

1/20/95

P R O T O C O L

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA
 AND
 THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES
 AMENDING AND SUPPLEMENTING THE 1982 AIR-TRANSPORT AGREEMENT
 BETWEEN
 THE GOVERNMENT OF THE UNITED STATES OF AMERICA
 AND
 THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

The Government of the United States of America and the Government of the Republic of the Philippines, hereinafter the Parties;

Desiring to facilitate international air transport opportunities;

Referring to discussions held by representatives of the Parties on October 31-November 2, 1994, January 25-27, 1995, April 25-27, 1995, and September 13-18, 1995, concerning the Air Transport Agreement between the United States and the Philippines, effected by exchange of notes dated September 16, 1982, as amended (the Agreement), and the Memorandum of Understanding amending the Agreement, effected by exchange of notes dated April 24, 1989;

Desiring to amend the agreement and to effect the understandings reached in those discussions as a foundation for the future development of the civil aviation relationship between their two countries;

HAVE AGREED AS FOLLOWS:

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I. Amendments to the Agreement

1. Article 3, (designation and authorization), paragraph (1) and footnote 1 of the Agreement shall be amended as follows:

"(1) Consistent with its domestic laws and policies, each Party shall have the right: (a) to designate up to three airlines to perform scheduled combination service on Route 2 of Annex I; (b) to designate up to three airlines to perform all-cargo services on Route 3 of Annex I; (c) to designate one airline to perform both combination services on Route 1 a and all-cargo services on Route 1 b of Annex I; and (d) to withdraw 1/or alter 1/such designations. Such designations shall be transmitted to the other Party through diplomatic channels.

An airline must hold separate designations to operate combination services on Route 2 and all-cargo services on Route 3 of Annex I. Only one designation will be required for carriers providing all-cargo and combination services on Route 2.

1/ It is agreed that any U.S. airline designated on Route 1 of Annex I shall be a Pacific regional airline which does not operate scheduled combination air service between Saipan, Palau, or Guam, on the one hand, and nonstop to Hawaii and/or the U.S. mainland on the other.

2. Paragraph (3), sub-paragraph (b) (i) of Article 8 of the Agreement shall be amended as follows:

"(b) (i) Designated airlines of the United States shall be permitted to perform ground handling service for any U.S. flag airline, and up to a total of six non-U.S. airlines. Any ground handling of non-U.S. airlines performed at Subic Bay by U.S. designated airlines shall not count against these limitations."

3. Paragraph (3), sub-paragraph (b) (ii) of Article 8 of the Agreement shall be amended as follows:

"(b) (ii) Designated airlines of the Philippines shall be permitted to perform ground handling services for any Philippine flag airline, and up to a total of six non-Philippine airlines.2/

2/ Limitations may be imposed by local airport authorities in the United States that restrict the right of the designated airline(s) of the Philippines to perform such ground-handling services."

4. A new paragraph 6 (code sharing) shall be added to Article 8 (commercial opportunities) of the Agreement and shall read as follows:

"6. In operating or holding out the authorized services on the agreed routes, any designated airline holding appropriate authority to provide such service, may, subject to the requirements normally applied to such arrangements, enter into cooperative marketing arrangements such as blocked-space, code-sharing or leasing arrangements with a designated airline or airlines of either Party which also holds appropriate authority to provide such services."

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5. Subparagraph 1 of Annex I, Section 1, Subsections a and b of the Agreement shall be amended and new footnote 9 shall be added to Annex I as follows:

"1(a) From Saipan and Guam via the intermediate point Palau to the Philippines and return. 9/"

"9/ For combination service only."

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"1(b) From Saipan and Guam via the intermediate point Palau to the Philippines and beyond. 4/"

"1(a) From the Philippines via the intermediate point Palau to Saipan and Guam and return. 9/"

"1(b) From the Philippines via the intermediate point Palau to Guam and Saipan and beyond. 4/"

6. Annex I, Section 1, Subsection b, paragraph 2 and footnote 6 of Annex I are amended as follows:

"2. From the Philippines via intermediate points to Honolulu, San Francisco, Los Angeles, Guam, Saipan, and four additional points 6/in the United States to be selected by the Government of the Philippines; and beyond to five countries, to be selected 7/ by the Government of the Philippines;"

"6/ These four points will be selected by the Government of the Philippines 60 days in advance of proposed services. These points may be changed by the Government of the Philippines by providing 60 days notice." Stopover rights are permitted at Los Angeles, Guam, Saipan, Honolulu, San Francisco, and the points selected by the Republic of the Philippines pursuant to paragraphs 2 and 2 bis.

