

RECORD OF DISCUSSIONS

Delegations representing Japan and the United States met in Tokyo on September 11-14, 2007, to discuss matters relating to further development of the aviation relations between the two countries. The delegation lists are shown in the Attachment. The consultations were conducted in the most friendly and constructive atmosphere.

Both delegations wish to record the following:

Narita Slots

1. The Japanese delegation, noting the scarcity of slots at Narita International Airport, the fact that a number of airlines of countries other than the United States had been strongly requesting slots, and the fact that the percentage of the slots at Narita International Airport maintained by the airlines of the United States had been exceptionally high compared to other major international airports around the world, expressed that if the percentage of the slots at Narita International Airport maintained by the airlines of the United States could be adjusted to a level similar to other major international airports around the world, then the slots at Narita International Airport could be distributed to those airlines of countries other than the United States. In this connection, the Japanese delegation also stated that achieving fair and equal conditions for competition at Narita International Airport in terms of the number of slots maintained by the designated airlines of both sides is a prerequisite for future negotiations for further liberalization.
2. The U.S. delegation noted the position of the Japanese delegation. The U.S. delegation expressed its view that all operations of U.S. airlines to and from Narita International Airport are fully consistent with the 1952 Civil Air Transport Agreement, as amended and supplemented. With respect to future negotiations, the U.S. delegation recalled the commitment of both parties in Part VIII "Future Negotiations" of the Memorandum of Understanding signed at Washington on March 14, 1998 (hereinafter referred to as "1998 MOU").
3. The Japanese delegation expressed concerns that some U.S. airlines perform "off-slot operations" and too frequent changes to their allocated slot

times at Narita International Airport, some of which, in its view, might be seen as misuse of slots or abuse of the coordination system. The Japanese delegation also expressed that it hopes that these U.S. airlines would consider and respond, as appropriate, to these concerns on a voluntary basis, before any actions are considered by the slot coordinator in accordance with the IATA Worldwide Scheduling Guidelines (hereinafter referred to as "IATA WSG"). The U.S. delegation noted the concerns of the Japanese delegation and the data it provided and stated that it would convey them to U.S. airlines.

4. Both delegations endorse the principles for holding and returning slots in paragraph 6.10.3 of the IATA WSG. Furthermore, both delegations intend to encourage their airlines to consider giving airlines of the other country the opportunity to use slots through codesharing arrangements, consistent with paragraph 6.10.5 of the IATA WSG. In this connection, the Japanese side welcomed that certain U.S. carriers returned the slots they no longer needed and that certain U.S. carriers gave the opportunity to Japanese carriers to use slots through codesharing arrangements.
5. Both delegations affirmed the principle that "the administration of the international airports will be conducted fairly, in accordance with IATA guidelines and existing administrative guidelines," and, in this connection, any new slots at Narita International Airport, including the slots expected to become available in 2010, will be allocated in accordance with this principle. The U.S. delegation does not expect that U.S. carriers will be allocated a percentage of the new slots greater than the percentage of slots currently allocated to U.S. carriers at the airport.

Additional rights for non-incumbent all-cargo airlines

6. The delegations intend to recommend to their governments the proposed amendments to the 1998 MOU that are set forth below. The amendments would enter into force following an exchange of diplomatic notes between the governments.

Part II B 1 (c) should be replaced with the following:

"(c) In addition to the four (4) points mentioned in paragraph (b), above, the airline designated pursuant to paragraph B 1 (a), above, may operate

all-cargo services to four (4) additional points in the United States. The four (4) additional points may be selected, or changed, on sixty (60) days notice by Japan to the United States."

Part II B 1 (d) should be replaced with the following:

"(d) In addition to the frequencies referred to in paragraph B 1 (b), above, the airline designated pursuant to paragraph B 1 (a), above, may operate all-cargo services with eighteen (18) additional weekly frequencies. These eighteen (18) frequencies may be operated by the airline with full coterminalization to all eight (8) points in the United States mentioned in paragraphs B 1 (b) and B 1 (c), above."

