

GULF AIRLINE SUBSIDIZATION: SHOULD THE EUROPEAN UNION AND THE UNITED STATES COLLABORATE TO COMBAT THIS ALLEGED THREAT?

*Savannah Harrison Moon**

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*J.D. Candidate, University of Georgia School of Law, 2019. B.A. in Political Science, Georgia College, 2016.

I. INTRODUCTION

What could make many major U.S. and European airlines feel their very future is threatened? For the past several years, major U.S. carriers including Delta, American Airlines, and United Airlines have made a considerable effort to bring attention to the alleged fact that certain Gulf airline carriers receive substantial subsidies from their respective governments.¹ These U.S. airlines, who refer to themselves as the “Partnership,” argue the Gulf carriers are violating the Open Skies Policy between the United States and their respective countries, threatening U.S. airline jobs, the U.S. economy, and the U.S. airline industry overall.² Across the Atlantic, large European airlines such as Air France KLM and Lufthansa, among others, are also concerned with the allegations of unfair state aid and have pressured the European Union to take action and combat the growing issue.³

The interests of these governmental bodies, however, have not been so aligned in the past few decades; rather, they have been contradictory. In fact, the European Union implemented the current governing regulation on the issue of airline subsidization with the aim of protecting European carriers from the impact of national subsidization by the U.S. government.⁴ Furthermore, EU carriers disliked that the previous arrangements between the United States and the European Union allowed the United States to have a strong transatlantic presence but granted EU airlines only minimal access to the United States.⁵ Nonetheless, because both U.S. and EU airlines are now intensely concerned about the alleged practices of the Gulf carriers, the question becomes whether it is more advantageous to address the Gulf carrier situation collaboratively.

As this Note illustrates, the U.S. government and the European Union have taken different approaches in their responses to the issue of unfair Gulf carrier subsidization. This Note does not intend to deeply analyze the merits of the arguments presented by the “Big Three” U.S. airlines or the large European airlines who lobby for action against the Gulf carriers. Rather, this Note will

¹ PARTNERSHIP FOR OPEN & FAIR SKIES, <http://www.openandfairskies.com> (last visited Sept. 26, 2017).

² *Id.*

³ Julia Fioretti, *Exclusive: EU Sharpens Competition Tools to Face Gulf Carrier Challenge*, REUTERS (Feb. 9, 2017), <http://www.reuters.com/article/us-eu-aviation-exclusive/exclusive-eu-sharpens-competition-tools-to-face-gulf-carrier-challenge-idUSKBN1502RW>.

⁴ Andrea Trimarchi, *EU Regulation 868/2004: Report of a Unilateral Approach on Regulating Unfair Subsidisation and Unfair Pricing Practices and Its Failure*, 38(2) EUR. COMPETITION L. REV. 72 (2017).

⁵ Jacob A. Warden, *Open Skies at a Crossroad: How the United States and European Union Should Use the ECJ Transport Cases to Reconstruct the Transatlantic Aviation Regime*, 24 NW J. INT'L L. & BUS. 227, 238-39 (2003).

look at the different approaches of the United States and the European Union and evaluate whether a collaboration between them to combat the issue is desirable, as well as whether such collaborative action would be successful in encouraging free and fair skies. Part II will provide background on the action taken by the United States and the European Union in approaching the issue. Part III will analyze the possible impact of a new EU proposal if implemented. With this projected impact in mind, Part IV will evaluate whether the United States and the European Union should collaborate to address the issue, and if so, how they should collaborate and what would be the implications of doing so.

II. BACKGROUND ON U.S. AND EU APPROACHES

A. U.S. Approach

Despite heavy pressure from the three major U.S. carriers, the U.S. government initially did not take any substantive steps to satisfy their demands.⁶ Delta, American Airlines, and United Airlines argue that Emirates, Etihad Airways, and Qatar Airways are violating the Open Skies Agreements by receiving over \$39 billion in various forms of unfair government subsidies,⁷ a fact these Gulf carriers have denied.⁸ In the Partnership's main report ("White Paper"), which details their collective position and evidence, the airlines request, at a minimum, a renegotiation of the Open Skies Agreements at issue and, at most, a termination of the agreements if the demands are not met.⁹

Despite inaction by the government in the past, these major airlines were hopeful the Trump administration would be more willing to take action than the Obama administration,¹⁰ and these airlines' hopes were not misplaced.¹¹ In 2015, the Partnership asserted the Obama administration "acknowledged

⁶ *U.S. Airline CEOs Ask to Meet with Tillerson on Gulf Carriers*, REUTERS (Feb. 22, 2017), <http://www.reuters.com/article/us-usa-airlines-tillerson/u-s-airline-ceos-ask-to-meet-with-tillerson-on-gulf-carriers-idUSKBN15H2NK> [hereinafter *U.S. airline CEOs*].

