

# *The Bigger Perspective (Part 3)*

**I** know you have all heard the phrase, “low hanging fruit.” This article is going to redefine the term. In preparing for this entire series of articles, I have experienced some real highs and lows. I am, of course, thrilled with the fact that the manufacturers are experiencing the longest sustained 24+ month backlog, and I have been thrilled that a large percentage of orders are coming from other countries besides the United States.

Rather than have the US be the only defining economy, I have always felt that having other economies support the market could take some of the demand lows out of our world. Maybe this will create a more sustainable, even market, but I have been concerned that this large segment of inventory would not have the maintenance or storage care that we in the US demand for our fleet.

The research I did for the preceding article (Part 2) helped me dispel many of those concerns for many destination countries. In fact, all the major manufactures are taking terrific leadership roles in helping most of these emerging business aviation countries build and strengthen their respective maintenance infrastructures.

So what will be the new definition of “low hanging fruit?” The phrase will now refer to the aircraft that did not get sold to a country outside of the United States!

Before I explain the new definition, let me be very clear. For years, people have been buying aircraft that have been registered in other countries, then importing them to the US - and very successfully, I might add. This is not a totally new concept. We have, however, never had such a high percentage of the new fleet sold out of this country, ever! Especially to third world countries.

This means that all the trials, tribulations and philosophies of importing will be multiplied ten fold if we are to contemplate importing such a large segment of the newly manufactured fleet back into the United States.

First, the segment that is being delivered directly to other countries will be culled by looking specifically at the country to which the aircraft is delivered and in which the aircraft is operated. With respect to maintenance

and storage as well as record keeping, some countries will be up to speed more quickly than others. So, a percentage of the fleet may be eliminated by that measure for consideration when reviewing the available fleet for purchase by a client in the US.

Will the traditional key factors be met for our clients? Will the logs be in English and the records be maintained with the considerations needed for operation in our country? There are so many things that will need to be consistent with our operational requirements. Those criteria for consideration are only the tip of the concerns that I have after discussing this with many of the finest, most respected aviation attorneys in the United States.

What will be our greatest leap? The contracting phase of the purchase. What is usual and customary in our world of contracting is not at all what is currently usual and customary in most other countries. Who will budge?

One of the biggest and most significant differences in this usual and customary philosophy is very strong indemnities and hold harmless clauses demanded by sellers in other countries. I, of course, want to be clear that as an aviation broker, this reporting is third hand. Please consult your individual aviation attorney for specific deal-by-deal considerations.

In the meantime, let me explain, in layman’s terms, what I mean by the indemnities and hold harmless language. In the US, when we accept an aircraft at purchase in an as-is condition, we are not specifically indemnifying or holding harmless the seller for misrepresentation or condition of the aircraft based on his or her prior ownership. Furthermore, we are not limited from suing or having our insurance companies sue the seller for these pre-existing conditions.

This is not the case when entering into a contract with most foreign sellers. They have a specific requirement that elevates them from any future litigation. They, in many cases, will also require to be named as an additional insured on the buyer’s insurance for some two to three years after purchase - very onerous by our standards. In fact, you may find that if you enter into an agreement that has these stipulations, your insurance company will waive coverage in part or in total.

Unfortunately, the insurance companies do not look at Purchase and Sale agreements, so you may not even know you have a coverage issue until you need the coverage!

Another interesting item is that in most cases, the owner of a foreign registered aircraft will demand that their attorney prepare the contract as opposed to the buyer usually providing the first draft. That is not the biggest problem, but it is not what we consider usual and customary in this country.

I have not even mentioned the practical differences in buying aircraft from other countries, as in having to travel great distances to see the plane and having to be tasked with inspecting in other countries, and the increased costs that go along with both. So now who budgets will depend on the attractiveness of the deal. If there are not absolutely compelling reasons to buy a plane in other countries, most people will not accommodate these practices and pass all together on these aircraft.

So, a broader base of ownership may help our market economies. Our universe of available aircraft for consideration may in fact be smaller. Of course, there may be foreign sellers who will contemplate hiring US brokers to sell their planes, US attorneys to help facilitate the contracting and allow the planes to be moved to the US for viewings and inspecting.

I suspect that we will all learn compromise in process over the years. In the meantime, most US buyers will grab the low hanging fruit of available aircraft based and operated in the United States.

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