2 bis"

(a) From October 1, 1996, airlines designated by the Government of the Philippines may serve up to an additional eight U.S. points provided a stop is first made at one of the points referred to in paragraph (2) above, or provided the point(s) are served only on a code share basis;

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(b) From October 1, 1996, airlines designated by the Government of the Philippines may serve up to an additional four U.S. points provided the points are served only on a code share basis;

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(c) From October 1, 1998, airlines designated by the Government of the Philippines may serve up to an additional eight U.S. points provided a stop is first made at one of the points referred to in paragraph (2) above, or provided the point(s) are served only on a code share basis; and

(d) From October 1, 1998, airlines designated by the Government of the Philippines may serve up to an additional four U.S. points provided the points are served only on a code share basis."

7. Annex I, Section 1, Subsection b, paragraph 3 of the Agreement is amended as follows:

"3. From the Philippines via intermediate points to the United States and beyond. 8/"

8. Section 3 (change-of-gauge) shall be added to Annex I of the Agreement and shall read as follows:

"Section 3

a. For all-cargo services, on any segment or segments of Route 1(b) and Route 3, any designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that, in the outbound direction, the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point.

b. For combination services, the designated airlines of either side may change gauge in third countries, on an authorized route, provided:

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i. For flights outbound from the homeland, onward transportation from the point of change of gauge is performed by a single flight having the same flight number with an aircraft having a capacity not more than the aircraft arriving at the change of gauge point;

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ii. For flights inbound to the homeland, transportation to the point of change of gauge is performed by a single flight with an aircraft having a capacity not more than the aircraft performing onward transportation from the point of change of gauge; and

iii. Such onward transportation is a continuation of the transportation from or to the homeland of the airline."

9. Section 4 (Intermodal Services) shall be added to Annex I of the Agreement and shall read as follows:

"Section 4

Notwithstanding any other provision of this Agreement, airlines of both Parties shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for cargo to or from any points in the territories of the Parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, or through arrangements with surface transportation operated by other airlines and indirect providers of cargo air transportation. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation."

10. An Annex III (Charter Air Services) shall be added to the Agreement and shall read as follows:

"Annex III

Charter Air Services

Section 1

Airlines of each Party authorized by the appropriate aviation authorities to perform services authorized under this Annex shall have the right to carry international charter traffic of passengers (and their accompanying baggage) and/or cargo (including, but not limited to freight forwarder, split, and combination (passenger/cargo) charters):

Between any point or points in the territory of the Party that has authorized the airline and any point or points in the territory of the other Party; and

Between any point or points in the territory of the other Party and any point or points in a third country or countries, provided that such traffic is carried via the carrier's homeland and makes a stopover in the homeland for at least two consecutive nights.

In the performance of services covered by this Annex, airlines of one Party authorized under this annex shall also have the right: (1) to make stopovers at any points whether within or outside of the territory of either Party; (2) to carry transit traffic through the other Party's territory; and (3) to combine on the same aircraft traffic originating in one Party's territory with traffic that originated in the other Party's territory.

Each Party shall extend favorable consideration to applications by airlines of the other Party to carry traffic not covered by this Annex on the basis of comity and reciprocity.

Section 2

With regard to traffic originating in the territory of either Party, each airline performing air transportation under this Annex shall comply with such laws, regulations and rules of the party in whose territory the traffic originates, whether on a one-way or roundtrip basis, as that Party now or hereafter specifies shall be applicable to such transportation. In addition, authorized airlines of one Party may also operate charters with traffic originating in the territory of the other Party in compliance with the laws, regulations and rules of the first Party. When such regulations or rules of one Party apply more restrictive terms, conditions or limitations to one or more of its airlines, the authorized airlines of the other Party shall be subject to the least restrictive of such terms, conditions or limitations. Moreover, if the aeronautical authorities of either Party promulgate regulations or rules which apply different conditions to different countries, each Party shall apply the least restrictive regulation or rule to the authorized airlines of the other Party.

However, nothing contained in the above paragraph shall limit the rights of either Party to require airlines authorized under this Annex by either Party to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights.

Section 3

Except with respect to the consumer protection rules referred to in the preceding paragraph, neither Party shall require an airline authorized under this Annex by the other Party, in respect of the carriage of traffic from the territory of that other Party on a one-way or round-trip basis, to submit more than a declaration of conformity with the applicable laws, regulations and rules referred to under Section 2 of this Annex or of a waiver of these laws, regulations, or rules granted by the applicable aeronautical authorities."