Part II B 1 (f) should be replaced with the following:

"(f) In addition to the airline designated pursuant to paragraph B 1 (a), above, Japan may designate one (1) airline (hereinafter referred to as the "new entrant"), other than incumbent all-cargo airlines, to operate all-cargo services between any point or points in Japan, one (1) of the points in the United States to which the airline designated pursuant to paragraph B 1 (a), above, may operate, and one (1) beyond point. The new entrant may use up to six (6) of any weekly frequencies available to, but not used by the airline designated pursuant to paragraph B 1 (a), above, and an additional six (6) weekly frequencies. The point in the United States may be selected, or changed, on sixty (60) days notice by Japan to the United States."

Part II B 2 (a) should be replaced with the following:

"(a) The non-incumbent all-cargo airline designated by the United States under the 1989 MOU may operate eighteen (18) weekly all-cargo frequencies, in the aggregate, including the frequencies authorized for the airline under the 1989 MOU, between any point or points in the United States, any three (3) points in Japan, and beyond each point in Japan to and from any two (2) points, with full traffic rights between all points on the routes. Such airline may coterminalize all the points in Japan to which it may operate."

Part II B 2 (b) should be replaced with the following:

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“(b) These rights shall be subject to the limitation that no more than six (6) weekly frequencies may be operated on routings including Tokyo, no more than twelve (12) weekly frequencies may be operated on routings including Osaka and no more than twelve (12) weekly frequencies may be operated on routings including Nagoya.”

Part II B 2 (c) should be replaced with the following:

“(c) The United States may select the same or different beyond points for each of the three (3) points selected in Japan. The points selected by the United States in Japan and the beyond points may be changed on sixty (60) days notice by the United States to Japan.”

Part II B 2 (d) should be replaced with the following:

“(d) The United States may designate¹⁴ one (1) airline that was not operating scheduled combination or all-cargo services between the United States and Japan as of the date of the signature of the 1996 MOU to operate all-cargo services with twelve (12) weekly frequencies, in the aggregate, between any point or points in the United States and any two (2) points in Japan, subject to the following conditions:

(i) The designated airline may not serve Beijing as a beyond point. No more than six (6) weekly frequencies may be operated to Shanghai in total as a beyond point.

(ii) No more than six (6) weekly frequencies may be operated on routings including Tokyo, and only one (1) beyond point, with full traffic rights, may be served on routings including Tokyo.

(iii) Two (2) beyond points with full traffic rights may be served on routings not including Tokyo. The second of these two beyond points may be served as of March 31, 2009, provided service to the second point in Japan and its first beyond point commences by May 31, 2008. If that service

¹⁴ An airline designated under the 1996 MOU prior to the 1998 MOU need not be redesignated by the United States.

commences after May 31, 2008, service to the second beyond point may not commence until one year after service to the second point in Japan and its first beyond point has commenced.

(iv) Such airline may coterminize all the points in Japan to which it may operate. The United States may select the same or different beyond points for each of the two points selected in Japan and may change the points in Japan and the beyond points with sixty (60) days notice by the United States to Japan."

Part II B 4 (b) should be replaced with the following:

"(b) For purposes of all-cargo services to the beyond points referred to in paragraphs B 1 (e), B 2 (a) and B 2 (d), above, the two beyond points may be served on a single flight or separate flights."

Charter Services

7. The delegations intend to recommend to their governments the proposed amendments to the 1998 MOU that are set forth below. The amendments would enter into force following an exchange of diplomatic notes between the governments.

A new Part III B 3 and a new Part III B 4 should be inserted after Part III B 2 as follows:

"3. Effective January 1, 2008, superseding subsection III B 2, above, airlines of each Party, in the aggregate, may operate an unlimited number of one-way charter flights per year between any point or points in the United States and any point or points in Japan, subject to the limitation that no more than four hundred (400) one-way charter flights may be operated to or from Tokyo by the airlines of each Party. Charter operations shall be subject to country-of-origin rules, except as provided in Section C, below.

4. Effective January 1, 2009, superseding subsection III B 3, above, airlines of each Party, in the aggregate, may operate an unlimited number of one-way charter flights per year between any point or points in the United States and any point or points in Japan, subject to the limitation that no more than five

hundred (500) one-way charter flights may be operated to or from Tokyo by the airlines of each Party. Charter operations shall be subject to country-of-origin rules, except as provided in Section C, below.”

8. The delegations discussed the continued need for the expedited processing of charter applications. Both sides confirmed that when carriers of the other side file complete applications with necessary documentation for approval of charters between the two countries with at least two business days’ notice, the aeronautical authorities of both countries intend to accept and process such applications in a timely manner, and that such authorities intend also to make every effort to process applications filed on less than two business days’ notice. This confirmation on the part of the U.S. delegation was based on the understanding that Japanese aeronautical authorities would continue to afford similar treatment to U.S. carrier applications filed with Japan’s aeronautical authorities to operate U.S.-Japan charters. This confirmation on the part of the Japanese delegation was based on the understanding that U.S. aeronautical authorities would afford similar treatment to Japanese carrier applications filed with U.S. aeronautical authorities to operate U.S.-Japan charters.

Same Country Codesharing

9. The delegations intend to recommend to their governments the proposed amendments to the 1998 MOU that are set forth below. The amendments would enter into force following an exchange of diplomatic notes between the governments.

Part IV E should be replaced with the following:

“Codesharing between airlines of the same Party shall be subject to the following limitations, except that codeshare operations involving airlines of the same Party that also involve an airline or airlines of the other Party shall not be subject to any restriction in this Section (Limitations on Same Country Airline Codesharing), and shall not be counted against any limitation in this Section.

1. Any designated airline may enter into codeshare arrangements with any other airline of the same Party on behind-gateway services in the territory of the Party without limitation.

2. Designated airlines of each Party, in the aggregate, may operate up to one hundred twelve (112) weekly round-trip frequencies for all-cargo gateway-to-gateway services with other designated airlines of the same Party. These frequencies may be operated without limitation as to routes, operating airline, or number of marketing airlines. Airlines may make changes without limitation to the operated routes on which they place their codes.

3. Designated combination airlines of either Party not providing service between the mainland U.S. and Japan as of January 1, 1998, shall be considered, for the purpose of this Section, to be "Category A Airlines." Designated combination airlines that were providing service between the mainland U.S. and Japan as of January 1, 1998, shall be considered, for the purpose of this Section, to be "Category B Airlines."¹⁶

4. No airline may enter into a codeshare arrangement for gateway-to-gateway combination services with an airline of the same Party, except that any designated airline may enter into codeshare arrangements for gateway-to-gateway combination services involving a Category B Airline of the same Party that does not maintain a codeshare arrangement with an incumbent airline of the other Party.

5. Notwithstanding the provisions of subsection 4, above, Japanese airlines that engaged in gateway-to-gateway combination codeshare arrangements with an airline of the same Party under the 1998 MOU prior to September 14, 2007, may continue to enter into such codeshare arrangements.

6. Airlines of each Party, in the aggregate, may operate up to one hundred twelve (112) weekly round-trip frequencies under codeshare arrangements pursuant to subsections 4 and 5 of this Section. These frequencies may be operated without limitation as to routes, operating airline, or number of marketing airlines. Airlines may make changes without limitation to the operated routes on which they place their codes.

7. The number of weekly round-trip frequencies specified in subsection 6

¹⁶ For the United States, the Category B Airlines are United Airlines, Northwest Airlines, American Airlines, and Delta Airlines. For Japan, the Category B Airlines are Japan Airlines and All Nippon Airways.

of this Section shall be increased if a Category A Airline of the other Party engages in codesharing on flights carrying the codes of two or more airlines of the first Party engaged in codeshare arrangements pursuant to subsections 4 and 5 of this Section. The number of such additional frequencies shall be equal to the number of weekly round-trip frequencies on which the Category A Airline of the other Party codeshares on such flights, on any gateway-to-gateway segment.

8. Any designated combination airline of one Party may enter into a codeshare arrangement on beyond services on a blind-sector basis with an incumbent combination airline of the same Party that does not maintain a codeshare relationship with an incumbent combination airline of the other Party. The number of frequencies operated under such codeshare arrangements shall be no more than twenty-one (21) weekly round-trip frequencies, in the aggregate, for each Party, without regard to the number of marketing airlines. This number of frequencies shall be increased if a Category A Airline of the other Party enters into a codeshare arrangement with a designated airline of the first Party, by the number equal to the number of weekly round-trip frequencies on which the Category A Airline of the other Party codeshares with the designated airline of the first Party on any segment beyond the territory of either Party.”

Tariffs

10. Both delegations stated that it is the intention of their respective aeronautical authorities not to take unilateral action to prevent the inauguration of proposed tariffs or the continuation of effective tariffs for one-way or round-trip air transportation originating in the territory of the other side.
11. The U.S. delegation informed the Japanese delegation that U.S. airlines desire that when U.S. airlines file tariffs for one-way and round-trip air transportation originating in Japan a few days before the effective date, the Japanese aeronautical authorities would process and respond to such filings in a timely manner. The Japanese delegation confirmed that in most of the cases, the Japanese aeronautical authorities had processed and responded to filings of tariffs by foreign airlines within a few days, and intend to continue to do so. The U.S. delegation confirmed that the U.S. aeronautical authorities intend to continue to provide Japanese airlines equivalent or better treatment with respect to their tariff filings.

Other matters

12. In response to a concern raised by the Japanese delegation, the U.S. delegation explained that, under the current and longstanding interpretation of U.S. law, the carriage of U.S. Government financed air transportation (Fly America traffic) by a U.S. carrier includes transportation sold under the code of a U.S. carrier pursuant to a codeshare arrangement, but carried on an aircraft operated by a foreign air carrier.
13. The U.S. delegation assured the Japanese delegation that the United States Government is working with Congress to obtain an exemption for foreign air carriers from the so-called "LUST tax" as soon as possible.
14. With respect to the so-called "OSL tax," the U.S. delegation noted that this tax is imposed on refiners or distributors of oil and not on consumers, such as airlines. The U.S. delegation intends to inform the Japanese delegation of future developments.

Future talks

15. The delegations intend to hold the next round of consultations by the summer of 2008 to discuss various matters, including issues related to Haneda airport. In this connection, the Japanese delegation provided information on the current planning for the introduction of international scheduled services at Haneda airport upon completion of the fourth runway in 2010. The U.S. delegation stated that it fully expects the U.S. Government to accept scheduled services at Haneda airport under the civil air transport agreement, but only if there is a fair and equal opportunity for the airlines of both sides to operate.

etc

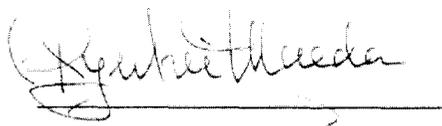
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Comity and Reciprocity

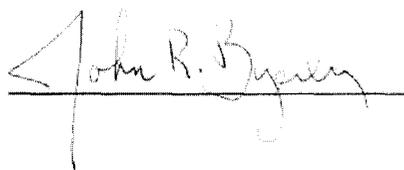
16. The two delegations indicated that their aeronautical authorities intend to implement provisionally upon signature of this Record of Discussions on the basis of comity and reciprocity the proposed amendments to the 1998 MOU set forth in paragraphs 6, 7 and 9, above.

Signed in Tokyo on September 14, 2007.

For the Japanese Delegation

A handwritten signature in cursive script, appearing to read "Hirotaka Maeda", written above a horizontal line.

For the U.S. Delegation

A handwritten signature in cursive script, appearing to read "John R. Bynum", written above a horizontal line.

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