NEW ETHIOPIAN INVESTMENT LAW IN LIGHT OF ETHIOPIA'S ACCESSION TO THE WTO: THE CASE OF THE AIR TRANSPORT SECTOR" is approved by the undersigned members of the examining board.

Board of Examiners	Signature	Date
Advisor: Martha Belete (Asst. Professor)		Nov 5/21
Examiner 1: Fikremarkos Merso (PhD)
Examiner 2: Solomon Abay (PhD)		Nov. 05 2021

Dedication

This paper is dedicated to the loving memory of all individuals who passed away in the Tigray War while working on my LL.M. study!!

Acknowledgements

First and foremost, I would like to thank the Almighty God for everything he does to me throughout my research work to complete the research successfully and placing where I am by now in the journey of my life.

Next, my deepest gratitude and indebtedness goes to my research advisor, Martha Belete (Assistant Professor), for giving me guidance, invaluable suggestions, encouragement and helpful approach during the development of this research work. Thank you Professor!!

I am also lucky to have the support of my friends (Gidey Belay and Gebreyohannes Gebrehiwot) for the special support they lend me along the work of my research and I am sincerely indebted and thankful to them. I am thankful to mention the name of my friend, Mihret Birhane, for her kindness and special financial assistance during all the journey of this research work, she lightened my financial burden and allowed me to focus more on the most important aspect of research. This research couldn't have been successfully achieved without their help. Thank you my beloved friends!!

I would like to express my unreserved and deepest gratitude to my beloved parents (my father Asgedom Haile and my mother Haregu Gebremariam), my siblings (Robel, Solomon, Ataklti, Haftom and Fana) and my beloved family (my wife Hareg Embaye and my son Haben Gidey) who extended their love, encouragement and care during the whole journey of my life and the pursuit of my LL.M study.

Finally, my thanks go to all the people who have directly or indirectly supported me to complete this research work.

Contents	Page No.
Acknowledgements	vi
Acronyms and Abbreviations	ix
Abstract	xi
Chapter One	1
Introduction	1
1.1. Background of the Research	1
1.2. Statement of the Problem and Research Questions.....	3
1.2.1. Statement of the Problem	3
1.2.2. Research Questions	4
1.3. Literature Review.....	5
1.4. Objectives of the Research.....	8
1.4.1. General Objective	8
1.4.2. Specific Objectives	8
1.5. Significance of the Research.....	8
1.6. Scope and Delimitation of the Research	9
1.7. Methodology of the Research	9
1.7.1. Research Design	9
1.7.2. Research Methods	9
1.7.3. Techniques of Data Analysis and Interpretation	10
1.8. Chapters Sequence/Organization Layout.....	10
CHAPTER TWO	10
CONCEPTUAL AND REGULATORY FRAMEWORK OF THE AIR TRANSPORT SERVICES, AND THE WTO ACCESSION PROCESS	10
Introduction.....	10
2.1. Air Transportation Services and Tough Competition in the Sector	11
2.1.1. Air Transport Services	11
2.1.2. The Tough Competition in the Air Transport Services	13
2.2. Regulatory Framework of the Air Transport Services.....	16
2.2.1. Convention on International Civil Aviation (Chicago Convention)	17

2.2.2. The Economic Regulation of International Air Transport	19
2.3. WTO and International Air Transportation Services	21
2.3.1. GATS	22
2.3.2. The Uruguay Round and Air Transport Services	23
2.3.3. GATS Annex on Air Transport Services	24
2.3.4. Reviews of the GATS Annex on Air Transport Services	26
2.4. WTO Accession Process.....	28
2.4.1. General Background on Accession to the WTO	28
2.4.2. WTO Accession procedures	29
CHAPTER THREE	31
THE NEW ETHIOPIAN INVESTMENT LAW ON INTERNATIONAL AIR TRANSPORT SERVICE AND ETHIOPIA’S ACCESSION TO THE WTO	31
Introduction.....	31
3.1. Ethiopia’s Accession to the WTO.....	31
3.2. The Ethiopian Air Transport Sector.....	34
3.3. The New Ethiopian Investment Law on Air Transport with Respect to Ethiopia’s Accession to the WTO	39
3.3.1. General overview of the Ethiopian Investment Law	39
3.3.2. The New Ethiopian Investment Law on Air Transport in Respect to Ethiopia’s Accession to the WTO	40
CHAPTER FOUR	44
CONCLUSION AND RECOMMENDATIONS	44
4.1. Conclusion	44
4.2. Recommendations.....	46
Bibliography	48

Acronyms and Abbreviations

AATS	GATTS Annex on Air Transport Service
AfCFTA	African the Continental Free Trade Area
ASAP	Database and Air Services Agreements Projector
AU	Africa Union
BASAs	Bilateral Air Services Agreements
CAA	Civil Aviation Authority
CRS	Computer reservation system
EASA	European Aviation Safety Authority
ETCAA	Ethiopia Civil Aviation Authority
ETG	Ethiopian Airlines Group
FAA	Federal Aviation Administration
FDI	Foreign Direct Investment
FDRE	Federal Democratic Republic of Ethiopia
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GOEs	Government Owned Enterprises
IATA	International Air Transport Association
ICAO	International Civil Aviation Organization
LDC	Least Developed Countries
MFN	Most Favored Nation
MFTR	Memorandum on its Foreign-Trade Regime
MRO	Aircraft maintenance repair and overhaul
New Investment Law	New Investment Proclamation and New Investment Regulation
NGOs	Non-Governmental Organizations
NIP	New Investment Proclamation (Investment Proclamation 1180/)
NIR	New Investment Regulation (Investment Regulations 474/2020)
NT	National Treatment
NTSB	National Transport and Safety Board
QUASAR	Quantitative Air Services Agreement Review

SDT	Special and Differential Treatment
UK	United Kingdom
UN	United Nation
USA	United States of America
WTO	World Trade Organization

Abstract

Air transport is regulated by the Chicago Convention, ICAO, and IATA, other regional and international arrangements. It is also governed by countries' Bilateral Air Services Agreements (BASAs). The WTO, although it excludes the air transportation in general, it included some sub-services (MRO, the selling and marketing of air transport services and CRS) in its AATS. To clarify the exact scope of the AATS and to check-up the interest of members regarding the continuity of current exclusion of "traffic rights and services directly related to the exercise of traffic rights" the Council of Trade in Services reviewed the AATS twice: first review (2000 - 2003) and second review (2005 - present) though it is not successful yet. Ethiopia formally submitted its formal request for WTO accession in January 2003 through the accession process was stagnant for about eight years until the current Prime Minister, Abiy Ahmed (PhD), came to power with some changes to the previous investment policy and resumed the accession process in June 2019. The New Investment Law has made many changes to the air transport sector: lifting the 50 passengers' aircraft seating capacity in the previous investment law and made a new partial liberalization of the international air transport service and domestic air transport service, but the travel agency, travel ticket sales and MRO are reserved for domestic investors. To this end, the researcher has assessed the new investment law considering Ethiopia's WTO accession using qualitative and descriptive methodology. In contrast to the AATS, the New Investment Law is as restrictive as the previous Ethiopian investment law though it has partly liberalized the major service of the air transport. Thus, the researcher concluded that the air transportation under the New Investment Law could be a challenging issue to Ethiopia's negotiation team to the WTO. Finally, the researcher provided some recommendations to be taken by the Ethiopian negotiation team, by the Ethiopian legislation and the WTO.

Key words: World Trade Organization (WTO), Accession, Ethiopia, Investment Law, Liberalization, Air Transportation

Chapter One

Introduction

1.1. Background of the Research

Ethiopia is a landlocked country in the Horn of Africa, and it is one of the Least Developed Countries (LDCs) in Sub-Saharan Africa. Next to Nigeria, Ethiopia is the second most populous nation in Africa. It is also the country with fast growing economy in the region with the targets to reach lower-middle-income status by 2025 though its positive economic growth and accelerating poverty reduction is challenging by the current COVID-19, locust invasion, political and social unrest, limited competitiveness and an underdeveloped private sector.¹

Ethiopia is landlocked and most populous country in the horn of Africa, a mountainous and difficult topography for road and rail transport, the seat of AU and presence of other regional and international organizations/NGOs, active participant in the international trade and have fast economy growth and it has strategic location (near to Middle East, Europe and Asia). As a result, air transport is the preferable means of transportation which can help the country to import from and export to the international market for perishable and other time sensitive products including documents, perishable agricultural products, electronic consumer goods, pharmaceuticals and fashion garments, and emergency shipments of spare parts and some other products.² Fortunately, Ethiopia has a highly competitive and African largest airline, Ethiopian Airlines group(ETG). In Ethiopia, various economic sectors including the ongoing infrastructure projects, ETG, roads, rails, airports, telecommunications, banking and insurance, power distribution and industrial parks are

¹ Admasu Shiferaw, 'Productive Capacity and Economic Growth in Ethiopia' (CDP Background Paper No. 34,) Department of Economic & Social 2017)1 ; The World Bank Website, 'The World Bank in Ethiopia'(#AFRICA CAN, <https://www.worldbank.org/en/country/ethiopia/overview#:~:text=With%20more%20than%20112%20million%20people%20%282019%29%2C%20Ethiopia.Ethiopia%20aims%20to%20reach%20lower-middle-income%20status%20by%202025>, accessed 09 February 2021)

² Francisco E. Rizzuto, 'The importance of Air Cargo for Landlocked Countries', (23 August 2019 <https://www.linkedin.com/pulse/importance-air-cargo-landlocked-countries-francisco-e-rizzuto> accessed 09 February 2021; The World Bank Group, ROLE OF AIR CARGO IN LANDLOCKED COUNTRIES, <http://pubdocs.worldbank.org/en/758091436899477576/Air-Transport-Air-Cargo-Intro.pdf> accessed 09 February 2021

owned by the state.³ Ethiopia has been actively participating in the international trade and it has applied for membership to the World Trade Organization (WTO).

WTO is an organization which is established and committed to work for international trade liberalization. It is one of the most important and broad in scope to supervise the multilateral trade agreements. Trade liberalization is a removal or reduction of restrictions/barriers on the free exchange of goods between nation that thwart free flow of services and goods among and between countries, and the end goal of trade liberalization is to create a plain playing field for all traders so that the basis of competition will be comparative and competitive advantages.⁴ The WTO has excluded the major part of the air transport from the scope of the General Agreement on Trade in Services (GATS) though it has provided some services of the sector to be included in the WTO negotiation process.

Ethiopia has applied for WTO accession in January 2003 and in the first 10 years it has been working on some activities including submission of memorandum, answering questions and the initial goods offer which was submitted in February 2012.⁵ However, the accession process was stopped for years.⁶ It has resumed in June 2019 after the Ethiopian Prime Minister Dr. Abiy Ahmed met with the former WTO Director-General, Roberto Azevêdo, on the Annual Meeting of the World Economic Forum in Davos on 23 January 2019 and continues the accession with revision of some policies and laws.⁷

In substitute to the Investment Proclamation dated on 17 September 2012 with its 2014 amendment, Ethiopia has adopted a New Investment Proclamation (“New Investment

³Ethiopia Economy 2020’ (Countries of the World, 27January 2020 https://theodora.com/wfbcurent/ethiopia/ethiopia_economy.html accessed 10 February 2021

⁴ Ermias Abebe, ‘THE ACCESSION OF ETHIOPIA TO THE WTO IN THE CONTEXT OF ITS POLICY ON “DEVELOPMENTAL STATE”’ (LL M Thesis, University of South Africa 2014)2

⁵ Hussein Ahmed, ‘ETHIOPIA’S ACCESSION TO THE WORLD TRADE ORGANISATION: LESSONS FROM ACCEDED EAST DEVELOPING COUNTRIES’4 Oromia Law Journal, No.1, (2015)227 Tilahun Esmael, ‘ETHIOPIA’S WTO ACCESSION AND FINANCIAL SERVICES LIBERALIZATION: STRIKING THE BALANCE BETWEEN TRADE LIBERALIZATION AND DOMESTIC POLICY SPACE’6 MIZAN LAW REVIEW No.2, (2012)208

⁶‘Ethiopia to Reinstate WTO Negotiations’ (Ethiopian Chamber of Commerce and Sectoral Association <http://ethiopianchamber.com/wto.aspx> accessed 10 February 2021)

⁷ World trade organization and regional trade relation negotiation committee directive No. 587/2013 (Federal Democratic Republic of Ethiopia Council of Ministers), Art.4; ENA, ‘Ethiopia Resumes WTO Membership Negotiations’ (<https://www.ena.et/en/?p=12146> accessed 10 February 2021) 1

Proclamation” or "NIP") on 30 January 2020.⁸ The NIP opens the investment framework many sectors of the Ethiopian economy including the service sectors except some sectors and sub-sectors.⁹ It has expanded its investment objectives under the NIP and all areas of investment are opened for Foreign Investors except those reserved in the proclamation. The reserved investment areas are also provided in the Investment Regulation No. 474/2020 (“New Investment Regulation” or “NIR”). The NIP has liberalized the air transport sector though some of its sub-services are restricted. This is the major research problem that initiated this study and the very purpose of this research is to thoroughly analyse the air transport sector under the NIP and WTO and its effect in the resumed Ethiopia’s accession to the WTO.

1.2. Statement of the Problem and Research Questions

1.2.1. Statement of the Problem

The new Ethiopian investment law, NIP and NIR (the “New Investment Law”), has expanded its investment objectives using a negative listing system. It has opened all areas for foreign investors by listing only the reserved ones. The below are among the reserved areas of investment on air transport sector:

1. International air transport service: reserved for joint investment of any investor with the Government.¹⁰
2. Domestic Air Transport Service: reserved for joint investment with domestic and foreign investors.¹¹
3. Travel agency, travel ticket sales and Aircraft maintenance repair and overhaul (MRO): reserved for domestic investors.¹²

⁸ The Investment Proclamation 2020 (Federal Democratic Republic of Ethiopia), Article 56

⁹Anthony Giustini and Nadezhda Varbanova (from Clifford Chance)¹ and Tadesse Kiros and Habtamu Hailemeskel (from Tadesse Kiros Law Office, Ethiopia), ‘ETHIOPIA’S NEW INVESTMENT LAW – WHAT DOES IT MEAN FOR FOREIGN INVESTORS?’(<http://www.tadessekiros.com/wp-content/uploads/ethiopias-new-investment-law%E2%80%93what-does-it-mean-for-foreign-investors.pdf> accessed 10 February 2021)

¹⁰ Investment Regulations 474/2020(Federal Democratic Republic of Ethiopia Council of Ministers), Art. 3(3)

¹¹ Ibid Art. 5(1) (b)

¹² Ibid Art. 4(11) and 4(19)

On the other hand, the GATS Annex on Air Transport Services (“AATS”) has provided three sub-services of air transport services though most of air transport services are excluded. The sub-services included in the AATS are:¹³

- A. Aircraft repair and maintenance services (MRO);
- B. The selling and marketing of air transport services and,
- C. Computer reservation system (CRS) services.

Although the main air transport sector is excluded from the GATS, it seems contradicting that the sub-services (travel agency, travel ticket sales and MRO) which are included in the AATS are reserved only for domestic investors in the New Investment Law. On the other hand, Ethiopia has partially opened the domestic and international air transport services in exceeding the scope of the AATS. Thus, these partial liberalizations and reservations may have positive and/or negative effects on the ongoing Ethiopian accession to the WTO.

As a result, this is the major research problem that initiated this study. The paper is therefore an attempt to critically analyze the above-mentioned problem.

1.2.2. Research Questions

In accordance with the above statement of the problem that initiates this study, there are certain questions that need to be addressed within the issue of the air transport sector in the New Investment Law and its effect on Ethiopia’s accession to the WTO.

Thus, this research will search an answer to the following research questions:

1. What is the place and status of the Air Transport Services under the WTO laws?
2. Is the New Investment Law compatible with the GATS Annex on Air Transport Services?
3. What is the effect of the partial liberalization of the international and domestic air transport services and the restriction of some sub-services under the New Investment Law to Ethiopia’s accession to WTO?

¹³ AATS, GATS Annex on Air Transport Services (AATS) Paragraph 3

1.3. Literature Review

Air transport services have been an important means of transportation in transporting peoples and goods from place to place within a boundary of a specific country and cross-border international services between and among service and different countries in every corner of the world. This service has contributed a lot in achieving economic growth and development of our globalizing world. States need to have a law to regulate the increasing airline services and the tough competition between and among the airline companies. Thus, the international air transport services have been regulated by a complex structure of bilateral agreements negotiated between states under the Chicago Convention.¹⁴ In respect to international air transport services, a principle of national sovereignty over airspace is provided in the Chicago Convention. This principle and the bilateral negotiations by and between states have been discouraging the full liberalization of international and even domestic air transport. However, due to the fast growth of the air transport industry and the increase of competition in the airline industry, a liberalization of the sector is becoming a continuous issue.¹⁵ The liberalization of air transport is also an issue in the first and second review of the AATS though the most air transport services are excluded from the scope of application of the GATS.¹⁶

The scope and the reason for the exclusion of the air transport sector in the AATS has discussed in the International Air Transport Association (IATA) Discussion Paper.¹⁷ The paper discussed that, in addition the well understood and comprehensive the services under the multilateral framework provided by International Civil Aviation Organization (ICAO) and IATA, over 3,500 bilateral agreements have recognized in the Uruguay Round negotiation and consequently the scope off the AATS becomes limited. The paper has also provided the option to clarify and strengthen the Annex (Option 1) and to expand the Annex (Option 2), and the position of

¹⁴ K. BUTTON and T. SAMANTHA, 'International Air Transportation and Economic Development', *J. of Air Transport Management*, (2000)20

¹⁵ Y. ZHAO, 'Liberalisation of Air Transport Services under the Framework of the WTO: Confronting the Challenge of the Twenty-First Century'3 *Asian Y.B. Int'l L.*, (1998), 8

¹⁶ C. FINDLAY and D.K. ROUND, "The 'three pillars of Stagnation: challenges for air transport reform", *World Trade Review*, (2006), 251

¹⁷ IATA Discussion Paper: LIBERALISATION OF AIR TRANSPORT AND THE GATS: Government Affairs External Relations Division, International Air Transport Association, Geneva, October 1999

developing countries are considered in the options. On the other hand, the paper has provided an option to liberalize air transport outside the GATS framework.

Julie Van Coillie has analyzed the ambiguous relationship between air transport services and the WTO and tried to discuss the place for air transport in the WTO.¹⁸ WTO has provided a place for air transport services in the specific annex of the General Agreement on Trade in Services (GATS). As a principle, the AATS has excluded the “traffic rights and services directly related to the exercise of traffic rights”, but it covered only three services as an exception to the principle. However, the AATS has not defined the phrase “*services directly related to traffic rights*” and it results in an ambiguity to the exact scope of the services under the AATS.¹⁹ Consequently, the WTO Members has always interpreted the phrase differently, and some have taken commitments outside the scope of these three covered services while the others limited only to three services.²⁰

As per the analysis of Julie Van Coillie, the GATS have adequate framework for liberalizing air transport although it has been impossible due to the political disagreement between to WTO Members.²¹ After the all his analysis, he concluded that a full adoption of air transport services, including the traffic rights, within the GATS framework will not occur soon.²²

Ruwantissa Abeyratne has briefly discussed the competition and investment laws in the international air transport.²³ It has discussed on the United Nations Conference on Trade and Development (UNCTAD) also called a Model Law on Competition adopted on 2004 also has the purpose to control or eliminate restrictive agreements or arrangements among enterprises, or limit access to markets or otherwise unduly restrain competition, adversely affecting domestic or international trade or economic development.²⁴ Many countries have also developed their own law to regulate the competition in air transport such as the Anti-Monopoly Law of China, The

¹⁸ JULIE VAN COILLIE, ‘The ambiguous relationship between air transport services and the WTO’ (LL M Thesis, KU LEUVEN FACILITY OF LAW 2019)32

¹⁹ Ibid 34

²⁰ Ibid

²¹ Ibid 54

²² Ibid

²³ Ruwantissa Abeyratne, *Competition and Investment in Air Transport: Legal and Economic Issues*, (2016)185

²⁴ Ibid 194

Competition Act (1998) of South Africa, The Indian Competition Act (2002), Competition and Consumer Protection Act of (2010) of Zambia and others are among these laws.²⁵

Ruwantissa Abeyratne has also provided a section about competition and investment in air transport infrastructure and argued that countries in the Asia Pacific Region, China, India, Philippines and Indonesia has been spending billions of dollars into building airport infrastructure to handle a higher-than-expected demand for air transport in the region bringing a substantial inflow of passengers, and to regulate this big investment they have been enacting different investment laws.²⁶

Regarding the Ethiopian air transport sector, (Arkebe Oqubay and Taffere Asfachew)²⁷ and (Abel Yifru)²⁸ have discussed the business development and success of ETG, and both concluded that the secret for the success of ETG are its business model in customer protection, strong commitment of the government to make the airline Ethiopianization national carrier, technological learning and capability building, working in cooperation with group airlines such as AFRA and Star Alliance, high level of team work and work ethics and etc. Ermias Abebe has also briefly summarized the previous Ethiopian investment law on the air transport sector considering Ethiopia's accession to the WTO.²⁹

As it is briefly provided from the above literature, the issue of liberalization of the international and domestic air transport sector in the New Investment Law and its effect to Ethiopia's accession to the WTO is not researched yet. Therefore, it makes a researchable area on the target of this research.

²⁵ Ibid 195

²⁶ Ibid 210

²⁷Arkebe Oqubay and Taffere Asfachew, 'The Journey of Ethiopian Airlines'2 African Development Bank No.1(2019)

²⁸ Abel Yifru, 'Determinants of Airline Business in Aviation Industry: A Case Study on Ethiopian Airlines' (MBA Thesis, Addis Ababa University 2017)

²⁹ Ermias (n.4)43

1.4. Objectives of the Research

1.4.1. General Objective

The general objective of this study is to examine the New Investment Law in light of Ethiopia's accession to the WTO with the scope of the air transport sector.

1.4.2. Specific Objectives

In addition to the above major objective of the study, there are also specific objectives addressed in this research. These include:

1. To access the place and status of the Air Transport Services under the WTO laws.
2. To investigate the compatibility of the New Investment Law with the AATS.
3. To critically analyze the effect of the partial liberalization of the international and domestic air transport services and the restriction of some sub-services to Ethiopia's accession to the WTO.

1.5. Significance of the Research

This study has legal significance through recommending points which are relevant in the compatibility and effect of the New Investment Law with the AATS and its effect in the negotiation of the ongoing Ethiopian accession to WTO as well as related points as mentioned in the objective of the study.

Thus, this research will have the following significances;

1. It may fill the gap of literature in the field of air transport in the WTO and Ethiopian Laws.
2. It may recommend filling the gap in the law of air transport in the WTO and Ethiopian Laws as well as the potential challenges that Ethiopia could face in the negotiation of WTO accession.
3. It may help to conduct larger scale doctrinal or empirical study on the area of air transport in the WTO and Ethiopian Laws.

4. It can also serve as a reference material to aviation academicians, practitioners and the people at large to critically understand the law on air transport in the WTO and Ethiopian Laws along with its effect.

1.6. Scope and Delimitation of the Research

This study will focus on the air transport sector under the WTO and the air transport sector in the New Investment Law in exclusion of any other services under the GATS and New Investment Law. The research is also limited to the Ethiopian accession to the WTO by excluding any other acceding countries. Finally, this research is limited only to commercial international and domestic air transport services and specifically the regular scheduled transportation of cargo, passengers and Mail (excluding any Aerial Firefighting, Agricultural Aviation, Personal Travel, Law Enforcement, Medical Transport, Overnight Delivery, Search and Rescue, Sightseeing, Surveying, Mapping and Traffic Reporting, and other small private air service organs with charter-based services).

1.7. Methodology of the Research

1.7.1. Research Design

This research contains the features of doctrinal inquiry. To achieve the objectives of the research, it will use qualitative data. To analyze the international laws and domestic laws, WTO laws and New Investment Law regulating the sector of air transport, the researcher will make an investigation into the laws and interpretations of the laws using the rules of interpretation and scholarly books and journals.

1.7.2. Research Methods

To analyze the law governing the subject matter at hand, the researcher will explain laws and legal analysis depending on the primary sources of laws which will help to access the first and second research questions. On the other hand, the researcher will employ the secondary sources to find the conceptual framework of the effect of the New Investment Law in the WTO accession and negotiation to accession (third research questions), by reading books, journals, academic articles and various internet sites will be consulted for relevant information.

1.7.3. Techniques of Data Analysis and Interpretation

The data will be analyzed by means of a qualitative and descriptive method. To answer the research questions of this research, laws will be interpreted purposively.

1.8. Chapters Sequence/Organization Layout

This research will attempt to explore the New Investment Law and the WTO accession with emphasis to the air transport service. In doing so, the writer has decided to divide the work into four chapters. *Chapter one* will brief the introductory and the research proposal of the study. This chapter will briefly highlight the statement of the problem, research questions, general as well as specific objectives of the research, literature review, significance and the research methodology briefly. The *second chapter* will explore the general overview of international and domestic air transport services, the competition among and between the airline companies, the theoretical and legal frameworks of the air transport sector including the laws the sector covered under the GATS. In this chapter, the WTO accession laws and procedures will be analyzed in line with the subject of the study. *Chapter three* will deal with the analysis of Ethiopian accession to the WTO, The Ethiopia's WTO accession process, Ethiopian air transport sector, the New Investment Law regarding the international and domestic air transport services and its effect in the Ethiopian accession to the WTO. Finally, *chapter four* will provide conclusion and recommendation. It will summarize the main findings of the research based on the analysis of previous chapters and attempt to provide some recommendation points which are appropriate on the merit of the research.

CHAPTER TWO

CONCEPTUAL AND REGULATORY FRAMEWORK OF THE AIR TRANSPORT SERVICES, AND THE WTO ACCESSION PROCESS

Introduction

This chapter will provide the services of air transportation, the regulatory frameworks of air transportation, the coverage of air transport services under the WTO, and the WTO Accession. It

will give a brief overview of the air transport services and the competition in the sector, the structure of the current regulatory framework of the air transport services in general and the place of the WTO/GATS to the air transport services in particular. It will also offer the regulatory framework and procedures of the WTO accession. This chapter will discuss only the relevant services and regulatory parts concerning the issues in this paper rather than the entire outset of the services and regulatory framework of air transport services and the WTO laws. The air transportation services and the competition in the sector will be discussed in section one, the second section will provide the legal framework of air transportation and thirdly the paper will provide the place and scope of WTO/GATS to the Air transportation services. Finally, the WTO membership and its accession process will be discussed.

2.1. Air Transportation Services and Tough Competition in the Sector

Air transport service is an aviation business dedicated to manufacturing and operating all types of aircraft. However, the aviation industry is a very vast sector including all and every type of transport that moves through the air. Aviation industry can be classified in two civil and military sectors.³⁰ There are two major airspace users in the world today: civil (private, commercial and government owned aircraft to transport cargo and passengers) and military (state-owned aircraft engaged in transport, training, security and defense). Aviation can also be classified into Aerial Firefighting, Agricultural Aviation, Business and Personal Travel, Law Enforcement, Medical Transport, Overnight Delivery, Search and Rescue, Sightseeing, Surveying and Mapping and Traffic Reporting.³¹ This paper is focused only with the civil aviation sector and in this section it will discuss its major services and the competition in the sector.

2.1.1. Air Transport Services

Civil Aviation is one of two major types of aviation, representing both private and commercial airline services (excluding the military aviation).³² It is all about transporting of passengers, cargo

³⁰ Dr Hayley Stainton, 'Types of air transport' (Tourism Teacher Ltd, 08/09/2020 <https://tourismteacher.com/types-of-air-transport/> accessed 24 March 2021)

³¹ Wilson Kehoe Winingham, 'Ten Types of General Aviation' (Aviation Accidents, 04 March 2020 <https://www.wkw.com/aviation-accidents/blog/ten-types-of-general-aviation/> accessed 24 March 2021)

³² Natalie Appleton, 'Understanding the Different Types of Air Travel, From Passenger to Cargo' (Stratos Jet Charters INC, 08 August 2011 <https://www.stratosjets.com/blog/understanding-the-different-types-of-air-travel-from-passenger-to-cargo/> accessed 24 March 2021)

and mail from place to place using different commercial and private aircrafts. The transportation could be operated by the scheduled or charter-based air transport. Scheduled air transport is transporting of passenger and cargo flights that operate on regularly scheduled time and routes. However, a charter flight is a one-time flight and not part of a routine schedule and it needs to be for affinity group flights.

Most of the airline companies (especially the large ones) shall get a service of MRO, Aviation Academy, Catering, Sales and Marketing, Ground Handling and other services which are supporting its transportation services. To transport passengers, cargo and mail, airline companies shall have safe and secured aircrafts and they also must sell their services to its customers. In the airline industry, MRO plays a great role in terms of avoiding service cost (saving of hard currency in developing countries), protection of the safety of an aircraft, providing a quality and fast service to save the ground time of an aircraft. To get these and other services, most of the large airline companies own MRO for their airline service. An airline business shall sale its services by a competitive CRS also sale its services by their Ticket Office and/or Travel Agent established and controlled by themselves.³³

These services may determine the customer protection and satisfaction, the business secret, pricing policy and management system of the airline. Considering the size of their own company or the competitiveness of other airlines, airline companies need to look for more efficient marketing strategies and it has a great impact on the choice of airline business model.³⁴ The easiness of CRS and the marketing system of the airline have a great role in a customer satisfaction and protection the data of the customers. This may bring customers into the market that would not otherwise use the service, or may encourage people who use the service more frequently or to stop using the airline and even it may enlarge from a shift of passengers away from competitor airlines.³⁵ In an airline industry, MRO and Marketing services are the most required sections to employ many unemployed citizens of the country (it is helps to reduce a jobless citizen especially in developing countries and LDCs). Thus, an airline without the direct control/involvement of the MRO, CRS,

³³ Eva Endrizalová, Martin Novák, Vladimír Němec, Martin Tilšar and Stanislav Szabo, *BRAND DESIGN AS THE PART OF THE AIRLINES MARKETING STRATEGY*, (2018)5

³⁴ Thomas Bieger and Andreas Wittmer, *Airline Strategy from Network Management to Business Models*, (2011)24

³⁵ Gerald Kraft, *The Role of Advertising Costs in the Airline Industry*, (1965) 96

Ticket Office and Travel Agent, may not continue as a safe, secure, profitable and competitive airline. Otherwise, the airlines which owned all these services may control the market.

2.1.2. The Tough Competition in the Air Transport Services

In the 21st century air transport has been vastly growing into one of the world's very important transport service industries.³⁶ It is happening due to globalization and increase of international trade. The growth of the airline industry has played a great role in creation of employment to millions of people, to expand the world trade and tourism, and increasing the opportunities for safe and fast travel to billions of passengers.³⁷

Today, air transport is a vibrant business for international trade, encircling all the aviation sector aspects including the aircraft and engine manufacturers, fuel suppliers, airports and air traffic control systems. Civil aviation customers are involved in all world economy sectors and segments of the world's population. As a result of the fast growth, there is a strong and flexible competition in the aviation business with fast technology improvements, customer utilization, pricing and marketing policies, industry consolidation and innovations. To survive in such a competitive environment, airline industries shall adopt and change their market strategy quickly and effectively to attain the highest dynamic competition strategy of the global market. Due to the tough and strong competition between and among the airlines, it has brought productive efficiency, lower prices for consumers, stimulate innovation to have better product and win business and it allows consumers to have a choice of services.³⁸ Thus, the forms of airline competition become multilayer including airlines within the same alliance and code share partners, airlines of other alliances, low cost carriers, charter carriers and inland transport modes. As the result of the competitions, many large airlines (Swissair, Sabena, United, American Airlines, Delta, SAS, Air France, etc.) and small airlines (i.e. many African Airlines, Spanair, Sky Europe, Sterling, Czech Airlines, Air Malta, Cyprus, etc.) have failed to survive in a changing market environment.³⁹ The below figures and tables may show the growth of international air transport and the competition in the sector.

³⁶ Ružica Škurla Babić, Mirko Tatalović and Jasmin Bajić, 'AIR TRANSPORT COMPETITION CHALLENGES' International Journal for Traffic and Transport Engineering, No. 7(2) (2017)145

³⁷ Ibid

³⁸ International Civil Aviation Organization (ICAO) (2013)

³⁹ Abeyratne (n.23)147

Figure 2.1: The movement of global aircraft over continents and oceans of the world (2016)



Source: Heinrich C. Bofinger, Air transport in Africa: A portrait of capacity and competition in various market segments⁴⁰

Figure 2.2: The international air traffic by the Star Alliance Member airlines (2020)

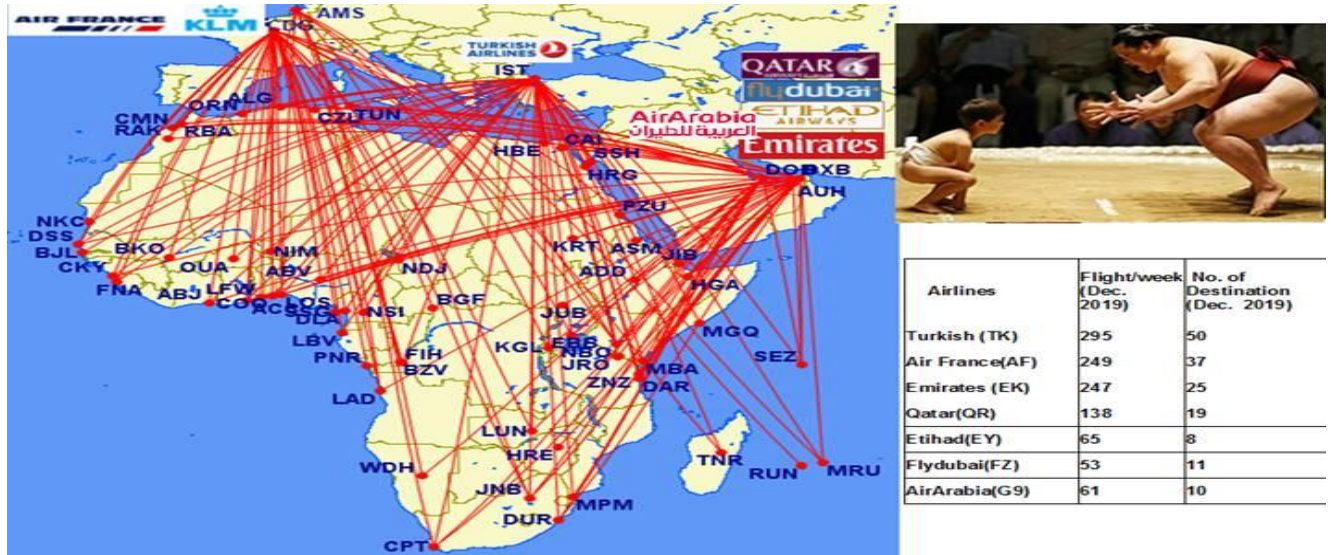


Source: Ethiopian Airlines annual report for the year of 2020

The above two figures (Figure 2.1 and 2.2) indicate that the air transport sector is dominant in the socio-economic and trade transactions by and between states from every corner of the world.

⁴⁰ Heinrich C. Bofinger, Air transport in Africa: A portrait of capacity and competition in various market segments (WIDER Working Paper 2017/36, United Nations University World Institute for Development Economic Research 2017)2

Figure 2.3: The competition of European and Middle East airlines over the African air transportation market (2020)



Source: Ethiopian Airlines annual report for the year of 2020

Table 2.1: Top 25 world airlines serving Africa and their annualized growth rates (2001-2015)

Rank	Airline	Estimated seat KMs 2001 (billions)	Estimated seat KMs 2007 (billions)	Estimated seat KMs 2015 (billions)	Market share 2015	Annual growth rate 2007–15	Annual Growth rate 2001–15
1	Ethiopian Airlines	4.02	11.82	35.68	11.5%	14.8%	16.9%
2	Emirates	1.72	11.03	32.68	10.5%	14.5%	23.4%
3	South African Airways	33.80	32.53	28.61	9.2%	-1.6%	-1.2%
4	Air France	13.55	18.24	23.57	7.6%	3.3%	4.0%
5	British Airways	19.67	15.89	15.01	4.8%	-0.7%	-1.9%
6	Kenya Airways	5.05	10.71	14.37	4.6%	3.7%	7.8%
7	KLM	5.99	9.40	10.64	3.4%	1.6%	4.2%
8	Turkish Airlines	0.42	0.59	8.99	2.9%	40.5%	24.5%
9	Delta Air Lines	0.00	2.95	7.96	2.6%	13.2%	
10	Air Mauritius	7.26	8.55	7.93	2.6%	-0.9%	0.6%
11	Lufthansa	3.17	5.84	7.24	2.3%	2.7%	6.1%
12	Qatar Airways	0.11	2.35	6.72	2.2%	14.0%	34.0%
13	Comair Ltd.	0.00	3.90	6.42	2.1%	6.4%	
14	CORSAIR	1.84	2.78	5.84	1.9%	9.7%	8.6%
15	TAAG – Linhas Aereas de Angola	1.32	2.39	5.41	1.7%	10.8%	10.6%
16	Air Austral	0.40	3.92	5.26	1.7%	3.7%	20.3%
17	Royal Air Maroc	0.45	2.61	4.99	1.6%	8.4%	18.8%
18	Arik Air	0.00	0.46	4.55	1.5%	33.3%	
19	Brussels Airlines N.V.	2.94	2.31	4.43	1.4%	8.5%	3.0%
20	TAP – Air Portugal	1.43	3.14	3.98	1.3%	3.0%	7.6%
21	Virgin Atlantic Airways	3.02	5.14	3.59	1.2%	-4.4%	1.2%
22	Egyptair	0.99	2.42	3.44	1.1%	4.5%	9.3%
23	Mango Airlines	0.00	0.55	3.42	1.1%	25.7%	
24	Etihad Airways	0.03	1.02	2.82	0.9%	13.5%	39.8%
25	Qantas Airways	2.04	2.25	2.73	0.9%	2.5%	2.1%

Source: Heinrich C. Bofinger, Air transport in Africa: A portrait of capacity and competition in various market segments⁴¹

⁴¹ Ibid 8

From the above Figure 2.3 and Table 2.1, we can conclude that the European and Middle East air carriers are the most dominant airlines in African airline markets. These airlines have modern fleets, advanced infrastructures, latest technologies, and government subsidies (i.e. oil to the Middle East carriers) to take a comparative advantage in the market competition over the African airlines, especially ETG. They have also geographical advantage over the carriers from the developed countries i.e. Far East and North America's carriers.⁴² Due to the above comparative advantages and the absence of strong and competitor African airlines (except Ethiopia Airlines), the African airline market has been harvested by the European and Middle East air carriers. European countries and their Airlines have long history in air transport competition and liberalization within the European Union and in the international market outside the Union.⁴³ Middle East countries also have a significant role on the liberalization and competition of regional and international air-transport industry with increase of international trade flows, regional and international tourism, incoming foreign direct investments and the presence of large competitive airlines in the region.⁴⁴

2.2. Regulatory Framework of the Air Transport Services

Air transport has a long history and it played a great role in the transportation service of peoples and goods although it has been growing greatly over the last century. The launch of the biggest and wide-body aircraft which are known '**jumbo jet**' was the game changer for the significant growth of the commercial air transport.⁴⁵ The great expansion of the aviation industry has contributed a lot to the current employing thousands of people and providing air transport services for millions of people in the world.⁴⁶ Air transportation service is also one of the major facilitators

⁴²Ethiopian Airlines annual report for the year of 2020 <https://www.google.com/search?q=Ethiopian+Airlines+annual+report+for+the+year+of+2020&oq=Ethiopian+Airlines+annual+report+for+the+year+of+2020&aqs=chrome..69i57.24835j0j7&sourceid=chrome&ie=UTF-8> accessed 09 February 2021)

⁴³ Guillaume BURGHOUWT, Pablo MENDES DE LEON and Jaap DE WIT, 'EU Air Transport Liberalisation: Process, impacts and future considerations' (Discussion Paper, 2015)8; Keith Mason, William G. Morrison and Ian Stockman, 'LIBERALISATION OF AIR TRANSPORT IN EUROPE AND THE EVOLUTION OF 'LOW COST' AIRLINES' (2011)2-3

⁴⁴ Nicole Adler and Niron Hashai, 'Effect of open skies in the Middle East region' (Hebrew University of Jerusalem, 2005)879-882; InterVISTAS-EU Consulting Inc, 'The Impact of International Air Service Liberalisation on the United Arab Emirates' (Agenda for Freedom, 2009)5-9

⁴⁵ Alphonse Michael, *Aviation safety. Regulatory framework, technology, contingency plan*, (2015)7

⁴⁶ Eranga Batuwangala, M. Silva and Graham Wild, *The Regulatory Framework for Safety Management Systems in Airworthiness Organizations*, (2018)12

of international trade.⁴⁷ The terms of the value of goods and services involved, its quick delivery of items (especially those sensitive and perishable goods) and passengers over long distances, and its necessity to some specific industries such as tourism makes the air transport service more important in the international trade.⁴⁸ However, air transport has been becoming serious security and safety concerns, because of the world has been facing with the large number of aircraft crashes which has been recorded every year and the bombing of commercial airliners. States may also have sovereignty and economic issues in opening their air space to the international air carriers and liberalizing their air transport services. Thus, to reduce these aircraft incidents and accidents, to insure safe air travel, to protect their sovereignty and economy, states need to have international laws and to develop many organizations and institutions to provide rules, regulations and standards. The 1944 Convention on International Civil Aviation (Chicago Convention), ICAO, National Transport and Safety Board (NTSB), European Aviation Safety Authority (EASA), Civil Aviation Authority (CAA) and Federal Aviation Administration (FAA) are some of these laws and organizations. The role of these laws and organizations to the air transport sector will be discussed as below.

2.2.1. Convention on International Civil Aviation (Chicago Convention)

During World War Two (WWII), the arrangement of a massive network of passengers and freights of carriage created a powerful catalyst for the technical development of the aero plane. However, this vast network has been faced with political and technical obstacles to the growing facilities and routes.⁴⁹ In 1944, the USA made a numerous study in coordination with its Allies and invited 55 States to join in the discussion of an International Civil Aviation Conference in Chicago and out of these 55 States, 52 of them had signed a new convention named the Convention on International Civil Aviation (commonly known as the ‘Chicago Convention’) on 7 December 1944.⁵⁰ The Chicago Convention entered into force on 4 April 1947 and with its current 193 member States, it is still the foundation for the organization of international air transportation services. The Chicago

⁴⁷ Kenneth John Button, ‘AIR TRANSPORTATION SERVICES: BOTH A TRADED COMMODITY AND A TRANSACTIONS COST IN INTERNATIONAL TRADE’ J. of International Commerce Economics and Policy, (2010) 117

⁴⁸ Ibid

⁴⁹ ‘The History of ICAO and the Chicago Convention’ (ICAO Website, <https://www.icao.int/about-icao/history/pages/default.aspx> accessed 21 March 2021)

⁵⁰ Ibid

Convention governs the rights and duties of states in relation to international aviation sector and thus it is considered as the “Magna Carta” of Aviation law.⁵¹

The Chicago Convention is established to “*help, create and preserve friendship and understanding among the nations and peoples of the world, to avoid friction and to promote that cooperation between nations and peoples upon which the peace of the world depends, to develop a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically...*”⁵² in the future development of international civil aviation sector by reducing/avoiding the abuse of the sector which become a threat to the general security of the world. The Chicago Convention has provided basic principles to the aviation sector and it has established ICAO as a regulatory organization.

I. Basic principles of the Chicago convention

The Chicago Convention provides the principle of ‘**National Sovereignty Over Airspace**’ which states “...*every State has complete and exclusive sovereignty over the air space above its territory*”.⁵³ This principle has prohibited the free flow of aircrafts over or into the airspace of a sovereign state without the express permission of that State and it also have an impact in the market access principle. ‘**Economic Sovereignty Over Airspace**’ is the second major principle of the Chicago Convention which is stated as “*No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization.*”⁵⁴ As a result of this principle the commercial rights of scheduled international air transport services has been obliged to govern by a special agreement between the States which is commonly known as Bilateral Air Services Agreements (BASAs).⁵⁵

II. International Civil Aviation Organization (ICAO)

⁵¹ Ludwig Weber, ‘The Chicago Convention’ (Routledge Handbook of Public Aviation Law 2016 <https://www.routledgehandbooks.com/doi/10.4324/9781315297774.ch2> accessed 21 March 2021

⁵² CONVENTION ON INTERNATIONAL CIVIL AVIATION 1944 (Chicago Convention) Preamble

⁵³ Ibid Article One

⁵⁴ Ibid Article six

⁵⁵ Weber (n.51)

ICAO is established by the Chicago Convention as one of the UN specialized agencies with a special objective to develop international air transport.⁵⁶ ICAO provides a framework for states to safely operate international air transport services though it does not conclude treaties. However, ICAO is criticized for its limitation in the economic field of air transportation although it has some link in articles 44 (d), (e) and (f) of the Chicago Convention.⁵⁷ Members of Chicago convention and ICAO shall be only sovereign states.⁵⁸ Thus, international organizations can not enjoy full membership rather they only get an observer status in the bodies of the ICAO, and it can be considered as a second criticism of the Chicago convention in the regulation of the air transport sector.⁵⁹

2.2.2. The Economic Regulation of International Air Transport

The economic aspect of international air transportation services are traffic rights (such as capacity, designation, ownership and control), tariffs and other services.⁶⁰ The state parties which have participated in the Chicago Convention have not agreed on the regulation of the economic aspects of international air transport services.⁶¹ Thus, the economic sector of the international air transportation services has been mostly regulated by BASAs (more than 4000) which have been concluded between states yet.⁶²

Traffic right is one of the major economic aspect in relation to the market access and freedoms of the air which allows air transport services into the territory of another state.⁶³ Because of the principle of ‘economic sovereignty over airspace’, the right of market access needs special permission in which a state of a foreign airline can have market access into a state’s national territory with the limit of that permission.⁶⁴ To facilitate the negotiations between states, the ICAO developed the traffic rights into nine ‘Freedom of the Air’ though only the third and fourth

⁵⁶ Chicago Convention (n.52) Article 43 and 44

⁵⁷ P.M. DE LEON, *Introduction to Air Law*, (2017)34

⁵⁸ Chicago Convention (n.52) Articles 92 and 93

⁵⁹ WEBER (n.51)30, Chicago Convention (n.52) Article 94

⁶⁰ ‘The Bilateral System – how international air services work’ (Australian Government: Department of Infrastructure, Regional Development and Cities, https://infrastructure.gov.au/aviation/international/bilateral_system.aspx accessed 08 March 2021.

⁶¹ SALAZAR and VAN FENEMA, *International air transport agreements* (P.S. DEMPSEY and R.S. JAKHU ed, Handbook of Public Aviation Law 2017) 253

⁶² Babić, Tatalović and Bajić (n.36) 34

⁶³ BUTTON and SAMANTHA (n.14) 11

⁶⁴ Ibid

freedoms are dealing with traffic rights. *“The right to carry passengers from the territory of the State whose nationality the airlines possess or where the airline is established, into a foreign territory”* and *“the right to carry passengers from the territory into the territory of the State whose nationality the airlines possess or where the airline is established”*⁶⁵ are the third and fourth ‘Freedom of the Air’ respectively. The BASAs negotiation regarding the traffic right is only for the regular and scheduled international air transport services. These are services open to use by the public and operated according to a planned schedule including time, regular frequency and type of aircraft. Currently, the traffic rights are governed by BASAs and other multilateral frameworks.

BASAs refers to the negotiation of the states to open each other’s national airspace including the conditions on market access for the operation of international air transport services though the rights given to one state are often may different from the rights given to another state.⁶⁶ Reciprocity is the basic principle in the negotiations in most of the BASA. USA and UK have made two BASAs, commonly known by the name ‘Bermuda Agreements’, which are characterized by a high level of government intervention and control in respect of capacity, fares, frequency, routes and type of planes and has been used as a model agreement for other states.⁶⁷ However, the ‘Bermuda Agreements’ are restrictive and not encourage liberalization which led to limited choice of states and there is hardly an opportunity for competition.⁶⁸ To overcome the restriction in the ‘Bermuda Agreements’, states have continued to the resorted ‘Open Skies’ which is more liberal agreement than the former.⁶⁹

The ‘Open Skies’ agreement is entered by the USA and the Netherlands in the early 1990’s.⁷⁰ This agreement is less restrictive and it deals not only about the exchange of rights to enter into each other’s national airspace and market, but also the regulation of competition between air transport

⁶⁵ DE LEON (n.57)45

⁶⁶ Luping Zhang, ‘The Role of Dispute Settlement Body in the World Trade Organization in the Aviation Industry – in the Time of Bombardier Case’43 Air and Space Law.No.2, (2012)182

⁶⁷ R. Wolfrum and S.Peter-Tobias, ‘WTO – Trade in Services’, Martinus Nijhoff Publishers, (2008)603

⁶⁸ Rachid Tiroual, ‘Competition and Subsidies in Air Transport Liberalization – The UAE – North America Dispute’82 J. of Air Law and Commerce. No.2 (2017)346

⁶⁹ Uniting Aviation, ‘Creating Opportunities Through Open Skies Agreements’ (Uniting Aviation, 18 July 2018 <https://www.unitingaviation.com/strategic-objective/economic-development/creating-opportunities-through-open-skiesagreements/> accessed 12 April 2019)

⁷⁰ Wolfrum and Peter-Tobias (n.67)603

services and allow the free market to establish the prices.⁷¹ ‘Open Skies’ agreement has enriched the flexibility and liberalization to enable a full market access without restrictions on the traffic rights regulated in the third and fourth ‘freedom of the air’.⁷²

The benefits of liberalization have increasingly recognized by the states and which led to the gradual shift from restrictive BASAs between two states to more liberal ‘Open Skies’ agreements with new multilateral solutions.⁷³ WTO is the one among the multilateral frameworks in the regulation of the international air transport organizations.

2.3. WTO and International Air Transportation Services

This section has briefly introduced the general aim of the WTO in General and the GATS in Particular. To assess the first research question, the relationship between air transport services, the scope and status of the WTO in the Air transport section has this sub section.

“WTO deals with the rules of trade between nations at a global or near-global level.”⁷⁴ The main aim of the WTO is liberalizing trade, a forum for states to negotiate trade agreements and a place for member states to settle trade disputes.⁷⁵ The WTO itself was born as a result of negotiations, the WTO creates a system of trade rules by negotiation and everything the WTO does is the result of negotiations.⁷⁶ As the result of the long negotiations of the Uruguay Round and earlier negotiations under the General Agreement on Tariffs and Trade (GATT) which has been made from 1986 to 1994, the WTO came into being in 1995 as fully-fledged international organization with its all the current bulk works. The WTO agreements provide legal ground-rules for international commerce as essentially contracts to bind states to keep their trade policies within agreed limits. To achieve the open markets and non-discrimination trading system, the WTO adopted some general principles.

⁷¹ Hanaa Fayed and John Westlake, ‘Globalization of air transport: the challenges of the GATS’ (Tourism Economics, 01 December 2002 <https://journals.sagepub.com/doi/abs/10.5367/000000002101298214?journalCode=teua> accessed 12 April 2019)

⁷² Uniting Aviation (n.69)

⁷³ Joann Tortorice, ‘Air Transport Services: International Regulation and Future Prospects for Liberalization’ Industry, Trade and Technology Review (1999)15

⁷⁴ WTO, *Understanding the WTO*, (2011)9

⁷⁵ Ibid

⁷⁶ Ibid

The **Most Favored Nation (MFN)**, the **National Treatment (NT)** and the **Market Access** are the general principles of the WTO trading system. The MFN principle prohibits a country from discriminating between and among other States, the NT principle prohibits a country from negatively discriminating against foreign states and the market access clause ensures that each member country shall grant services and service suppliers of any other member country treatment no less favorable than provided for under the terms, limitations and conditions agreed and specified in its Schedule.⁷⁷ Unlike the Chicago Convention and the ICAO states any State or separate customs territory possessing the full autonomy in the conduct of its external commercial relations may join to the WTO as a full member irrespective of state sovereignty as a condition for membership to the WTO.⁷⁸

In the institutional structure of the WTO, the Ministerial Conference is at the top of the structure which all members of the WTO are represented, the next level is the General Council and it works as Dispute Settlement Body and Trade Policy Review Body, and specialized councils are established at the below level with a specific function to facilitate and implement the operation of the WTO agreements under the general guidance of the General Council.⁷⁹ In the GATS, the Council of Trade in Services may also be responsible for the periodic review of the Annex on Air Transport Services.⁸⁰ This paper is focusing on the GATS agreement since air transportation is provided in the GATS as one of the service sectors.

2.3.1. GATS

GATS is the applicable WTO agreement for the service sector trading system including the air transport sector. The air transport services are mostly excluded from the scope of application of GATS although some air transport services are regulated in the AATS. January 1995 is the turning point for the international trade in services to economic growth and development because of the GATS has entered into force on January 01, 1995 as the first and only multilateral agreement aimed at the liberalization of international trade in services.⁸¹ Creating a credible and reliable

⁷⁷ P. VAN DEN BOSSCHE and W. ZDOUC, *The Law and Policy of the World Trade Organization*, (Cambridge University Press, 2017)306

⁷⁸ Agreement Establishing the World Trade Organization (Marrakesh Agreement), (1995) Article XII

⁷⁹ *Ibid* Article IV

⁸⁰ *Ibid*

⁸¹ VAN COILLIE (n.18)21

system of international trade rules, ensuring fair and equitable treatment of all participants and promoting trade and development through liberalization are the main purposes of the GATS.⁸²

GATS is created because of long-standing negotiations completed under the Uruguay Round undertaken from 1986 to 1994. After the adoption of the GATS the state parties increasingly join the negotiation on trade in services considering the contribution of international trade in services to the economic growth and development.⁸³ However, the GATS have not led to substantial liberalization of trade in services though the Uruguay Round negotiation shows that there is a will to liberalize trade in services on a multilateral level.⁸⁴ Having the general overview of the Uruguay Round negotiation, the negotiation in respect of the air transport sector is analyzed in the below.

2.3.2. The Uruguay Round and Air Transport Services

The Uruguay Round negotiations could have been a good opportunity to open the international air transport services on a multilateral level though the member parties did not want to accept significant changes regarding the liberalization of the air transport service.⁸⁵ The parties against the liberalization of air transportation service believed in the bilateral agreements which are governed under the ICAO framework. They argued that the ICAO framework is more reliable and has an expertise of air transport services than the WTO. On the other hand, some WTO parties argue that the competences of ICAO in the are limited in the economic field, and they believe that multilateral liberalization under the framework of the GATS could be maximize the economic benefits of air transport services.⁸⁶ These two contradicting arguments were also raised in the adoption of the AATS within the GATS. Finally, the AATS was included in the GATS in compromise between pro and against the liberalization of air transport services on a multilateral level.

⁸² GENERAL AGREEMENT ON TRADE IN SERVICES (GATS) (1995) Preamble, The General Agreement on Trade in Services: objectives, coverage and disciplines, (World Trade Organization, https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm accessed 24 April 2021.

⁸³ PETERSMANN and M. HILF, 'The New GATT Round of Multilateral Trade Negotiations: Legal and Economic Problems' (Kluwer Law and Taxation Publishers, 1988) 459

⁸⁴ C.G. DECURTINS, 'The air transport review at the WTO: Bilateralism versus Multilateralism' (PhD thesis International relations, University of Genève, 2007)64

⁸⁵ Wolfgang HUBNER and Pierre SAUVE, 'Liberalization scenarios for International Air Transport'35 J. of World Trade 35(5), (2001) 975

⁸⁶ Ibid 974 & 975

2.3.3. GATS Annex on Air Transport Services

This section will answer the first research question which is about the place and status of air transport service under WTO. Air transportation service and WTO are related only by the AATS and its two reviews, nothing more nothing less. Therefore, to answer the first research question, the researcher will analyze the Annex AATS and its two reviews.

The scope of the AATS is provided as *“the Annex applies to measures affecting trade in air transport services, whether scheduled or non-scheduled, and ancillary services.”*⁸⁷ However, the phrases ‘trade in air transport services’ and ‘ancillary services’ are not clearly defined in the AATS. Thus, the WTO members interpret the scope of the AATS differently.⁸⁸ Some members (e.g. Australia and Japan) interpreted it broadly while some (e.g. USA) others interpreted it narrowly only within the limit of the three covered services included in the Annex ATS.⁸⁹

The air transport services covered under the AATS are only three. These are *“... measure affecting aircraft repair and maintenance services, computer reservations system services and the selling and marketing of air transport services.”*⁹⁰ However, the annex ATS has clearly excludes the services *“traffic rights and services directly related to the exercise of traffic rights”*.⁹¹ The Annex ATS has provided the definition of some phrases as below:

- I. ‘Aircraft repair and maintenance activities’:** *“such activities when undertaken on an aircraft or a part thereof, while it is withdrawn from service and do not include the so-called line maintenance.”*⁹²
- II. ‘Computer reservation services’:** *“services provided by computerized systems that contain information about carriers’ schedules, availability, fares and fare rules, for which reservations can be made or tickets may be issued.”*⁹³
- III. ‘Selling and marketing of air transport services’:** *“opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of*

⁸⁷ AATS, GATS Annex on Air Transport Services (AATS) Paragraph 1

⁸⁸ Ibid Paragraph 3

⁸⁹ Ibid Paragraph 3

⁹⁰ Ibid

⁹¹ Ibid Paragraph 2

⁹² Ibid Paragraph 6 (a)

⁹³ Ibid Paragraph 6 (c)

marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions."⁹⁴

IV. 'Traffic rights': *"Traffic rights mean the right for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Member, including points to be served, routes to be operated, types of traffic to be carried, capacity to provide, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership and control."*⁹⁵

Although the AATS has provided the definition for the above phrases, it has missed to define the phrase 'Services directly related to...' and the absence of such definition creates an ambiguity regarding the coverage of the AATS.⁹⁶ Considering this ambiguity the WTO Secretariat has tried to clarify phrase and states that the three covered services are regarded as directly related though some WTO member could not agree with the explanation.⁹⁷ Thus, some WTO members gave a broad interpretation to include more services within the AATS while other states may only interpreted in relation to the three sub-sectors to limit the scope of the AATS.⁹⁸ Commitments under the AATS may differ from member to member. Some members have not made any commitments and some members have obtained exemption under the GATS.⁹⁹

Thus, 43, 46 and 62 members have made commitments on selling and marketing of air transport services, computer reservation services and maintenance and repair of aircrafts respectively.¹⁰⁰ On the other hand, 3, 19 and 22 members have made MFN exemptions on maintenance and repair of aircrafts, computer reservation services and selling and marketing of air transport services respectively.¹⁰¹ The list of WTO member states for the Exemption to the AATS also summarized in the below table.

Table 2.2: List of member states for the Exemption to the GATS Annex on Air Transport (2019)

⁹⁴ Ibid Paragraph 6 (b)

⁹⁵ Ibid Paragraph 6 (d)

⁹⁶ D. KREYMBORG, 'Developments Relevant to International Air Transport in the WTO' Air & Space Law, (2003) 471, 478 (As cited in VAN COILLIE (n.18))

⁹⁷ Ibid

⁹⁸ Wolfrum and Peter-Tobias (n.67)611

⁹⁹ Robert EBDON, 'A Consideration of GATS and of its Compatibility with the Existing Regime for Air Transport'20 Air and Space Law No.2, (1995)71, 73

¹⁰⁰ VAN COILLIE (n.18)35

¹⁰¹ Ibid

Party	Repair and maintenance	M	Selling Marketing and	Computer Reservation System
Austria	✓		✓	✓
Canada			✓	
EC and its Member States			✓	✓
Finland			✓	✓
Iceland			✓	✓
Kuwait	✓		✓	✓
Liechtenstein			✓	✓
Norway			✓	✓
Poland			✓	✓
Romania			✓	✓
Singapore				
Sweden			✓	✓
Switzerland			✓	✓
Thailand	✓		✓	✓
United States			✓	✓

Source: Narayan Murthy and B.K. Zutshi ¹⁰²

2.3.4. Reviews of the GATS Annex on Air Transport Services

Considering the possible additional application of the agreement in air transport sector, the WTO members has got the opportunity and the flexibility to further review the AATS every five years by the Council of Trade in Services.¹⁰³ The periodic reviews has an objective to clarify and further liberalize the air transport services on a multilateral level.¹⁰⁴ The AATS has been reviewed twice since it is adoption.

❖ **First Review (2000-2003):** To clarify the exact scope of the AATS and to check-up the interest of members regarding the continuity of current exclusion of “*traffic rights and services directly related to the exercise of traffic rights*”, the Council of Trade in Services reviewed the AATS.¹⁰⁵ Although, the first purpose of this review was to clarify the exact coverage of the AATS to resolve the ambiguity, the members cannot reach into consensus on the interpretation of the phrase “*services directly related to the exercise of traffic rights.*”¹⁰⁶ Thus, the ambiguity on the coverage of the AATS has maintained yet. The second objective of the review is to

¹⁰² Narayan Murthy and B.K. Zutshi, ‘Trade in Services: Opportunities and Constraints’ (2019)110 Indian Council for Research on International Economic Relations <<https://icrier.org/pdf/Narayanmurthy.PDF>> accessed 22 March 2021

¹⁰³ AATS (n.102) Paragraph 5

¹⁰⁴ Peter P.C. Haanappel, ‘The Law and Policy of Air Space and Outer Space. A comparative approach’ Kluwer Law International, (2003) 151 and 152

¹⁰⁵ Ibid

¹⁰⁶ Latrille, Pierre and Lee, Juneyoung, ‘Services rules in regional trade agreements: how diverse and how creative as compared to the GATS multilateral rules?’ WTO Staff Working Paper, NO. ERSD-2012-19, (2012)12

assess if the WTO Members have an interest to maintain or to avoid the exclusion of “*traffic rights and services directly related to the exercise of traffic rights.*”¹⁰⁷ Regarding this issue and further development of the AATS, the WTO Members raised different perspectives.

Australia and Japan were the proponents of extending the coverage of the GATS to a broader range of air transport services. Australia argued for the liberalization of air transport services including the traffic rights in replacing the bilateral agreements over the long term.¹⁰⁸ However, Japan’s argument was only to broaden the scope of the AATS without full inclusion of the traffic rights and the applicability of the MFN principle and the NT.¹⁰⁹ On the other hand, the USA was one of the states which had strongly argued against any further extension of the AATS. USA has strongly supported the liberalizing air transport services, but it argued that the liberalization of air transport services should not be through WTO framework rather by the existing bilateral system.¹¹⁰

In the first review, the WTO members cannot reach into an agreement and it is closed without any major outcome in the liberalization of air transport services under the GATS.¹¹¹ However, it gives an opportunity to know the different perspectives of the WTO members in regarding to the liberalization of air transport services.¹¹²

- ❖ **Preparation to Second Review:** After the first review, the Secretariat provided a background paper titled “Developments in the Air Transport Sector since the Last Review” as a preparation document for the second review and it tried to include all aspects of air transport and air transport-related services.¹¹³ It also created the Quantitative Air Services Agreement Review (QUASAR) database and Air Services Agreements Projector (ASAP).¹¹⁴
- ❖ **Second Review (2005-Present):** like the first review, the second review has also the objective to explain the exact coverage of the AATS to resolve the ambiguity and to clarify if WTO Members wanted to continue or avoid the exclusion related with *the “traffic rights and services*

¹⁰⁷ Haanappel (n.121)151

¹⁰⁸ KREYMBORG (n.114) 484

¹⁰⁹ Ibid 487

¹¹⁰ WTO Doc., ‘communication from the United States: Review of the GATS Annex on Air Transport Services’ S/C/W/198, (2001)38 &39

¹¹¹ HAANAPPEL (n.117)473

¹¹² XING, ‘Air Transport Services in the GATS’, (LL.M thesis, University of Ghent, 2013-2014)26

¹¹³ Air Transport Services: Second Review’, (World Trade Organization https://www.wto.org/english/tratop_e/serv_e/transport_e/review2_e.htm accessed 30 April 2021

¹¹⁴ WTO Doc., ‘Second Review of the Air Transport Annex: developments in the Air Transport Sector (Part Two)’1 S/C/W/270/Add.1, (2006)10

directly related to the exercise of traffic rights".¹¹⁵ The WTO members had review session on 2 October 2007 to set out their different views regarding the AATS though the members did not significantly change their previous different stand. Australia and USA want to maintain the stand they had in the first review.¹¹⁶ Because of political divergence, the 'national sovereignty over airspace' and other differences among and between the WTO members, they cannot reach into consensus about the fully inclusion of air transport services within the GATS agreement.¹¹⁷ Thus, the pending second review in stalemate and an implementation of traffic rights within the scope of the AATS will not happen in the near future.¹¹⁸

2.4. WTO Accession Process

2.4.1. General Background on Accession to the WTO

WTO is an organization established in 1995 by a multilateral trade Agreement Establishing the World Trade Organization (commonly known as a "Marrakesh Agreement").¹¹⁹ The Marrakesh Agreement is created to independently supervise trade transactions among the members, to liberalize and regulate international trade, and to facilitate the administration of the trade in goods, services and intellectual property rights.¹²⁰

Under the WTO System, membership is open for non-members. The Marrakesh Agreement provided an accession clause as "*Any state or separate customs territory possession full autonomy in the conduct of its external commercial relations and of the other matters provided for in this agreement and the multilateral trade agreements may accede to this agreement on terms to be agreed between it and the WTO...*"¹²¹

The WTO emerged with the foundation of the GATT in 1948 by the 23 founding members.¹²² As the result of the accession clause, the WTO has received more members after 1995. Many

¹¹⁵ HAANAPPEL (n.121)151

¹¹⁶ WTO Doc. (n.131)45

¹¹⁷ F. DEVOS, 'De vervoerdiensten en het WTO GATS' (unpublished master thesis Law and Economics, University Ghent/Antwerp 2010-2011) 60 (As cited in VAN COILLIE (n.18))

¹¹⁸ VAN COILLIE (n.18)41

¹¹⁹ Amrita Narlikar, *The World Trade Organization: A Very Short Introduction*, (Oxford University press 2013) 2

¹²⁰ Marrakesh Agreement (n.78) Article III

¹²¹ Ibid Article XII (1)

¹²² 'Members and Observers' (WTO Website, https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm accessed 24 May 2021)

African countries have been becoming a member of the WTO though all most all these countries are joined the WTO through accession process under WTO rather through succession.¹²³ The WTO has a succession process which allowed to colonized countries the opportunity to join the WTO after their independence.¹²⁴

Many commentators believed that the accession process has no rules but precedent and power though the WTO officials say that WTO is a rule-based system.¹²⁵ The WTO agreement has special and differential treatment (SDT), transition period and subsidies mechanisms in the negotiation process. SDT is a system considered to keep the most vulnerable economies to take measures that would otherwise contradict with WTO rules and the transition period allows a member to phase in or delay certain additions or charges to its laws until it fully comply with its new WTO obligations.¹²⁶ Based on their level of development, the members (mostly the LDCs) may take any subsidies and it makes high level of controversy in the negotiation stage and as well as in the implementation stage.

2.4.2. WTO Accession procedures

The WTO has mandatory and non-mandatory (observer status) membership status. As a warm-up and exercise the basic information and know-how to start the accession, States may continue as observer status for five years.¹²⁷ However, the States shall pass through six mandatory stages irrespective of whether they pass through the observer state or not. The six stages are:¹²⁸

1. **Submission of formal request for accession:** A state shall submit its request for accession to the General Director.¹²⁹

¹²³ Ermias (n.4)22

¹²⁴ GENERAL AGREEMENT ON TARIFFS AND TRADE(GATT) Article XXI: 5(c)

¹²⁵ UNCTAD/DITC/TNCD/11, 'WTO Accession & Development Policies' (UN publications 2002) XI; Fatwmata Jawara and Aileen kwa, *Behind the sense at the WTO: The real world of International Trade Negotiation* (Zed Books Ltd 2004)4&5; Roman Grynber, Manleed Dugal and Mohammed A.Rzzque, *An Evaluation of the terms of Accession to the WTO* (2006)2

¹²⁶ 'Accession to the WTO, Newly Independent States '(WO/NCSD Project, International Institute for sustainable development (2002) 3&9 (as cited Ermias (n.4)24

¹²⁷ Ermias (n.4)24

¹²⁸ Ivan Markovic, 'How to join the WTO: some aspects of the accession process' (Economic Annals, volume LIV, No.180 2009) 119

¹²⁹ Marrakesh Agreement (n.78) Article XII

2. **Establishment of working party:** After the submission, the office of the Director circulates it to all members for discussion in the General Counsel meeting and the General Counsel meeting will form a working party.¹³⁰
3. **Submission of memorandum on foreign trade regime:** It is a standardized and detailed document on trade and economic policies and legal framework of the acceding states in relation to the WTO trade obligations.
4. **Fact finding and negotiations in the terms of accession:** It is all about the process of asking questions and receiving answers in writing. It is the reviewing and investigating the trade policies of the acceding state, its preparation and capability to accede the WTO. The negotiation finally produces a schedule of tariffs and specific commitments in services.
5. **Adoption of the report of the working party for accession:** After the negotiation, the working party organizes and summarizes the outcome of the negotiation to produce a consolidated single agreement (protocol of accession) so that it will be distributed to the members of the working party for review.
6. **Approval of the accession by the General Counsel or Ministerial Conference:** It is a final stage to adopt the protocol of accession by the General Counsel. At the end, the acceding State shall adopt the accession agreement by its own treaty ratification process so that the state becomes a WTO member.¹³¹

However, in recent days there are critics regarding the issue of “WTO- plus obligations” and “WTO- Minus rights”. These are about the discretion of the original powerful members of WTO to demand extra/additional commitments beyond the WTO agreement (“WTO- plus obligations”) from the acceding countries or new members may relinquish rights available to the members (“WTO- Minus rights”).¹³²

¹³⁰ Markovic (n.152) 132

¹³¹ Ibid

¹³² Simon J. Evenett and Carlos A. primo Braga, *WTO Accession, Lessons from experience* (2005)3

CHAPTER THREE

THE NEW ETHIOPIAN INVESTMENT LAW ON INTERNATIONAL AIR TRANSPORT SERVICE AND ETHIOPIA’S ACCESSION TO THE WTO

Introduction

This chapter provides a summary about Ethiopia’s accession to the WTO and the air transport in Ethiopia. It also examines the new Ethiopian investment law on international and domestic air transport and the effect of the law on the Ethiopian accession to the WTO. Thus, it summarizes the process which has been undertaken by Ethiopia in the WTO accession process, the Ethiopian air transport sector and its role in international trade, and the new Ethiopian investment law on international and domestic air transport considering the GATS and Ethiopian accession to the WTO.

3.1. Ethiopia’s Accession to the WTO

Ethiopia has been governed by different political/economical ideologies which had been inspired as the policies and legal frameworks of successive governments which are the feudalist doctrine of the monarchical regimes (until 1967), by the socialist economic policies introduced by the military regime (1975-1991) and by the government of EPRDF (1991-present). The EPRDF came with the FDRE constitution, adopted a market economy with the industrial policy called Agricultural Development Led Industrialization (ADLI) and later changed to the developmental state ideology with a large governmental participation in economic activities.¹³³ The government reserved some vital economic sectors for itself and banned the participation of both domestic and foreign businessmen in these sectors.¹³⁴ The government has also reformed its different laws regulating trade to deregulate domestic prices, the gradual abolition of export taxes and subsidies, privatization of public enterprises, harmonization, simplification, devaluation of the national

¹³³ ‘The evolution of rural development policies in Ethiopia’ (OECDiLibrary, 2020 <https://www.oecd-ilibrary.org/sites/77fd2b51-en/index.html?itemId=/content/component/77fd2b51-en> accessed 21 September 2021)

¹³⁴ Ibid

currency, and significant reduction in tariffs and non-tariff (subsidies, import quotas, customs delays, technical barriers and other systems) barriers to trade. Recently, the Prosperity Party led by the current Prime Minister Abiy Ahmed (PhD) has changed some policies and laws including the replacement of the previous investment law by a New Investment Law.¹³⁵ The prime minister has also developed a fresh and Ethiopian-centric approach/philosophy called **መደመር (Medemer)**.¹³⁶

The Ethiopian government applied to accede the WTO with the intent to enhance and facilitate its international trade.¹³⁷ Ethiopia has formally applied for an observer status at the WTO in 1997 and it has been conferred with an observer status in the WTO for five years until 2002.¹³⁸ Ethiopia also submitted its formal request for the WTO accession in January 2003. After the acceptance of the application, it established a working party and submitted a Memorandum on its Foreign-Trade Regime (MFTR) and that triggered the bilateral questions and answers process in 2007.¹³⁹ In 2008, the first working party meeting took place with the participation of many WTO members that already have trade relations with Ethiopia. In the meeting, the participants submitted over 300 questions regarding Ethiopian MFTR and Ethiopia answered those questions in 2008 and 2009. The working party has also met three times until 2012, submitted an initial goods offer in February 2012 and the working party had demanded for an initial service offer before serious negotiation starts.¹⁴⁰ However, the accession process was paused for about eight years until the current Prime Minister, Abiy Ahmed (PhD), came to power in 2018 with some changes to the previous investment policy.¹⁴¹

¹³⁵ MEKDELAWITE KIBEBEW, 'THE IMPLICATION OF ETHIO - DJIBOUTI BULK WATER TRANSFER AGREEMENT IN THE ADVENT OF ETHIOPIAN ACCESSION TO WTO', (LLM Thesis Addis Ababa University 2020)37

¹³⁶ Abiy Ahmed, መደመር (Medemer), (2019), Preamble

¹³⁷ MEKDELAWITE (n-135)37

¹³⁸ WTO doc. WT/ACC/11/Rev.7, TECHNICAL NOTE ON THE ACCESSION PROCESS (18 May 2007) <https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=56067,105395,102984,107749,83244,74750,73526,56879,62896,45027&CurrentCatalogueIdIndex=5&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True> accessed 22 August 2021

¹³⁹ Henok Asmelash, 'Ethiopia's Long Walk to WTO Membership: Exploring the Implications of the 2012 WTO Accession Guidelines for Least Developing Countries' *Manchester Journal of International Economic Law* 12(3) (2015) 323

¹⁴⁰ Ibid

¹⁴¹ ENA (n-7)1

The Accession process is resumed in June 2019 after the Ethiopian Prime Minister met with the former WTO Director-General, Roberto Azevêdo, on the Annual Meeting of the World Economic Forum in Davos on 23 January 2019.¹⁴² The Prime Minister set up a 10 member national committee (hereinafter referred to as a “National Committee”) drawn from Ministry of Trade, Ministry of Foreign Affairs, Ministry Finance and Economy, Ministry of Industry, Ministry of Custom and Revenues Authority, National Bank of Ethiopia, National Planning and Development Commission and other organs to be specified by the Ethiopian Government.¹⁴³ After 8 years of deadlock, Ethiopia has participated at the 4th meeting of the Working Party on the country’s accession which was held on 30 January 2020. In the meeting, the Ethiopian delegation was led by Mr Mamo Mihretu (senior advisor to the Ethiopian Prime Minister and chief trade negotiator) with his high-level government delegation team including Ambassador Misganu Arga Moach (State Minister of Trade and Industry), Dr Eyob Tekalign Tolina (State Minister of Finance), Ambassador Zenebe Kebede Korcho (Permanent Representative of Ethiopia in Geneva), and other senior government officials and experts from a different ministries and government agencies.¹⁴⁴

The Ethiopian delegation has emphasized Ethiopia’s commitment to the accession process jointly with members to advance and hopefully join the WTO by the end of 2021, with an accelerated negotiation process in consideration of Ethiopia's status as a LDC.¹⁴⁵ Ethiopia also made a commitment that its revised goods offer envisages 100 percent of tariff lines and it has offered to make commitments in 10 service sectors.¹⁴⁶ However, the type of these 10 services sectors and the current progress of the overall accession process is not published yet and remained secret even for a researcher.¹⁴⁷ The researcher expects the air transport sector could be included in the 10 sectors considering the new investment law.

¹⁴² Ibid

¹⁴³ Ibid

¹⁴⁴ Embassy of FDRE Lon, UK, Ethiopia resumes WTO accession negotiations, (5 Feb 2020), (accessed with <https://www.ethioembassy.org.uk/ethiopia-resumes-wto-accession-negotiations/> on July 05, 2021)

¹⁴⁵ Mr. Mamo Mihretu, Ethiopian Chief Trade negotiator to the WTO: Address to the 4th Meeting Working Party on the Accession of Ethiopia (Geneva, 30 January 2020), (accessed with https://www.wto.org/english/news_e/news20_e/acc_eth_31jan20_e.pdf on July 05, 2021)

¹⁴⁶ Ibid

¹⁴⁷ The Researcher has visited the Ethiopian Trade and Industry Minister on August 02, 2021 and requested the type of 10 services sectors and the status of the overall accession process. However, the request was not successful for the mere reason that these issues are not allowed to be publicize at this time.

3.2.The Ethiopian Air Transport Sector

After the end of WWII, Ethiopia is the only independent African sovereign state and a founding member of the United Nations which is committed to establish a commercial airline. At that time and even still today, having a commercial airline for Ethiopia is the most rational and cost-effective strategy because of the uneven and mountainous landscape, and inadequate roads and railways. Thus, Ethiopia has established a commercial airline on 21 December 1945, and commencing its operation on 8 April 1946 by the first 5 C-47 aircraft and with its first flight to Cairo via Asmara.¹⁴⁸ While many airlines of that age only survived for years or not more than a decade, Ethiopian Airlines has survived and continuously shined for seventy-five plus years, by overcoming all the domestic and international obstacles.¹⁴⁹

Today, Ethiopian Airlines has developed into a large and wide-ranging airline called Ethiopian Airlines Group (ETG). It is a flag carrier airline which made Ethiopian as one of the continent's leading carrier, strategic outlook, incomparable in Africa for its profitability and market growth. Currently, ETG has 130 Aircraft (117 passenger aircraft and 13 cargo/freight aircrafts), and it has also 41 aircrafts in order.¹⁵⁰ ETG is continuing as leading and shining African airline even in the past three years when the air transportation competition become stiff and most African and other continents carriers are displaying continues loss and bankruptcies because of the political conflict, pandemic disease (such as Ebola and COVID) and other domestic and international phenomenon.

ETG has been serving as an ambassador and giving a good image/brand for Ethiopia overall African continent and even in other parts of the world. As a result, many African countries are opting to work in cooperation with ETG and some countries have already dealt and established airlines of which ETG is a shareholder partner. These airlines are:¹⁵¹

1. ASKY Airlines: ETG (26%) and government of Togo (74)
2. Malawian Airlines: ETG (49%) and government of Malawi (51%)

¹⁴⁸ Arkebe and Taffere (n.27)4

¹⁴⁹ Ibid

¹⁵⁰ETG, 'Ethiopian Fact Sheet May 2021', (Ethiopian Airlines Group, May 2021 https://corporate.ethiopianairlines.com/docs/default-source/ethiopian-factsheet/ethiopian-fact-sheet-may-2021.pdf?sfvrsn=d59a68d_2 accessed 12 July 2021)

¹⁵¹ Ibid

3. Tchadia Airlines: ETG (49 %) and government of Chad (51%)
4. Ethiopian - Mozambique Airlines: ETG (99 %) and ASKY Airlines (01%))
5. Zambia airlines: it is pending between ETG and the government of Zambia.
6. ETG has also a management agreement with the government of Equatorial Guinea to manage the overall operation of the CEIBA International Airline.

Because of the above partner airlines, ETG has increased its operation hubs. Currently, ETG has five hubs which are: Addis Ababa (Main Hub), Lome (Second Hub), Lilongwe (Third Hub), Maputo (Fourth Hub) and N'djamena (Fifth Hub).¹⁵² These hubs have been helping ETG to distribute its operational services and to dominate the African air transportation service. In addition, ETG has a code share agreement with 26 Airlines from all continents of the world except Australia.¹⁵³

ETG is implementing its 15 years' strategic plan (commonly known Vision 2025) to become the leading airline group in Africa with seven strategic business units (it is already achieved early) with its motto of **Bringing Africa Together and Beyond**. To achieve the Vision 2025, ETG has joined Star Alliance (the world's largest Airline network) in December 2011, it has created a link through its 22 domestic cities, a vast African network to 62 cities (vast Intra-Africa network better than any Airline) and more than 127 international passenger and cargo destinations, with daily and more flights, with a minimum layover in Addis Ababa.¹⁵⁴ As a result, ETG has been winning a many awards such as: SKYTRAX Best Airline Staff Service in 2013 and 2016, 'Best Airline in Africa' from 2017-2019, it has got a Four Star Airline Certification in 2017 and in December 2020 ETG was recognized as the Decade of Airline Excellence Awards as Africa's best-performing airline of the past 10 years.¹⁵⁵ The below table and figure may describe the dominance of ETG in the African air transport sector and its vast coverage of service in 5 continents of the world.

¹⁵² Ibid

¹⁵³ Ibid: Aegean Airlines, All Nippon Airways, ELAL Israel Airlines, Rwanda Air, Turkish Airlines, Air Canada, Asiana Airlines, Kuwait Airways, Scandinavian Airlines, United Airlines, Air China, ASKY Airline, LAM/Mozambique Airline, Shenzhen Airlines, Azul Brazilian Airlines, Air Europa, Austrian Airlines, Lufthansa Air, Singapore Airlines, Air India, Avianca Brazil, Malaysian Airlines, South African Airways, Air Namibia, Egypt Air, Oman Air and TAP Portugal Airline

¹⁵⁴ ETG (n.150)

¹⁵⁵ Ibid

Table 3.1: Top 25 African airlines providing international service within sub-Saharan Africa

Rank	Airline	Estimated seat KMs 2001 (billions)	Estimated seat KMs 2007 (billions)	Estimated seat KMs 2015 (billions)	Market share 2015	Annual growth rate 2007– 15	Annual growth rate 2001– 15
1	Ethiopian Airlines	0.98	3.70	10.87	30.3%	14.4%	18.8%
2	South African Airways	4.00	4.39	6.76	18.9%	5.5%	3.8%
3	Kenya Airways	1.66	3.46	5.02	14.0%	4.7%	8.2%
4	Arik Air	-	-	1.20	3.3%		
5	Air Mauritius	0.50	0.79	1.06	3.0%	3.8%	5.5%
6	TUIfly GmbH	-	-	0.94	2.6%		
7	SA Airlink dba South African Airlink	-	0.41	0.84	2.3%	9.5%	
8	RwandAir Limited	-	0.16	0.79	2.2%	22.3%	
9	TAAG – Linhas Aereas de Angola	0.36	0.38	0.70	2.0%	7.8%	4.8%
10	Air Namibia (Pty) Ltd	0.31	0.54	0.69	1.9%	3.1%	5.8%
11	Air Austral	0.40	0.39	0.62	1.7%	6.0%	3.2%
12	ASKY	-	-	0.54	1.5%		
13	Comair Ltd.	-	0.37	0.48	1.4%	3.6%	
14	Sudan Airways Co Ltd	0.34	0.15	0.40	1.1%	12.8%	1.2%
15	LAM - Linhas Aereas De Mocambi	0.06	0.11	0.38	1.1%	16.5%	13.7%
	Subtotal	8.61	14.85	31.28	87.3%	9.8%	9.7%
	Others	6.31	6.17	4.56	12.7%	-3.7%	-2.3%
	Totals	14.92	21.01	35.84	100.0 %	6.9%	6.5%

Source: Heinrich C. Bofinger, Air transport in Africa: A portrait of capacity and competition in various market segments¹⁵⁶

¹⁵⁶ Bofinger (n.37)13

Figure 3.1: ETG's more than 127 International Destinations in Five Continents



Source: ETG Fact sheet May 2021¹⁵⁷

The Ethiopian Government enacted Ethiopian Airlines Group establishment regulation No. 406/2017 and regulation No. 452/2019 in 2017 and 2019 respectively and decided Ethiopian Airline Enterprise to take over Ethiopian Airport Enterprise with a new name Ethiopian Airlines Group (ETG). EAG comprises various diversified aviation strategic business units and took over the Ethiopian Airports Enterprise with the new Aviation Group to leverage the strong coordination that naturally exists among the two companies. Thus, ETG got its current structure with the strategic business units including Ethiopian Airports Enterprises, Passenger Airline, Cargo Airline and Logistics Company, Ethiopian MRO Services, Ethiopian Aviation Academy, Ethiopian Inflight Catering Services, Ethiopian Hotel and Tourism Services, and Ethiopian Ground Services.

ETG plays a great role in the country's tremendous import and export activities. As Ethiopia is a land locked country, it imports and exports goods and mails from and to different countries of the world using the fastest way of transport, air transport. Especially, sensitive and perishable products like medicine, meat, flower and other urgent goods and mail cannot be practical and effective to transport using the other type of transport sector (land and sea). Fortunately, Ethiopia has a large

¹⁵⁷ ETG (n.150)

cargo hub with the large wide-body cargo flights that transport all these goods and mail in fast. ETG also assists the Ethiopian economy and tourism as well as the African economic transaction by transporting tens of millions of passengers, different cargo and logistics from and to Ethiopia and the rest of the world.¹⁵⁸ Generally, ETG helps to foster different investments, FDI, tourism and other business activities coming into the country and going out of the country.¹⁵⁹ ETG has had its own MRO since 1957 and currently it is among the largest MRO services in Africa and it serves the Africa, Middle East, and other large and small airlines. It is equipped with modern Hangars, Engine and Component Maintenance workshops with equipment needed to repair/ overhaul aircraft, engines and components with over 2,800 employees. The ETG's MRO facility is certified by the FAA, EASA and ETCAA.¹⁶⁰ To facilitate the sales of its services and handle its customers, ETG has hundreds of sales offices in Ethiopia and in all the ETG's international destinations. To give fast and satisfactory services to its customers, and to compete in the volatile and tough competitive airline industry, ETG uses different CRSs including Galileo, Saber, Cargo Spot and other small applications such as the online reservation and Mobile Applications. Thus, the writer of this research concluded that the ETG's competitiveness and achievement always attract large airlines of other countries to involve in the Ethiopia's air transport service with full or partial liberalization of the sector and they (through the representative of their countries) may raise the issue of liberalization of air transportation in the Ethiopian negotiation to WTO accession.

In Ethiopia, there are small airlines and aviation services such as Abyssinian Flight Services, East African Aviation, National Airways Ethiopia and others. These airlines and aviation services are owned by domestic investors/individuals and most of their services are domestic and charter-based services. Since these domestic airlines and aviation services are owned by domestic investors/individuals, and mostly give domestic and charter based services, they have no effect on Ethiopia's accession to WTO in the merit of this research. Thus, the researcher has excluded these airlines and aviation services from the scope of this research.

¹⁵⁸ IATA Economics Website, The air transport sector makes a major contribution to Ethiopia's economy, (<https://www.iata.org/en/iata-repository/publications/economic-reports/ethiopia--value-of-aviation/> accessed on 23 June 2021)

¹⁵⁹ Ibid

¹⁶⁰ ETG Website, (<https://corporate.ethiopianairlines.com/mro/base-maintenance> accessed on 23 June 2021)

3.3.The New Ethiopian Investment Law on Air Transport with Respect to Ethiopia’s Accession to the WTO

3.3.1. General overview of the Ethiopian Investment Law

It is well known that investment is one of the primary factors for economic growth of a country though the way to attract sufficient and quality investment is challenging for many countries especially for the developing ones. To attract sufficient and quality investment with a balanced foreign savings and Foreign Direct Investment (FDI), states shall have comprehensive investment policy, clearly defined laws and regulations, and transparent institutions to implement the investment policies and laws.¹⁶¹ Ethiopia, as LDC, has been making and enacting investment policies and laws so that it attracts sufficient and quality investment.

Looking into the power of making policies and laws, the Federal Government has the power to formulate and execute the country’s foreign investment policies, strategies and laws.¹⁶² Accordingly, Ethiopia enacted and used previous investment law (Investment Proclamation No. 769/2012) which is characterized by its ‘positive’ list approach though it has included some flexibility to accommodate the ‘negative’ list approach.¹⁶³ ‘Positive’ list approach is an approach to list all the investment sectors and activities open to foreign investors and provide an exhaustive list of sectors reserved for the government and for domestic investors. With intention to open up sectors that were previously closed to foreign investment and to create a business environment conducive for private investment, the Ethiopian government revised its investment laws, privatized government owned enterprises (GOEs) and minimized the public sector involvement in production and service sectors through partial equity sales in four strategic sectors (airlines, telecom, power, and logistics) and fully privatized several other GOEs (railways, industrial parks, sugar plants and other sectors).¹⁶⁴ Thus, in replacing the previous law, Ethiopia has adopted a New Investment Proclamation (Investment Proclamation No. 1180/2020) and started the privatization of some GOEs.