11. Texts reproduced for ease of reference

a. Pricing

to
The text of Article 12 of the Air Transport Agreement (pricing), as amended by the Memorandum of Consultation of July 9, 1982, and which entered into force on September 16, 1982, is reproduced below:

"Article 12 Pricing

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"(1) Subject to the provisions of this Article, each Party shall allow prices for air transportation to be established by each designated airline based upon commercial considerations in the marketplace. Neither Party shall take unilateral action to prevent the inauguration or continuation of any price proposed or charged by the airlines of either Party for international air transportation between the territories of the Parties unless such action is in accordance with the provisions of this Article. Intervention by the Parties shall be limited to:

- (a) Protection of consumers from discriminatory prices or practices or prices that are unreasonably high or restrictive due to the abuse of a dominant position; and

(b) Protection of airlines from predatory prices that are artificially low or uneconomic.

"(2) Each Party may require prior notification to or filing with its aeronautical authorities of prices proposed to be charged by airlines of the other Party to or from its territory. Notification or filing by the airlines of both Parties may be required no more than 60 days before the proposed date of effectiveness. In individual cases, notification or filings may be permitted on shorter notice than normally required.

"(3) (a) If either Party is dissatisfied with any price proposed or charged by an airline of the other Party for international air transportation between the territories of the Parties, it shall notify the other Party of the reasons for its dissatisfaction. In the case of a proposed price, such notice of dissatisfaction shall be given to the other Party within 30 days of receiving the notification or filing of the price. If the Party presenting a notice of dissatisfaction does not request consultations, the price shall go into effect as filed unless a Party disapproves such a price pursuant to its rights under paragraph 6(b) of this Article. If the notifying Party requests consultations, such consultations shall be held as soon as possible, and in no event later than 30 days after receipt of the request. If the notified Party fails to agree to consult within the prescribed time frame, the dissatisfied Party has the right to defer the implementation of the proposed price.

(b) If a Party is dissatisfied with any price proposed or charged by an airline of the other Party for international air transportation between the territory of the first Party and a third country, it shall notify the other Party of the reasons for its dissatisfaction within 30 days of receiving notification of filing of the price. In this particular case, the notifying Party may unilaterally disapprove the price proposed or charged by the airline of the other Party. However, with respect to matters arising pursuant to the provisions of paragraph 5(b) of this Article, either Party may request consultations which shall be held as soon as possible, and in no event later than 30 days after receipt of the request.

(c) If either Party is dissatisfied with any price proposed or charged by an airline of a third country for international air transportation between the territories of the Parties, it shall notify the other Party of the reasons for the dissatisfaction within 30 days of receiving notification or filing of the price. In the case of proposed price leadership by a third party airline, the notifying Party may unilaterally disapprove the price proposed or charged by the third country airline.

"(4) The consultations referred to in this Article may be formal or informal, and may be effected through a telephonic exchange of views between the two Parties (later confirmed in a written communication) or by a written exchange of views transmitted by letter, cable, telegram, diplomatic note or other written means. If the parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Party shall promptly carry out the terms of that agreement. If the Parties fail to reach such agreement, the price shall go into effect unless a Party disapproves such price pursuant to its route rights under paragraph 6(b) of this Article.

"(5) Each party shall allow:

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(a) Any airline of either Party to meet a more competitive price proposed or charged in the marketplace for international air transportation between the territories of the Parties;

(b) Any airline of one Party to meet a lower or more competitive price proposed or charged in the marketplace for international air transportation between the territory of the other Party and a third country; and

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(c) Any airline of a third country to meet a lower or more competitive price proposed or charged in the marketplace for international air transportation between the territories of the Parties provided that the third country has granted reciprocal rights to the airlines of both Parties.

"As used in this Article, the term "meet" means the right to establish on a timely basis, using such expedited procedures as may be necessary, an identical or similar price on a direct, interline or intra-line basis, notwithstanding differences relating to distance, routing, roundtrip requirements, connections, type or conditions of service including aircraft configuration or type, or such price through a combination of prices.

"(6) With respect to unilateral action by a Party to prevent the inauguration or continuation of any passenger price proposed or charged by airlines of either Party for international air transportation between the territories of the Parties:

(a) Neither Party may take such action if the price is equal to or greater than 80 percent of the appropriate index fare level as defined in Annex II;

(b) Either Party may take such action provided that the price is less than 80 percent of the appropriate index fare level, but only with respect to traffic for which the first point on the itinerary (as evidenced by the document authorizing transportation by air) is in its own territory.

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"(7) Neither Party may take unilateral action to prevent the inauguration or continuation of a cargo price proposed or charged by an airline of either Party for transportation between the territories of the Parties."

b. Aviation Security

The text of Article 7 (Aviation Security), as amended by the exchange of notes dated May 29, 1987, and January 13, 1988, is reproduced below:

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"Article 7 Aviation Security

"(1) In accordance with their rights and obligations under international law, the Parties reaffirm that their obligation to protect, in their mutual relationship, the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement.