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Dec. 6, 2007
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MEMORANDUM OF CONSULTATIONS

Delegations representing the Governments of the Federative Republic of Brazil and the United States of America met on December 5 and 6, 2007, in Rio de Janeiro to discuss various issues related to the March 21, 1989 Air Transport Agreement between the Federative Republic of Brazil and the United States of America, as amended. The consultations took place in the cordial atmosphere that characterizes relations between the two nations. Delegation lists are included as Attachments A and B.

The following topics constituted the working agenda: frequencies, designations, route expansion, code sharing, tariffs, transit visas and doing business issues.

The U.S. Delegation emphasized its interest in adopting an open skies agreement and the Brazilian Delegation replied that this was not yet the appropriate moment to discuss the question.

The two delegations then discussed the potential liberalization of frequencies, designations, routes, tariffs, and code sharing with airlines of third countries.

The Brazilian Delegation proposed to liberalize existing rights regarding capacity, designations, route schedules and code sharing, and tariffs. The texts of these proposals are in Attachments C, D, E, and F respectively. The U.S. Delegation proposed a provision on intermodal rights (Attachment G).

After carefully examining the Brazilian proposals, the U.S. Delegation stated its preference for another meeting in the near future in order to achieve a more broad-based expansion of the aviation relationship between the two countries. The Brazilian Delegation expressed its interest in particular in achieving its route schedule proposal to address what is, in its view, an imbalance in traffic access.

The Brazilian Delegation expressed concerns about the current procedures regarding transit visas for travel through the United States. In this context, it mentioned, in particular, concerns regarding lengthy processing periods. This situation has, in the Brazilian view, already had a negative impact on passengers travel from Brazil to the Asia-Pacific region on Brazilian carriers. The Brazilian Delegation therefore requested that the U.S. Delegation convey these concerns to the appropriate authorities of the U.S. Government with the request that they examine means to address these issues.

The United States Delegation provided information about initiatives that have been undertaken to facilitate and expedite visa issuance to qualified Brazilian applicants, and assured that it would bring Brazilian concerns to the attention of appropriate U.S. authorities.

The U.S. Delegation requested ANAC's assistance regarding the application of the exemptions provided for in Article 9 (Customs Duties and Taxes) in Brazil. A number of U.S. carriers report difficulties convincing Brazilian authorities to recognize those exemptions. Therefore, the U.S. Delegation, noting that Brazilian carriers enjoy these


exemptions in the United States, asked that ANAC bring this concern to the attention of the relevant authorities in Brazil.

The U.S. Delegation also expressed concerns regarding the high cost to airlines of doing business in Brazil, including the introduction of the ATAERO tax. The U.S. Delegation acknowledged Brazil's authority to charge for services provided, but noted the particular importance of a transparent process for setting charges, including consultations between the competent charging authorities and airlines, consistent with the Agreement.

The Brazilian Delegation stated that the mentioned duties and charges are imposed on a non-discriminatory basis and that the competent Brazilian authorities are ready to provide any clarification that is considered necessary. The Brazilian Delegation promised to convey the concerns of the U.S. Delegation to the appropriate authorities.

The Delegations expressed their mutual intent to meet before the end of 2008.

For the Delegation of the Federative
Republic of Brazil



Eliezer Negri
Head of Delegation

For the Delegation of the United
States of America



Terri L. Robl
Head of Delegation

Rio de Janeiro, December 6, 2007.

BRAZILIAN DELEGATION

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International Relations Superintendent, National Civil Aviation Agency
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Mr. Luciano Ghelardi
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U.S.A DELEGATION

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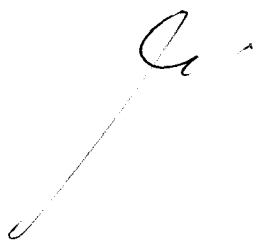
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MR. DAN WEISS
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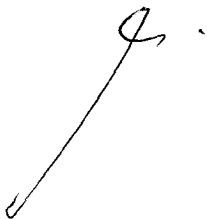
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PROPOSAL
Section III – Capacity

- (1) Each airline will file schedules with the aeronautical authorities of the other Contracting Party at least 45 days in advance of the proposed effective date of the schedule. Such schedules will become effective on the proposed effective date, provided they conform to the terms of this Annex. Schedules may be filed less than 45 days in advance with respect to changes such as changes in the day or hour of operations, short-term changes of equipment type for operational reasons changes in itinerary on authorized routes and capacity and equipment substitution changes that do not exceed the airline's authorized capacity levels the airline shall notify the aeronautical authorities of the other Contracting Party in advance of the change but no approval or special permissions shall be required.
- (2) The designated airlines of each Contracting Party may operate combination services over the routes specified in Section I of this Annex as follows:
 - ~~a. Effective April 1, 1997, ninety-eight (98) frequencies per week.~~
 - ~~b. Effective October 1, 1998~~ a. one hundred and five (105) frequencies per week.
 - b. Additionally, twenty-one (21) frequencies per week only to/from airports in the North, Northeast or Mid-west regions of Brazil, limited to 3rd and 4th traffic rights.
- (3) The designated airline(s) of each Contracting Party may operate twenty-four (24) all-cargo frequencies per week between the United States and Brazil.
- (4) For the all-cargo services the number of flights are expressed as units representing wide-body freighters. One or more freighters may be substituted by narrow-body freighters in ratio of two (2) narrow-body frequencies equal one (1) wide-body frequency.
- (5) Each Contracting Party will grant approval of applications for extra-section combination flights by the airlines of the other Contracting Party in addition to the frequencies authorized in paragraphs 2 and 3 of this section, to meet peak-season passenger traffic demand. The peak-season periods are considered the periods June 15 through August 15 and December 15 through February 28.
- (6) Each Contracting Party will grant approval of applications for extra-section all-cargo flights by the airlines of the other Contracting Party, in addition to the frequencies authorized in paragraphs 2 and 3 of this section, to meet periods of peak or unusual cargo demand.
- (7) Each Contracting Party may allocate or redistribute the authorized quotas of all-cargo and combination frequencies at its discretion, with the understanding that if any of its designated airlines suspends services, either temporarily or permanently, the Contracting Party may reallocate those quotas to its other airlines. Frequencies of airlines performing combination services may be transferred only to other designated airlines performing combination services. All-cargo frequencies may be transferred only as all-cargo frequencies to any of the airlines designated under this Annex, not with standing the terms of its designation.
- (8) For purposes of this section code-share services shall be counted as follows: airlines of either Contracting Party offering services by placing their code on an aircraft operated by a designated airline of either Contracting Party shall not be counted against any frequency limitation state in this section.

PROPOSAL

Section II – Designation

- ~~A. Each Contracting Party, in accordance with Article 3 of this Agreement may designate a total of eight (8) airlines to perform scheduled combination (passengers and cargo) and all cargo (property and mail) services as follows:~~
- ~~(1) Each Contracting Party may designate a maximum of four (4) airlines for combination services.~~
 - ~~(2) Each Contracting Party may designate a maximum of four (4) airlines for all cargo (property and mail) scheduled services.~~
- B. A . Airlines of either Contracting Party offering services exclusively by placing their code on an aircraft operated between the final point of departure in one Contracting Party and the first point of arrival in the other Contracting Party by a designated airline of either Contracting Party, shall be designated in accordance with Article 3 of this Agreement. ~~but shall not be counted against the limits on designations stated in paragraph A above.~~



PROPOSAL

ANNEX I

SCHEDULED SERVICES

Section I – Routes

- (1) Airlines of one Contracting Party whose designation is made pursuant to this Annex shall, in accordance with the terms of their designation, be entitled to perform international air transportation (a) between the points of the following routes and (b) between points on such routes and points in third countries through points in the territory of the Contracting Party which has designated the airline.

A. Routes for the airline or airlines designated by the Government of the United States:

(1) From a point or points in the United States, via intermediate points, to any points in ~~Brazil—Manaus, Brasilia, Rio de Janeiro, Sao Paulo, Recife, Porto Alegre, Belem, Belo Horizonte, and Salvador de Bahia,~~ to any points beyond Brazil to ~~Argentina, Uruguay, Paraguay and Chile.~~

~~(2) From a point or points in the United States via intermediate points, to twenty five points in Brazil (in addition to those mentioned in (1) above) to be served on a code share basis only.[†]~~

~~(3) Effective October 1, 1998, from a point or points in the United States via intermediate points, to thirty points in Brazil (in addition to those mentioned in (1) above) to be served on a code share basis only.[†]~~

[†]~~The points are to be selected by the Government of the United States, with notification to the Government of Brazil, and may be changed as often as desired, upon 30 day's notice to the Government of Brazil.~~

B. Routes for the airline or airlines designated by the Government of the Federative Republic of Brazil:

(1) From a point or points in Brazil, via intermediate points to any points in United States ~~New York, Atlanta, Miami, Orlando, Detroit, Washington/Baltimore, Houston, Chicago, Los Angeles, San Francisco, Boston and San Juan, Puerto Rico~~, to any points beyond United States.

~~(a) beyond New York, Atlanta, Miami, Orlando, Detroit, Washington/Baltimore, Houston, Chicago, Los Angeles, San Francisco, Boston and San Juan, Puerto Rico, to a point or points in Germany, Switzerland, Belgium, and the Netherlands;~~

~~(b) beyond New York, Atlanta, Miami, Orlando, Detroit, Washington/Baltimore, Houston, Chicago, Los Angeles, San Francisco, Boston and San Juan, Puerto Rico, to a point or points in Canada;~~

~~(c) beyond New York, Atlanta, Miami, Orlando, Detroit, Washington/Baltimore, Houston, Chicago, Los Angeles, San Francisco, Boston and San Juan, Puerto Rico, to a point in Taiwan, Macau, Seoul, Beijing, and Bangkok;²~~

~~(d) beyond Los Angeles, to a point or points in Japan.~~

~~(2) From a point or points in Brazil, via intermediate points, to San Juan, Puerto Rico, and beyond to a point or points in third countries~~

~~(3) From a point or points in Brazil, via intermediate points, to twenty five points in the United States (other than those mentioned in (1) above) to be served on a code share basis only.³~~

~~(4) Effective October, 1 1998, from a point or points in Brazil, via intermediate points, to thirty points in the United States (other than those mentioned in (1) above) to be served on a code share basis only.³~~

~~² Service to or from these points may not be combined with service to or from Japan and must be served with combination service only. Seoul, Beijing, and Bangkok may only be served beyond Los Angeles and San Francisco.~~

~~³ The points are to be selected by the Government of Brazil, with notification to the Government of the United States, and may be changed as often as desired, upon 30 days' notice to the Government of the United States.~~

(2) Each designated airline may, on any or all flights, and at its option, operate flights in either or both directions and without directional or geographic limitations, serve points on the routes in any order, and omit stops at any point or points outside the territory of the Contracting Party which has designated that airline without loss of any right to carry traffic otherwise permissible under this agreement, provided that all flights originate or terminate in the territory of the Contracting Party designating airline.

(3) On any segment or segments of the routes described in Section I (1) A and B above, each designated airline may perform international air transportation without any limitation as to the use of multiple flight numbers and as to change, at any point on the routes, in type or number of aircraft operated, provided that in the outbound direction the transportation beyond the change of gauge point is a continuation of the transportation from the territory of the Contracting Part which has designated the airline and, in the inbound direction, the transportation to the territory of the Contracting Party which has designated the airline is a continuation of the transportation from behind the change of gauge point. The Contracting Parties agree that, among acceptable practices, each designated airline may transfer passengers from one of its own flights to another connecting flight or flights of the same airline provided such connections constitute continuing service and transport the passengers between points of origin and destination that the designated airline is authorized to serve on its routes.

(4) Each designated airline may, in the operation of services authorized by this agreement, use its own aircraft or aircraft that are leased, chartered or interchanged, observing the norms and regulations of each Contracting Party.

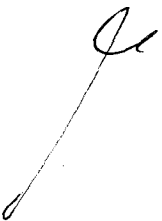
(5) In operating or holding out the authorized services on the agreed routes, any designated airline of one Contracting Party may enter into cooperative marketing arrangements such as blocked space, code sharing, leasing or aircraft interchange arrangements with

(a) an airline or airlines of either Contracting Party; and

(b) an airlines or airlines of a third country, in accordance with paragraph bellow:

any points beyond, to be specified by one Party, may be served under code-sharing agreements with designated airlines from those countries nominated or to be nominated in the route scheduled. Each participating airline will be allowed to display its own code on the entire route. Nevertheless those agreements do not grant additional 5th freedom rights;

provided that all airlines is such arrangements 1) hold the appropriate authority and 2) meet the requirements normally applied to such arrangements.



PROPOSAL

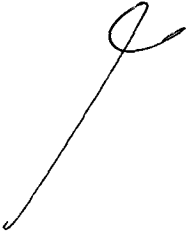
Article 12

Tariffs

1. The tariffs to be applied by the designated airlines of a Party for services covered by this Agreement shall be established at reasonable levels, due regard being paid to all relevant factors, including interests of users, cost of operation, characteristics of service, reasonable profit and other commercial considerations in the market-place.
2. The Parties agree to give particular attention to tariffs which may be objectionable because they appear unreasonably discriminatory, unduly high or restrictive because of the abuse of a dominant position, artificially low because of direct or indirect subsidy or support, or predatory.
3. Each Party may require notification or filing of tariffs proposed by the designated airline(s) of both Parties for carriage to or from its territory. Such notification or filing may be required not more than thirty (30) days before the proposed date of introduction. In special cases, this period may be reduced.
4. Each Party shall have the right to approve or disapprove tariffs for one way or round-trip carriage between the territories of the two Parties which commences in its own territory. The tariffs to be charged by a designated airline of one Party for carriage between the territory of the other Party and that of a third State on services covered by this Agreement shall be subject to the approval requirements of the other Party. Neither Party shall take unilateral action to prevent the inauguration of proposed tariffs or the continuation of effective tariffs for one way or round-trip carriage between the territories of the two Parties commencing in the territory of the other Party.
5. Approval of tariffs consequent upon the provisions of paragraph 4 above may be given expressly by either Party to the airline(s) filing the tariffs. However, if the Party concerned has not given in writing to the other Party notice of disapproval of such tariffs of the airline(s) of the other Party within thirty (30) days from the date of submission, the tariffs concerned shall be considered approved. In the event of the period of submission being reduced in accordance with paragraph 3, the Parties may agree that the period within which any disapproval shall be given be reduced accordingly.
6. Where either Party believes that a tariff for carriage to its territory falls within the categories described in paragraph 2 above, such Party shall give notice of dissatisfaction to the other Party, as soon as possible, and at least within thirty (30) days of the date of notification or filing of the tariff, and may avail itself of the consultation procedures set out in paragraph 7 below.




7. Each Party may request consultation regarding any tariff of an airline of either Party for services covered by this Agreement, including where the tariff concerned has been subject to a notice of disapproval or dissatisfaction. Such consultations shall be held not later than sixty (60) days after receipt of the request. The Parties shall cooperate in securing information necessary for reasoned resolution of the issues. If the Parties reach agreement, each Party shall use its best efforts to put that agreement into effect. If no agreement is reached, the decision of the Party in whose territory the carriage originates shall prevail.
8. A tariff established in accordance with the provisions of this clause shall remain in force, unless withdrawn by the airline(s) concerned or until a new tariff has been approved. However a tariff shall not be prolonged for more than 6 months after the date on which it otherwise would have expired unless approved by the Parties. Where a tariff has been approved without an expiry date and where no new tariff has been filed and approved, that tariff shall remain in force until either of the Parties gives notice terminating its approval on its own initiative or at the request of the airline(s) concerned. Such termination shall not take place with less than thirty (30) days notice.
9. The Parties shall endeavor to ensure that active and effective machinery exists within their jurisdictions to investigate violations by any airline, passenger or freight agent, tour organizer, or freight forwarder, of tariffs established in accordance with this Article. They shall furthermore ensure that the violation of such tariffs is punishable by deterrent measures on a consistent and non-discriminatory basis.

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Attachment G
Intermodal Operations

Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transportation 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, including 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.

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