⁷ *Restoring Open Skies: The Need to Address Subsidized Competition from State-Owned Airlines in Qatar and the UAE*, PARTNERSHIP FOR OPEN & FAIR SKIES 1, 54 (2015), <http://www.openandfairskies.com/wp-content/themes/custom/media/White.Paper.pdf> [hereinafter *White Paper*].

⁸ Bart Jansen, 'Outrageous': Emirates CEO Says Airline Isn't Subsidized, USA TODAY (June 30, 2015), <https://www.usatoday.com/story/news/2015/06/30/emirates-ceo-clark-persian-gulf-subsidies-dispute-aa-delta-united/29502997/>.

⁹ *White Paper*, *supra* note 7, at 54.

¹⁰ *U.S. Airlines CEOs*, *supra* note 6.

¹¹ Press Release, *Trump Administration Secures Agreement with the United Arab Emirates to Enforce Aviation Trade Agreement and Protect American Jobs*, PARTNERSHIP FOR OPEN & FAIR SKIES (May 14, 2018) (<http://www.openandfairskies.com/press-releases/trump-administration-secures-agreement-united-arab-emirates-enforce-aviation-trade-agreement-protect-american-jobs/>).

the trade distortions and unfair competition that state capitalism and state-owned enterprises (SOEs) are creating in other sectors of the U.S. economy,” but did not take steps to address these issues in the aviation sector.¹² The airlines had hoped this inaction would change in the current administration, since President Trump’s election campaign focused on taking action against countries exploiting U.S. trade deals.¹³ In 2018, the Trump administration did come to an agreement with both the United Arab Emirates and Qatar to address illegal subsidies.¹⁴ The Partnership viewed these agreements as successful, stating the UAE agreement “will protect American airline jobs and help enforce U.S. trade deals against unfair foreign business practices.”¹⁵

B. EU Approach

Between the United States and the European Union, the European Union was the first to respond to the demands of large airlines, seeking operable ways to address alleged unfair competition practices over the past two decades. In June 2017, the European Union proposed a regulation that ideally will provide an effective way for EU member states and their airlines to submit complaints to the European Commission concerning illegal subsidies benefiting non-EU airlines.¹⁶ This new proposal is in response to the CEOs of Lufthansa, Air France-KLM, Air France, KLM, Swiss International, Austrian, and Brussels airlines demand “for a revised and efficient defense instrument safeguarding fair competition in the European aviation market also vis-a-vis third-country carriers” in 2015.¹⁷

The proposal, which still requires approval by the European Parliament and EU member states before becoming law,¹⁸ lays out the guidelines for a new regulation, repealing the current one, Regulation (EC) No 868/2004.¹⁹ Regulation (EC) No 868/2004 was unsuccessful in addressing unfair subsidization and pricing practices in aviation because it was never applied.²⁰ In fact,

¹² *White Paper*, *supra* note 7, at 3.

¹³ *U.S. Airline CEOs*, *supra* note 6.

¹⁴ Press Release, *supra* note 11.

¹⁵ *Id.*

¹⁶ Julia Fioretti, *EU to Tackle Unfair Airline Competition with New Rules*, REUTERS (June 8, 2017), <https://www.reuters.com/article/us-eu-aviation/eu-to-tackle-unfair-airline-competition-with-new-rules-idUSKBN18Z1A0>.

¹⁷ Madhu Unnikrishnan & Jens Flottau, *Backing Up*, 177 AVIATION WEEK & SPACE TECH. 40, 40 (2015).

¹⁸ *Id.*

¹⁹ *Commission Proposal for Regulation of The European Parliament and of The Council on Safeguarding Competition in Air Transport, Repealing Regulation (EC) No 868/2004, COM (2017) 289 final* (June 8, 2017) [hereinafter *Commission Proposal*].

²⁰ *Id.* at 3.

“some of its features made it very unlikely that it ever be (concretely) applied.”²¹ The European Union derives its power to regulate airlines from Article 100(2) of the Treaty of the Functioning of the European Union, which allows “adoption of all appropriate provisions for air transport.”²²

There are a few possible reasons why the European Union was initially more responsive than the United States in addressing the allegations of unfair competition practices. First, on a theoretical level, perhaps the U.S. government originally decided taking the steps desired by the large airlines would be hypocritical, because U.S. airlines have received governmental benefits. In fact, Regulation (EC) No 868/2004 was the European Union’s reaction to the U.S. subsidization of airlines after September 11, 2001 and had the goal of providing protection to European airlines.²³ Additionally, the pro-competition U.S. Open Skies Agreements have been successful overall, giving the United States a “privileged place” in the aviation market.²⁴ Thus, the U.S. government may be concerned that the renegotiation or repeal of one of these Open Skies Agreements could threaten the stability of the policy on a grand scale. Perhaps it was because of this concern that the United States eventually addressed many of the Partnership’s demands through independent agreements with some of the Gulf states, instead of completely renegotiating the respective Open Skies Agreements.²⁵

III. PROJECTED IMPACT OF THE NEW PROPOSAL

In order to understand whether collaboration between the United States and the European Union would be desirable and ultimately successful, it is beneficial to first examine the projected success of the new proposal on the Gulf subsidization issue. This can be done by examining the differences between the failed, current Regulation (EC) No 868/2004 and the new regulation the proposal sets forth. Some of the main areas of concern are the high burden and availability of proof,²⁶ who has standing to institute a complaint,²⁷ as well as the way the current regulation is modeled conceptually.²⁸

First, one of the main reasons Regulation (EC) No 868/2004 has never been applied is because of the high burden of proof.²⁹ It is often, if not always, impossible for European Airlines to obtain sufficient evidence to file a complaint against a potential subsidization because of the Gulf carriers’ lack of

²¹ *Id.*

²² *Id.* at 5.

²³ Trimarchi, *supra* note 4, § 2.

²⁴ Warden, *supra* note 5, at 235-237.

²⁵ Press Release, *supra* note 11.

²⁶ Trimarchi, *supra* note 4, § 5.

²⁷ *Commission Proposal*, *supra* note 19, at 3.

²⁸ *Id.*

²⁹ Trimarchi, *supra* note 4, § 5.

transparency.³⁰ Under Regulation (EC) No 868/2004, the requirements to initiate a proceeding are “sufficient evidence of the existence of countervailable subsidies . . . or unfair pricing practices”³¹ However, under the new proposal, proceedings can be initiated upon evidence of either a violation of an international obligation or “a practice affecting competition, adopted by a third country or a third country entity” (injury and causation are also elements needed to prove this second factor).³² This language is broader than that used in past regulations, specifically using “practice affecting competition” and “international obligation” instead of “subsidies” or addressing pricing issues. This leads to the projection that this approach will cover a broader range of behavior as grounds for initiating a proceeding.

Additionally, the proposal itself addresses several other practical problems with the current regulation. For example, neither member states nor individual air carriers can become complainants in their own right under Regulation 868/2004.³³ Rather, the right to complain is only held by the “Community Industry,” which is defined in a complicated manner as “the Community air carriers supplying like air services as a whole or those of them whose collective share constitutes a major proportion of the total Community supply of those services.”³⁴ This restricted right to complain contributes to the regulation’s ineffectiveness, so the proposal gives both member states and individual member airlines the right to file a complaint with the Commission.³⁵ This expanded right to complain should encourage individual member airlines to institute actions against Gulf carriers, provided they have proof.

Finally, another fundamental area of concern with the current regulation is how it is modeled conceptually.³⁶ The proposal states that the main reason the regulation has been ineffective is that “insofar as it concerns ‘unfair pricing,’ it is conceptually modeled on tools used against the dumping of goods and is therefore not adapted to the specificities of the air transport sector.”³⁷ In other words, apart from just subsidization issues, under the current regulation, unfair pricing practices can only be found where a “carrier charges air fares which are sufficiently below those offered by competing Community air

³⁰ *Id.*

³¹ Commission Regulation 868/2004, art. 7, 2004 O.J. (L 162).

³² *Commission Proposal, supra* note 19, art. 3.

³³ *Id.*

³⁴ *Id.* (quoting Commission Regulation 868/2004, 2004 O.J. (L 162)).

³⁵ *Id.* (mandating that “[a]n investigation shall be initiated following a written complaint submitted by a Member State, a Union air carrier or an association of Union air carriers in accordance with paragraph 2, or on the Commission’s own initiative”).

³⁶ *Id.*

³⁷ *Id.* See also Philippe Ruttley, *Stormy Skies Ahead: The New EC Regulation Against Unfair Pricing in the Aviation Sector*, 11 (2) INT’L. TRADE L. & REG. 43 (2005) (discussing how Regulation 868/2004 uses regulatory techniques borrowed from anti-dumping and competition law and how a similar measure used in another transport sector was not successful).

carriers to cause injury,” evidence of which the proposal states is “hard to administer.”³⁸ The new regulation would take this into consideration—it does not use the term “unfair pricing” in Article 3, which sets forth requirements of initiating a complaint, as discussed above.³⁹ It is worthwhile to note that the issue of unfair pricing practices is a factor very much linked to subsidization, since an airline that receives some form of government subsidization can turn around and offer cheaper prices to consumers. Therefore, by taking this inadequacy into consideration in the proposal, the EU hopes to offer even more opportunity for member states and airlines to bring complaints against third country carriers to the European Commission, on the basis of either subsidization or unfair pricing practices.

Overall, the proposal itself acknowledges several problems with the current regulation and takes these issues into consideration in the proposed new regulation. Consequently, this regulation likely will be more effective if approved and implemented. However, as discussed above, one issue in the past was the ability to get concrete evidence of subsidies due to the lack of transparency in the countries at issue.⁴⁰ In fact, “many state-controlled carriers do not publish any financial data.”⁴¹ Thus, this might be one issue which a new regulation would not be able to address. At least one of the Gulf carriers, Emirates, which denies receiving any unfair subsidization, has gone on record to say it welcomes the European Commission’s new measure.⁴²

IV. COLLABORATION POSSIBILITY

Now this Note turns to analyze whether the European Union and United States are likely to address the issue of Gulf subsidization collaboratively based on the projected improvement by the proposal if passed, and how they could do so. Instinctively, this question arises since major airlines on each “side” seem to have the same stance on the issue. Thus, since these major airlines are pushing their respective governments to take action, it is natural to wonder if the United States and European Union would, or should, address the issue together.

In order to analyze the possibility and desirability of collaboration, it is crucial to look at the dynamics of the relationship between the European Union and the United States in the area of aviation. Due to tension about aviation

³⁸ *Commission Proposal*, *supra* note 19.

³⁹ *Id.* at art. 3.

⁴⁰ Trimarchi, *supra* note 4, § 5.

⁴¹ *AEA Response to the European Commission DG Trade Public Consultation on a Future Trade Policy*, ASSOCIATION OF EUROPEAN AIRLINES (2010), http://trade.ec.europa.eu/doclib/docs/2010/september/tradoc_146636.pdf.

⁴² Fioretti, *supra* note 3.

subsidization among the United States and the European Union⁴³, and the European Union's skepticism of the United States after the lopsidedness of the Open Skies Agreement,⁴⁴ it seems unlikely that the United States and the European Union will officially collaborate to address the issue of Gulf airline carrier subsidization. Rather, the European Union and its airlines will likely prefer to avoid any official collaboration with the United States and instead will use the proposal to bring complaints against any future U.S. subsidization.

The United States and European Union have had tension concerning subsidization in the aviation sector, both in the past and present.⁴⁵ This tension may make these two entities unlikely to join forces in addressing "third party" subsidization. As mentioned earlier, the original regulation, enacted in 2004, was the European Union's response to U.S. airline subsidization.⁴⁶ The events of September 11, 2001 led the United States (and other non-EU governments) to "support their national air carriers with subsidies, leading to the perception in the EC that European airlines faced unfair and anticompetitive practices."⁴⁷ While the contemporary focus has now switched to the issue of unfair governmental aid to Gulf airlines, the United States and the European Union still have this tense relationship when it comes to aviation subsidies, as evidenced by current events.

Recently, for example, the two entities accused each other of providing unfair government aid to the aviation sector, and these allegations resulted in both the United States and the European Union bringing WTO claims against each other.⁴⁸ In 2011, the WTO decided in favor of the United States in a case brought against the European Union in which the United States argued the European Union unfairly subsidized Airbus.⁴⁹ Then again in 2012, the United States brought another case arguing the European Union did not take affirm-

⁴³ Trimarchi, *supra* note 4, § 2.

⁴⁴ Christain Westra, Note, *The April 2007 U.S. EU "Open Skies" Agreement: A Dream of Liberalization Deferred*, 32 B. C. INT'L & COMP. L. REV. 161, 171-72 (2009).

⁴⁵ Gabriel S. Sanchez, *In Defense of Incrementalism for International Aviation Emissions Regulations*, 53 VA. J. INT'L L. DIG 1, 5 (2012) (discussing the "historic tensions between the U.S. and EU on aircraft subsidization").

⁴⁶ Trimarchi, *supra* note 4, § 2.

⁴⁷ Philippe Ruttley, *Stormy Skies Ahead: The New EC Regulation Against Unfair Pricing in the Aviation Sector*, 11 (2) INT. TRADE L. & REG. 43 (2005).

⁴⁸ Press Release, Office of the United States Trade Representative, WTO Appellate Body Rejects EU Allegations of Prohibited Subsidies to Boeing in Latest Win for the United States, WTO Appellate Body Rejects EU Prohibited Subsidy Case (Sept. 4 2017) [hereinafter *U.S. Press Release*].

⁴⁹ Press Release, Office of the United States Trade Representative, WTO Panel Rejects EU Claims Alleging WTO-Inconsistent U.S. Subsidies for Boeing (June 9, 2017).

ative action to remedy the unfair subsidies, as required by the 2011 WTO ruling.⁵⁰ A WTO compliance panel agreed with the United States in a 2016 decision.⁵¹ On the other side, the European Union has filed two WTO cases alleging U.S. subsidization of Boeing, one of the largest commercial airline companies in the United States.⁵² The latest case was filed in 2014.⁵³ In September 2017, the WTO Appellate Body rejected the European Union's argument that certain Washington State subsidies to Boeing were prohibited.⁵⁴

Comparing the two press releases, the European Union's disdain for this most recent decision is clearly evident, and the United States' approval of the ruling is clear in their response.⁵⁵ In fact, the United States used its press release as an opportunity to state the European Union is the one that is really guilty of prohibited subsidies.⁵⁶ The United States' press release brushes off the European Union's challenges as meritless.⁵⁷ With a similar dejected tone, the European Union does not miss the chance in its press release to indicate that the additional prohibited subsidies case they brought against the United States is still pending, while also highlighting the fact that the European Union is also appealing the Airbus case (*i.e.*, the 2016 WTO decision).⁵⁸

Of course, this trade subsidization conflict is in a different context—commercial airplane *producers*, rather than the airlines themselves, are the ones who have allegedly received aid.⁵⁹ Still, this conflict represents the relationship between the United States and the European Union concerning airline subsidization. This strong animosity suggests these governmental entities may

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *U.S. Press Release, supra* note 48.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *See id.* (stating that the Appellate Body report gave the “United States a complete victory in this dispute”); European Commission Press Release, WTO Reverses “Prohibited” Subsidies Ruling, EU Calls on US to Respect Obligations as Main Dispute Continues (Sept. 4, 2017) (“The EU disagrees with the Appellate Body assessment of the scheme.”).

⁵⁶ *See U.S. Press Release, supra* note 48 (quoting U.S. Trade Representative as saying “European governments have provided billions of dollars in illegal subsidies to Airbus for years, yet they have tried and failed to create a false equivalence with the United States and Boeing”).

⁵⁷ *Id.*

⁵⁸ European Commission Press Release, *supra* note 55; Jim Tankersley, *WTO Rules Europe Illegal Subsidized Airlines, Handing Victory to Obama Administration Ahead of Trade Fight*, WASH. POST (Sept. 22, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/09/22/wto-rules-europe-illegally-subsidized-airlines-handing-victory-to-obama-administration-ahead-of-trade-fight/?noredirect=on&utm_term=.c5035ebcdef6 (discussing how the WTO ruled in 2016 that the EU failed to end illegal subsidies for Airbus “in what has become the most expensive dispute in international trade history”).

⁵⁹ *See generally* JOHN NEWHOUSE, *BOEING VERSUS AIRBUS: THE INSIDE STORY OF THE GREATEST INTERNATIONAL COMPETITION IN BUSINESS* (2008).

not be willing to address the issue collaboratively, despite many of their respective airlines' alignment on the issue of Gulf subsidization.

Both this animosity and the proposal give insight as to why the United States and the European Union will not likely work together on the Gulf subsidy issue. While there is underlying hostility, currently the European Union is not actively accusing U.S. airlines of subsidization. However, this does not foreclose the possibility of future accusations. Since the new, improved proposal aims to allow member states to successfully bring complaints against non-member states, the European Union might very well intend to use this procedure to bring complaints about the United States in the future. Thus, based on this subsidization animosity between the two, it seems unlikely that the governmental entities will formally work together to address unfair aid by another third party government such as the UAE or Qatar.

Additionally, the one-sidedness of the U.S.-EU Open Skies Agreement⁶⁰ may influence the European Union's desire to officially collaborate with the United States on another issue of aviation, even if this sentiment is not expressly stated by the European Union. In other words, the European Union might not be willing to officially collaborate with the United States to address Gulf subsidization because of the unfavorable outcome of prior aviation collaboration. While there is no doubt the Agreement was a financial success for both parties involved, "there is little question that the U.S.- EU Open Skies Agreement favors the United States."⁶¹ While U.S. carriers have the right to fly routes within Europe, the Agreement does not give EU carriers the right to fly within the United States.⁶² In fact, in negotiations during the first phase, the European Union ended up conceding many of their demands.⁶³ Thus, this inability to collaborate to the advantage of both sides may make the European Union unwilling to collaborate again without a drastic need.

Overall, it seems the European Union essentially entered into the Agreement out of necessity. Ultimately, projected financial benefits of between \$9 billion and \$17 billion helped persuade the European Union to give up certain demands, as well as the projected job growth after ratification of the Agreement.⁶⁴ Furthermore, after the bilateral Open Skies Agreements between individual EU member states and the United States had been essentially invalidated by the European Court of Justice, there was a risk there would not be a governing aviation agreement between the United States and European Union member nations if a new, all-encompassing Open Skies Agreement was not

⁶⁰ Christain Westra, Note, *The April 2007 U.S. EU "Open Skies" Agreement: A Dream of Liberalization Deferred*, 32 B.C. INT'L & COMP. L. REV. 161, 171 (2009).

⁶¹ *Id.*

⁶² *Id.* at 171-72.

⁶³ *Id.* at 172.

⁶⁴ *Id.* at 174.

passed.⁶⁵ This made the need for an overall EU agreement with the United States even more essential, since failure to agree could unravel “the entire transatlantic aviation order.”⁶⁶

Thus, the driving force in U.S.-EU collaboration in Open Skies was necessity. In the area of Gulf subsidization, the financial benefits to the European Union as a result of collaboration with the United States are not as substantial, nor is there as strong a sense of urgency. Therefore, the European Union might be less persuaded to collaborate with the United States, since collaboration is not actually necessary, especially if the proposal is passed. While the Gulf subsidies are alleged to impact both the United States and the European Union,⁶⁷ they are not as impactful as the situation that necessitated the EU-U.S. Open Skies Agreement.

Up to this point, this Note has focused on the issue of collaboration from the European Union’s perspective rather than from the United States’ perspective. This is because the European Union would be most likely to initiate any collaboration since they have traditionally been the most proactive in taking action against the Gulf subsidies.⁶⁸ Even though the Trump administration has taken some action against the alleged subsidies, they did not address any collaboration with the European Union.⁶⁹ This is mainly because the European Union and the United States have had a “complicated” relationship during the current administration so far.⁷⁰ This stressed relationship is further complicated by the Boeing-Airbus subsidization issue discussed above; this added tension makes official collaboration unlikely.⁷¹

V. INFORMAL MEANS OF COLLABORATION

Despite the prediction that official collaboration is unlikely, there are some less formal strategies each party should adopt or continue, which could be beneficial to the financial interests of both U.S. and EU airlines.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ See generally *White Paper*, *supra* note 7.

⁶⁸ Fioretti, *supra* note 3.