¹⁶¹ EIC, ‘Ethiopian Investment Report 2019’ p. 31

¹⁶² Constitution of the Federal Democratic Republic of Ethiopia (Proc. No. 1/1995) Art. 51(4)

¹⁶³ Investment Regulation 270/2012(Federal Democratic Republic of Ethiopia Council of Ministers), Art. 4(2)

¹⁶⁴ EIC (n.161)31

Unlike the previous investment law, the New Investment Law comes with a ‘negative’ list approach which is to open the investment framework across all sectors of the Ethiopian economy except the listed investment areas which are fully or partially restricted to foreign investors.¹⁶⁵ This approach seems more transparent, predictable and less confusing to implement the law and categorize any new area of investment. The main purpose of the New Investment Law is to modernize the legal, regulatory and administrative framework of Ethiopia’s investment law and investment policy framework, to align with national development goals and the recent reforms in policy direction and priorities, to revisit and revise the sectoral restrictions imposed on foreign investment, to adopt best practice investment promotion, facilitation and aftercare services and efficient investment administration system, and to align the investment regime with the commitment of the African Continental Free Trade Area (AfCFTA) and with the plans to join the WTO.¹⁶⁶ Generally, the New Investment Law has provided three investment categories which are: (1) investment areas reserved for Joint Venture with the government, (2) investment areas reserved for domestic investors and (3) investment areas reserved for Joint Venture with domestic investors (with equity cap).¹⁶⁷ All the rest investment areas that do not fall under the investment areas mentioned above will be open to foreign investors, subject to legality, morality and public safety.¹⁶⁸

3.3.2. The New Ethiopian Investment Law on Air Transport in Respect to Ethiopia’s Accession to the WTO

The developmental state policy of Ethiopia has limited the principles of market access and NT for the service sectors in general and specifically the air transport sector. The policy has authorized the government to largely get involved in the strategic service sectors. It has been also empowering the domestic investor and restricting the foreign investors from engaging in the service sectors such as finance, transport (including air transport), packaging, forwarding, legal service, broadcasting, education, health care, and others.

¹⁶⁵ Investment Regulations 474/2020(Federal Democratic Republic of Ethiopia Council of Ministers), Art.6

¹⁶⁶ The Investment Proclamation 1180/2020(Federal Democratic Republic of Ethiopia), Preamble; The Ethiopian Investment Report 2019, p. 31

¹⁶⁷ The Investment Proclamation 1180/2020(Federal Democratic Republic of Ethiopia), Article 6(2)

¹⁶⁸ Ibid Article 6(1) and 6(3)

Under the previous investment law, air transport services using aircraft with a seating capacity of more than fifty passengers had exclusively been reserved for the government.¹⁶⁹ The previous law had also reserved the air transport services using aircraft with a seating capacity of below fifty passengers only for Ethiopian nationals.¹⁷⁰ On the other hand, the 2012 investment regulation had remained silent regarding the participation of foreign investors in the air transport services which are under the coverage of the AATS (ticket selling service, MRO, and CRS). Thus, due to the nature of the law with a Positive list approach, these sub-services were not allowed to foreign investors. In this case, the working party or member states in the bilateral negotiation could raise the liberalization of these sub-services in the strict application of the scope of the AATS. They might also request to allow foreigners to engage in the air transport service using aircraft with a seating capacity below 50 passengers and even to further open for remaining more than 50 passengers seating capacity outside the scope of the AATS. However, the New Investment Law comes with a different approach regarding the involvement of foreign investors in the general service sector including the air transport sector.

The New Investment Law has made a very important change by lifting the 50 passengers' aircraft seating capacity limit in the previous investment law. The law does not provide any restriction of aircraft seating capacity and it is fully open for any investor. Thus, if the air transport sector is part of the Ethiopian negotiation for WTO accession, it will have a positive role for the Ethiopian negotiators. The New Investment Law has also partially liberalized the international and domestic air transport sector for domestic and foreign investors, but it has reserved some sub-services to domestic investors as per the below.

1. **International air transport service:** reserved for joint investment of any investor with the Government.¹⁷¹
2. **Domestic Air Transport Service:** reserved for joint investment with domestic and foreign investors.¹⁷²
3. **Travel agency, travel ticket sales, and MRO:** reserved for domestic investors.¹⁷³

¹⁶⁹ The Investment Proclamation 769/2012 (Federal Democratic Republic of Ethiopia), Article 6(1)(c)

¹⁷⁰ Investment Regulations 474/2020(Federal Democratic Republic of Ethiopia Council of Ministers), Art. 3(1)(h)

¹⁷¹ Investment Regulations 474/2020(Federal Democratic Republic of Ethiopia Council of Ministers), Art. 3(3)

¹⁷² Ibid Art. 5(1) (b)

¹⁷³ Ibid Art. 4(11) and 4(19)

International air transport service: Opening international air transport for any investor is a great change of the New Investment Law. It means the domestic and foreign investors can be engaged in the international air transport sectors. However, domestic and foreign investors can only be involved in international air transport jointly with the government, and the level/percentage of the involvement is not provided in the new investment regulation. Thus, the involvement of the domestic and foreign investors depends on the government's interest to establish a new airline and/or to sell some portion of its existing big airline, ETG. The international air transport service is not covered under the AATS. However, it may rise in the working party or bilateral negotiation member states, and members may demand a full liberalization of the sector without the requirement of joint involvement of the government. In this case, the Ethiopian negotiation team may easily argue that Ethiopia has opened the international air transport service even beyond the coverage of the sector in the AATS and they may promise to make clear the level of involvement of the investors and to fully liberalize the industry in the future after membership.

Domestic Air Transport Service: The new investment law also liberalized the domestic air transport for the joint investment of domestic and foreign investors with a maximum of 49 percent share for the foreign investor.¹⁷⁴ This is the extra mile for the law to liberalize domestic air transport which is not covered in the previous investment laws and the AATS. As per ETG experience and the general airline business, Ethiopian domestic air transport with short distance services are not as profitable as the international with long distance airline services, rather it helps as a source of customers for international air transport.¹⁷⁵ Thus, the liberalization of domestic air transportation may not even raise in Ethiopia's WTO negotiation for accession. However, if suddenly raised, it would be a plus for Ethiopia to argue its extra mile to open the domestic air transport sector.

Travel agency, travel ticket sales, and MRO: The New Investment Law has maintained the restriction of the previous investment law and it clearly reserved the travel agency, travel ticket sales, and MRO only for domestic investors. In air transportation, transporting passengers and cargo is not as difficult as getting and maintaining customers in the high competition market,

¹⁷⁴ Ibid Art. 5(1) (b) and 5(2)

¹⁷⁵ Peter Morrell, 'The Economics of Low Cost Airlines, can long-haul low-cost airlines be successful?'²⁴ UK Research in Transportation Economics No. 1, (2008) 24

selling of air services, maintaining and checking an aircraft to be ready for the next flight, and other services to carefully work on the ground. The writer of this research has been working for more than 6 years in the aviation sector (ETG) in different legal positions including his current position, Attorney IV (Expert level), and he observed that these sub-services are among the most important and critical services in most (especially large) airlines in terms of safety, security, market competition, cost-saving, job creation, customer satisfaction, data protection and continually updating latest and easily accessible technologies. These sub-services are included in the AATS and they can be part of the negotiation in the WTO accession process.

Once the main air transport services (domestic and international air transport services) are opened for foreign investors, the researcher has not found any policy justification for restricting these sub-services. Had the domestic and international air transport services been restricted for domestic investors, these sub-services might not be raised in the Ethiopian negotiation in the WTO accession. The researcher argued that without the involvement in these sub-services, the spirit of the partial liberalization on the main air transport services (domestic and international air transport services) may not be achieved. Thus, regarding these three sub-services, the New Investment Law has no change from previous investment law. The New Investment Law is also as restrictive as the previous investment law in the strict application of the AATS,

Therefore, the researcher concludes that the new investment law has not complied with the AATS though it has made major changes by partially opening the domestic and international air transportation for foreign investors. Thus, the WTO state parties, who have the interest to involve and establish large airlines in the domestic and/or international air transport services, may boldly demand Ethiopia to open these sub-services. In this case, the Ethiopian negotiation team may argue on the big move of the new investment law (partial liberalization of the domestic and international air transport) and as Ethiopia is one of the LDCs, the team may also promise to open the rest of the sub-services and even the overall sector in the transitional period after the accession.

Generally, Ethiopia is a landlocked and most populous country in the horn of Africa, a mountainous and difficult topography for road and rail transport, the seat of AU and presence of other regional and international organizations/NGOs, an active participant in international trade and fast economic growth. Ethiopia is also the owner of the African largest and competitive airline

in the world (ETG) and it has a strategic location (near to the Middle East, Europe, and Asia). The above and other features of the country make it among the preferable countries for air transport. Thus, the partial liberalization of Ethiopian air transport may become good news to the countries (especially the Middle East and European countries with large airlines) which are interested in expanding their airlines in the Ethiopian air transport sector and they may demand more and/or full liberalization of the Ethiopian air transport sector. Accordingly, the Ethiopian negotiation team in the WTO shall consider the issue of liberalization of air transport in their preparation for the negotiation.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1. Conclusion

Air transport service is an aviation business dedicated to manufacturing and operating all types of aircraft. However, the aviation industry is a very vast sector including all and every type of transport that moves through the air including the civil and military aviation sectors. Civil Aviation is all about transporting of passengers and cargo from place to place using different commercial and private aircrafts, and it also represents both private and commercial airline services but excluding the military aviation.

Air transportation services are major facilitators of international trade and international air transportation is important to earn profits and foreign exchange for the country providing air transport service. However, air transport has serious security and safety concerns, and it also has an issue of States sovereignty and economic issues in opening their air space to the international air carriers and liberalizing their air transport services. Thus, the Chicago Convention, ICAO, IATA, NTSB, EASA, CAA, FAA and other regional and international laws and organizations have been established to regulate the civil aviation industry. The ICAO, IATA and the local civil aviation of every country are among the active regulatory matters for the domestic and international air transportation services.

The WTO has also included some sub-services (MRO, the selling and marketing of air transport services and CRS) in its AATS although most of the air transport services are excluded from its scope. To clarify the exact scope of the AATS and to check-up the interest of members regarding the continuity of current exclusion of “traffic rights and services directly related to the exercise of traffic rights”, the Council of Trade in Services reviewed the AATS twice, first review (2000 - 2003) and second review (2005 - present). However, due to the political divergence, the ‘national sovereignty over airspace’ and other differences among and between the WTO members, they could not reach to consensus about the fully inclusion of air transport services within the GATS agreement.¹⁷⁶

Under the WTO System, membership is open for non-members, and as per the law established the WTO (Marrakesh Agreement), any non-member may have been allowed to accede to the WTO whenever it is interested and complied with rights and obligations under the WTO. Accordingly, Ethiopia has applied for WTO membership and its accession process is pending.

Ethiopia formally applied for an observer status of the WTO in 1997 and submitted its formal request for the WTO accession in January 2003. After the acceptance of the application, it established a working party and submitted a MFTR that triggered the bilateral questions and answers process in 2007. In 2008, the first working party meeting took place with the participation of many WTO members that already have trade relations with Ethiopia. The working party also met three times until 2012, the initial goods offer was submitted in February 2012 and the working party had demanded for an initial service offer before serious negotiation started. However, the Ethiopian WTO accession process was paused for about eight years until the current Prime Minister, Abiy Ahmed (PhD), came to power with some changes to the previous investment policy and resumed the accession process in June 2019.

The New Investment Law has made very important change by lifting the 50 passengers’ aircraft seating capacity in the previous investment law and made a new partial liberalization of the international air transport service (reserved for joint investment of any investor with the Government) and domestic air transport service (reserved for joint investment with domestic and

¹⁷⁶ F. DEVOS (n.134)

foreign investors). However, like the previous Ethiopian investment law, travel agencies, travel ticket sales and MRO are reserved for domestic investors in contrast to the AATS. Thus, in the strict sense of the AATS, the New Investment Law is as restrictive as the previous investment law.

4.2. Recommendations

Based on the above findings and conclusions of the research, the researcher has provided the below recommendations which may contribute to the successful negotiations and accelerate the long Ethiopian WTO accession process.

1. The researcher concluded that once Ethiopia has partially opened the main air transport services (domestic and international air transport services) for foreign investors, there is no reason/policy justification to reserve the travel agency, travel ticket sales, and MRO for domestic investors. Such restrictions may negatively affect the practical application of the opened domestic and international air transport services. Thus, Ethiopia shall amend its investment law and open the travel agency, travel ticket sales, and MRO for foreign investors.
2. The domestic and foreign investors can be involved in international air transport only in joint with the government. However, unlike domestic air transport (the involvement level/percentage of the foreign investor is exactly known and limited to a maximum of 49 percent share)¹⁷⁷, the new investment regulation has not provided the level/percentage of the domestic and foreign investor's involvement in the international air transport services. Thus, to avoid problems in applying this law, the investment regulation shall be amended and specifically provide the level of involvement of foreign investors as well as the domestic ones.
3. It is known that the main parts of the air transport sector are excluded in the AATS of the GATS. However, due to the fact that Ethiopia is landlocked and most populous country in the horn of Africa, a mountainous and difficult topography for road and rail transport, the seat of AU and presence of other regional and international organizations/NGOs, active participant in the international trade, owner of the African largest and competitive airline in the world (ETG), it has strategic location(near to Middle East, Europe and Asia) and other features of the country, Ethiopia is among the preferable countries for air transport and the WTO member

¹⁷⁷ Investment Regulations 474/2020(Federal Democratic Republic of Ethiopia Council of Ministers), Art. 5(1) (b) and 5(2)

states may demand more and/or full liberalization of the Ethiopian air transport sector. Thus, the Ethiopian negotiation team in the WTO shall not undermine the issue of liberalization of air transport on their preparation for the negotiation.

The researcher has also forwarded the below recommendations to the WTO:

1. The Council of Trade in Services shall clarify the exact scope of the AATS and the interest of members regarding the continuity of current exclusion of “traffic rights and services directly related to the exercise of traffic rights”, especially the broad phrase of “...services directly related to the exercise of traffic rights”.
2. The Council of Trade in Services shall finalize the long standing second review (2005 - present) of the AATS and update the WTO members and other acceding countries so that they consider it in the amendment of their laws and in the WTO negotiations for accession.

Bibliography

I. Books and Journal Articles

- Abiy Ahmed, ሞደሜር (Medemer), (2019)
- Alfhonce Michael, *Aviation safety. Regulatory framework, technology, contingency plan*, (2015)
- Amrita Narlikar, *The World Trade Organization: A Very Short Introduction*, (Oxford University press 2013)
- Arkebe Oqubay and Taffere Asfachew, ‘The Journey of Ethiopian Airlines’2 African Development Bank No.1(2019)
- C. FINDLAY and D.K. ROUND, “The ‘three pillars of Stagnation: challenges for air transport reform”, *World Trade Review*, (2006)
- C.G. DECURTINS, ‘The air transport review at the WTO: Bilateralism versus Multilateralism’ (PhD thesis International relations, University of Genève, 2007)
- D. KREYMBORG, ‘Developments Relevant to International Air Transport in the WTO’ *Air & Space Law*, (2003)
- Eranga Batuwangala, M. Silva and Graham Wild, *The Regulatory Framework for Safety Management Systems in Airworthiness Organizations*, (2018)
- Eva Endrizalová, Martin Novak, Vladimír Němec, Martin Tilšar and Stanislav Szabo, BRAND DESIGN AS THE PART OF THE AIRLINES MARKETING STRATEGY, (2018)
- Fatwmata Jawara and Aileen kwa, *Behind the sense at the WTO: The real world of International Trade Negotiation* (Zed Books Ltd 2004)
- Gerald Kraft, *The Role of Advertising Costs in the Airline Industry*, (1965)
- Henok Asmelash, ‘Ethiopia’s Long Walk to WTO Membership: Exploring the Implications of the 2012 WTO Accession Guidelines for Least Developing Countries’ *Manchester Journal of International Economic Law* 12(3) (2015) 323
- Hussein Ahmed, ‘ETHIOPIA’S ACCESSION TO THE WORLD TRADE ORGANISATION: LESSONS FROM ACCEDED EAST DEVELOPING COUNTRIES’4 *Oromia Law Journal*, No.1, (2015)
- InterVISTAS-EU Consulting Inc, ‘The Impact of International Air Service Liberalisation on the United Arab Emirates’ (Agenda for Freedom, 2009)

- Ivan Markovic, 'How to join the WTO: some aspects of the accession process' (Economic Annals, volume LIV,
- Joann Tortorice, 'Air Transport Services: International Regulation and Future Prospects for Liberalization' Industry, Trade and Technology Review (1999)
- K. BUTTON and T. SAMANTHA, 'International Air Transportation and Economic Development', J. of Air Transport Management, (2000)
- Keith Mason, William G. Morrison and Ian Stockman, 'LIBERALISATION OF AIR TRANSPORT IN EUROPE AND THE EVOLUTION OF 'LOW COST' AIRLINES' (2011)
- Kenneth John Button, 'AIR TRANSPORTATION SERVICES: BOTH A TRADED COMMODITY AND A TRANSACTIONS COST IN INTERNATIONAL TRADE' J. of International Commerce Economics and Policy, (2010)
- Luping Zhang, 'The Role of Dispute Settlement Body in the World Trade Organization in the Aviation Industry – in the Time of Bombardier Case'43 Air and Space Law.No.2, (2012)
- Nicole Adler and Niron Hashai, 'Effect of open skies in the Middle East region' (Hebrew University of Jerusalem, 2005)
- No.180 2009)
- P. VAN DEN BOSSCHE and W. ZDOUC, The Law and Policy of the World Trade Organization, (Cambridge University Press, 2017)
- P.M. DE LEON, *Introduction to Air Law*, (2017)
- Peter Morrell, 'The Economics of Low Cost Airlines, can long-haul low-cost airlines be successful?'24 UK Research in Transportation Economics No. 1, (2008) 24
- Peter P.C. Haanappel, 'The Law and Policy of Air Space and Outer Space. A comparative approach' Kluwer Law International, (2003)
- Peter Van den Bossche, Werner Zdouc, *The Law and Policy of the World Trade Organization*, (2017)
- PETERSMANN and M. HILF, 'The New GATT Round of Multilateral Trade Negotiations: Legal and Economic Problems' (Kluwer Law and Taxation Publishers, 1988)
- R. Wolfrum and S.Peter-Tobias, 'WTO – Trade in Services', Martinus Nijhoff Publishers, (2008)
- Rachid Tiroual, 'Competition and Subsidies in Air Transport Liberalization – The UAE – North America Dispute'82 J. of Air Law and Commerce. No.2 (2017)

- Robert EBDON, ‘A Consideration of GATS and of its Compatibility with the Existing Regime for Air Transport’20 Air and Space Law No.2, (1995)
- Roman Grynber, Manleed Dugal and Mohammed A.Rzzque, *An Evaluation of the terms of Accession to the WTO* (2006)
- Ruwantissa Abeyratne, *Competition and Investment in Air Transport: Legal and Economic Issues*, (2016)
- Ružica Škurla Babić, Mirko Tatalović and Jasmin Bajić, ‘AIR TRANSPORT COMPETITION CHALLENGES’ International Journal for Traffic and Transport Engineering, No. 7(2) (2017)
- SALAZAR and VAN FENEMA, *International air transport agreements* (P.S. DEMPSEY and R.S. JAKHU ed, Handbook of Public Aviation Law 2017)
- Simon J. Evenett and Carlos A. primo Braga, ‘WTO Accession, Lessons from experience’ (2005)
- Terance P. Stewart, *The GATT Uruguay Round: A negotiating history (1986 – 1992)*, (1993)
- Thomas Bieger and Andreas Wittmer, *Airline Strategy from Network Management to Business Models*, (2011)
- Tilahun Esmael, ‘ETHIOPIA’S WTO ACCESSION AND FINANCIAL SERVICES LIBERALIZATION: STRIKING THE BALANCE BETWEEN TRADE LIBERALIZATION AND DOMESTIC POLICY SPACE’6 MIZAN LAW REVIEW No.2, (2012)
- Wolfgang HUBNER and Pierre SAUVE, ‘Liberalization scenarios for International Air Transport’35 J. of World Trade 35(5), (2001)
- WTO, *Understanding the WTO*, (2011)
- Y. ZHAO, ‘Liberalisation of Air Transport Services under the Framework of the WTO: Confronting the Challenge of the Twenty-First Century’3 Asian Y.B. Int’l L, (1998)

II. Working Papers, Thesis and Other Documents

- ‘Accession to the WTO, Newly Independent States’ (WO/NCSD Project, International Institute for sustainable development (2002)
- Abel Yifru, ‘Determinants of Airline Business in Aviation Industry: A Case Study on Ethiopian Airlines’ (MBA Thesis, Addis Ababa University 2017)
- Admasu Shiferaw, ‘Productive Capacity and Economic Growth in Ethiopia’ (CDP Background Paper No. 34,) Department of Economic & Social 2017)
- EIC, ‘Ethiopian Investment Report 2019’

- Ermias Abebe, ‘THE ACCESSION OF ETHIOPIA TO THE WTO IN THE CONTEXT OF ITS POLICY ON “DEVELOPMENTAL STATE”’ (LL M Thesis, University of South Africa 2014)
- F. DEVOS, ‘De vervoerdiensten en het WTO GATS’ (unpublished master thesis Law and Economics, University Ghent/Antwerp 2010-2011)
- Guillaume BURGHOUWT, Pablo MENDES DE LEON and Jaap DE WIT, ‘EU Air Transport Liberalisation: Process, impacts and future considerations’ (Discussion Paper, 2015)
- Heinrich C. Bofinger, Air transport in Africa: A portrait of capacity and competition in various market segments (WIDER Working Paper 2017/36, United Nations University World Institute for Development Economic Research 2017)
- IATA Discussion Paper: LIBERALISATION OF AIR TRANSPORT AND THE GATS: Government Affairs External Relations Division, International Air Transport Association, Geneva, October 1999
- ICAO, *Manual on The Regulation of International Air Transport (Doc 9626, Third Edition)*, (2016)
- JULIE VAN COILLIE, ‘The ambiguous relationship between air transport services and the WTO’ (LL M Thesis, KU LEUVEN FACILITY OF LAW 2019)
- Latrille, Pierre and Lee, Juneyoung, ‘Services rules in regional trade agreements: how diverse and how creative as compared to the GATS multilateral rules?’ WTO Staff Working Paper, NO. ERSD-2012-19, (2012)
- MEKDELAWITE KIBEBEW, ‘THE IMPLICATION OF ETHIO - DJIBOUTI BULK WATER TRANSFER AGREEMENT IN THE ADVENT OF ETHIOPIAN ACCESSION TO WTO’, (LLM Thesis Addis Ababa University 2020)37
- Mr. Mamo Mihretu, Ethiopian Chief Trade negotiator to the WTO: Address to the 4th Meeting Working Party on the Accession of Ethiopia, Jan.30.2020
- UNCTAD/DITC/TNCD/11, ‘WTO Accession & Development Policies’ (UN publications 2002)
- World trade organization and regional trade relation negotiation committee directive No. 587/2013 (Federal Democratic Republic of Ethiopia Council of Ministers)
- WTO Doc., ‘communication from the United States: Review of the GATS Annex on Air Transport Services’ S/C/W/198, (2001)

- WTO Doc., ‘Second Review of the Air Transport Annex: developments in the Air Transport Sector (Part Two)’1 S/C/W/270/Add.1, (2006)
- XING, ‘Air Transport Services in the GATS’, (LL.M thesis, University of Ghent, 2013-2014)

III. Codes and Other Laws

- Agreement Establishing the World Trade Organization (Marrakesh Agreement), (1995)
- Constitution of the Federal Democratic Republic of Ethiopia (Proc. No. 1/1995)
- CONVENTION ON INTERNATIONAL CIVIL AVIATION (1944)
- GATS Annex on Air Transport Services (AATS)
- GENERAL AGREEMENT ON TARIFFS AND TRADE(GATT)
- GENERAL AGREEMENT ON TRADE IN SERVICES (GATS) (1995)
- International Civil Aviation Organization (ICAO) (2013)
- Investment Proclamation 2020 (Federal Democratic Republic of Ethiopia)
- Investment Proclamation 769/2012 (Federal Democratic Republic of Ethiopia)
- Investment Regulation 270/2012(Federal Democratic Republic of Ethiopia Council of Ministers)
- Investment Regulations 474/2020(Federal Democratic Republic of Ethiopia Council of Ministers),

IV. Websites and Other Internet Sources

- ‘Air Transport Services: Second Review’, (World Trade Organization https://www.wto.org/english/tratop_e/serv_e/transport_e/review2_e.htm accessed 30 April 2021)
- ‘Ethiopia Economy 2020’ (Countries of the World, 27January 2020 https://theodora.com/wfbcurrent/ethiopia/ethiopia_economy.html accessed 10 February 2021)
- ‘Ethiopia to Reinstate WTO Negotiations’ (Ethiopian Chamber of Commerce and Sectoral Association <http://ethiopianchamber.com/wto.aspx> accessed 10 February 2021)
- ‘Members and Observers’ (WTO Website, https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm accessed 24 May 2021)
- ‘The Bilateral System – how international air services work’ (Australian Government: Department of Infrastructure, Regional Development and Cities, https://infrastructure.gov.au/aviation/international/bilateral_system.aspx accessed 08 March 2021.

- ‘The History of ICAO and the Chicago Convention’ (ICAO Website, <https://www.icao.int/about-icao/history/pages/default.aspx> accessed 21 March 2021)
- Anthony Giustini and Nadezhda Varbanova (from Clifford Chance)¹ and Tadesse Kiros and Habtamu Hailemeskel (from Tadesse Kiros Law Office, Ethiopia), ‘ETHIOPIA'S NEW INVESTMENT LAW – WHAT DOES IT MEAN FOR FOREIGN INVESTORS?’ (<http://www.tadessekiros.com/wp-content/uploads/ethiopias-new-investment-law%E2%80%93what-does-it-mean-for-foreign-investors.pdf> accessed 10 February 2021)
- Dr Hayley Stainton, ‘Types of air transport’ (Tourism Teacher Ltd, 08/09/2020 <https://tourismteacher.com/types-of-air-transport/> accessed 24 March 2021)
- Embassy of FDRE Lon, UK, Ethiopia resumes WTO accession negotiations, (5 Feb 2020), (accessed with <https://www.ethioembassy.org.uk/ethiopia-resumes-wto-accession-negotiations/> on July 05, 2021)
- ENA, ‘Ethiopia Resumes WTO Membership Negotiations’ (<https://www.ena.et/en/?p=12146> accessed 10 February 2021)
- ETG, ‘Ethiopian Fact Sheet May 2021’, (Ethiopian Airlines Group, May 2021 https://corporate.ethiopianairlines.com/docs/default-source/ethiopian-factsheet/ethiopian-fact-sheet-may-2021.pdf?sfvrsn=d59a68d_2 accessed 12 July 2021)
- Ethiopian Airlines annual report for the year of 2020 <https://www.google.com/search?q=Ethiopian+Airlines+annual+report+for+the+year+of+2020&oq=Ethiopian+Airlines+annual+report+for+the+year+of+2020&aqs=chrome..69i57.24835j0j7&sourceid=chrome&ie=UTF-8> accessed 09 February 2021)
- Francisco E. Rizzuto, ‘The importance of Air Cargo for Landlocked Countries’, (23 August 2019 <https://www.linkedin.com/pulse/importance-air-cargo-landlocked-countries-francisco-e-rizzuto> accessed 09 February 2021)
- Hanaa Fayed and John Westlake, ‘Globalization of air transport: the challenges of the GATS’ (Tourism Economics, 01 December 2002 <https://journals.sagepub.com/doi/abs/10.5367/000000002101298214?journalCode=teua> accessed 12 April 2019) <https://www.unitingaviation.com/strategic-objective/economic-development/creating-opportunities-through-open-skiesagreements/> accessed 12 April 2019) https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm accessed 24 April 2021)

- IATA Economics Website, The air transport sector makes a major contribution to Ethiopia's economy, (<https://www.iata.org/en/iata-repository/publications/economic-reports/ethiopia--value-of-aviation/> accessed on 23 June 2021)
- Ludwig Weber, 'The Chicago Convention' (Routledge Handbook of Public Aviation Law 2016 <https://www.routledgehandbooks.com/doi/10.4324/9781315297774.ch2> accessed 21 March 2021)
- Narayan Murthy and B.K. Zutshi, 'Trade in Services: Opportunities and Constraints' (2019)110 Indian Council for Research on International Economic Relations <https://icrier.org/pdf/Narayanmurthy.PDF> accessed 22 March 2021
- Natalie Appleton, 'Understanding the Different Types of Air Travel, From Passenger to Cargo' (Stratos Jet Charters INC, 08 August 2011 <https://www.stratosjets.com/blog/understanding-the-different-types-of-air-travel-from-passenger-to-cargo/> accessed 24 March 2021)
- The General Agreement on Trade in Services: objectives, coverage and disciplines, (World Trade Organization,
- The World Bank Group, ROLE OF AIR CARGO IN LANDLOCKED COUNTRIES, <http://pubdocs.worldbank.org/en/758091436899477576/Air-Transport-Air-Cargo-Intro.pdf> accessed 09 February 2021
- The World Bank Website, 'The World Bank in Ethiopia' (#AFRICA CAN, <https://www.worldbank.org/en/country/ethiopia/overview#:~:text=With%20more%20than%20112%20million%20people%20%282019%29%2C%20Ethiopia,Ethiopia%20aims%20to%20reach%20lower-middle-income%20status%20by%202025.> accessed 09 February 2021)
- Uniting Aviation, 'Creating Opportunities Through Open Skies Agreements' (Uniting Aviation, 18 July 2018
- Wilson Kehoe Winingham, 'Ten Types of General Aviation' (Aviation Accidents, 04 March 2020 <https://www.wkw.com/aviation-accidents/blog/ten-types-of-general-aviation/> accessed 24 March 2021)
- WTO doc. WT/ACC/11/Rev.7, TECHNICAL NOTE ON THE ACCESSION PROCESS (18 May 2007) < https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=56067,105395,102984,107749,83244,74750,73526,56879,62896,45027&CurrentCatalogueIdIndex=5&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True > accessed 22 August 2021