⁶⁹ Press Release, *supra* note 11. When the administration initially did not take any action, there was pressure for them to do so. Three hundred members of Congress called on the White House to address the alleged violations of Open Skies Agreements by Qatar Airways, Etihad Airways and Emirates; Melanie Zanona, *Majority of Lawmakers Call on Trump to Crack Down on Gulf Air Carriers*, THE HILL (Oct. 27, 2017), <http://thehill.com/policy/transportation/357517-majority-of-lawmakers-want-trump-to-crack-down-on-gulf-air-carriers>.

⁷⁰ Iwaylo Iaydjiev & Lukas Lausen, *An Exchange of People and Ideas Can Help Repair EU-US Relations*, NEWSTATSMAN AMERICA (June 7, 2017), <https://www.newstatesman.com/2017/06/exchange-people-and-ideas-can-help-repair-eu-us-relations>.

⁷¹ *U.S. Press Release*, *supra* note 48.

For starters, during the U.S.-EU Joint Committee Meetings (meetings that are part of the Open Skies Agreement), the parties should keep each other informed on negotiations with the Gulf states related to the subsidization issue, as well as on the state of the proposal.⁷² At the 2016 meeting, the delegations exchanged information on their ongoing negotiations with Qatar and the UAE.⁷³ Additionally, the European Union updated the United States on their effort to address Regulation 868/2004.⁷⁴ By keeping each other informed, the European Union and United States can be aware of ongoing negotiations and both can tailor their strategies accordingly.

Furthermore, keeping each other informed will be especially helpful since the United States is trying to approach the issue of Gulf subsidization by securing “voluntary commitments on best practices in the areas of transparency and moving towards financing in commercial terms.”⁷⁵ These “informal” discussions (i.e., not “consultations” requested pursuant to the relevant provisions of the Open Skies Agreements)⁷⁶ appear to be the most action the United States will currently take to collaborate.

If both the United States and the European Union are aware of how negotiations are proceeding, such as what has or has not been successful in securing voluntary commitments from the respective Gulf states, then the process will be expedited. This expedited process is an express goal of the United States and likely a goal of the European Union as well.⁷⁷ The European Union uses information about the negotiations and how the United States’ Open Skies Agreement has or has not worked to plan its strategy for agreement with the UAE and Qatar.⁷⁸ This agreement would be ideal, especially if the proposal is not as successful as expected once implemented. This is because, with an agreement similar to the U.S. Open Skies Agreement, the European Union would have an additional ground by which to address Gulf airline subsidization.⁷⁹ Thus, while formal collaboration between the European Union and the United States will likely not occur, this informal collaboration may be beneficial to both parties.

⁷² Nineteenth Meeting of the U.S.-EU Joint Committee, Record of Meeting, 18-19, (Nov. 16, 2016), <https://www.state.gov/e/eb/rls/othr/ata/e/eu/271408.htm>.

⁷³ *Id.*

⁷⁴ *Id.* at para. 22.

⁷⁵ *Id.* at para. 19.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ See Air Transport Agreement, U.S.-EU, art. 14, April 30, 2007, 46 I.L.M. 470 (setting forth the procedure for addressing claims if unfair government support is suspected by a party to the Agreement).

VI. CONCLUSION

Overall, the issue of airline subsidization is filled with allegations on all sides. While the U.S. government, for better or for worse, was not quick to take substantive action on the issue, the European Union has responded with the proposal for a new regulation to replace the unused Regulation (EC) No. 868/2004. This proposal, which addresses and fixes several of the problems with the current regulation, should be more successful if implemented.

The proposal's projected success is one of the reasons the European Union might avoid collaboration with the United States, since the European Union may want to bring a complaint against the United States in the future. Additionally, the likelihood of formal collaboration is lessened by the strained relationship between the United States and the European Union concerning aviation subsidies, as illustrated by the WTO cases concerning alleged trade subsidization in the aviation sector. Furthermore, the European Union's inability to receive their demands in the negotiations of the Open Skies Agreement may also decrease the likelihood they will want to work with the United States in the future absent a strong necessity.

Despite the low probability of official collaboration, the European Union and the United States would benefit from informal collaboration. Going forward, during the U.S.-EU Joint Committee Meetings, each party should continue to keep the other up-to-date on negotiations taking place with the Gulf states related to the subsidization issue.