

MEMORANDUM OF CONSULTATIONS

Delegations representing the governments of the United States of America and the People's Republic of China met in Washington, D.C. on May 21-22, 2007, and in Chengdu, China on April 25-27, 2007, to discuss their bilateral civil aviation relationship. Delegation lists appear as Appendix 1. Discussions proceeded in a warm and productive atmosphere characteristic of the close relationship between the two countries, and resulted, *inter alia*, in the following:

At the Washington meeting the delegations reached agreement *ad referendum* on a set of amendments to the 1980 U.S.-China Agreement Relating to Civil Air Transport, as amended ("the Agreement"). The text of these amendments is set out in a draft Protocol, which appears as Appendix 2. The delegations intend to submit the draft Protocol to their respective governments for approval, with the goal of its entry into force in the near future.

In order to facilitate provision of adequate air transport capacity at the time of the 2008 Beijing Olympics, the delegations intend to recommend that their aeronautical authorities exercise the authorities they have in the Agreement, as amended, to give favorable consideration to applications to operate extra sections of scheduled service and additional charter flights exceeding the limits specified in the Agreement during the period from July to September 2008 for the 2008 Olympic Games.

The two delegations confirmed their understanding that upon elimination of restrictions on the number of U.S. cargo designations as of March 2011, as provided in the draft Protocol, the United States may take designations previously assigned to cargo carriers for use on Route B and reassign them to combination carriers to use on Route A.

Both delegations confirmed their understanding that full liberalization of air transport markets, as referred to in Article 5 of the draft Protocol, includes the following elements: unlimited designations; unrestricted capacity and frequencies on all routes; unrestricted route and traffic rights; double-disapproval pricing; liberal charter arrangements; a liberal cargo regime; liberal conversion and remittance arrangements; open code sharing opportunities; provision for self-handling; pro-competitive provisions on commercial opportunities, change of gauge, user charges, fair competition and inter-modal rights; and modern provisions on safety and security.

The Chinese delegation expressed concerns about U.S. visa policy, stating that U.S. visa policy and processing practices hinder market demand and Chinese carriers' ability to compete in the market. The Chinese delegation expressed its desire that the U.S. Government make modifications in visa policy and procedures to promote travel to the United States by Chinese citizens. The Chinese delegation said such modifications would be conducive to expanding the bilateral air services agreement with a view to reaching full liberalization of air transport between China and the United States as the ultimate objective. The U.S. delegation provided information demonstrating recent progress in terms of increases in visa issuance rates, improvements in processing times,

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and the extent of travel by Chinese citizens to the United States. A letter from the responsible U.S. Government official to her Chinese counterpart providing additional details appears as Appendix 3. The Chinese delegation took note of the efforts made by the U.S. Government, and responded by urging the U.S. Government to ease further visa policy and procedures for Chinese citizens traveling to the United States. Both delegations noted the progress made by the governments toward conclusion of a separate bilateral Memorandum of Understanding (MOU) to expand Chinese outbound group leisure travel to the United States and expressed the view that such an MOU would have a positive impact on air travel between the two countries.

In keeping with the two sides' intention, stated in their Memorandum of Consultations of March 15, 2007, to work toward a final resolution of their differences over the scheduling operations discussed therein, the Chinese side stated its intention to allow U.S. cargo carriers, through the IATA 2010 Winter Season, to undertake operations comparable in extent to those previously approved that involve open jaw,' changes of plane/gauge and/or layovers of over twenty-four hours at beyond points or terminal points, be the terminal points beyond or in China, without requiring the use of a second frequency. The delegations noted that the elimination of restrictions on cargo frequencies as of March 2011, as provided in the draft Protocol, would render such past disagreements moot.

Nothing in this Memorandum or the draft Protocol is intended to restrict the rights of carriers that establish hubs pursuant to Article 11bis of the Agreement.

The delegations expressed their expectation that their aeronautical authorities would permit operations consistent with the terms of the draft Protocol on the basis of comity and reciprocity pending its entry into force.

Done at Washington this 22nd day of May 2007.

For the Delegation of
The United States of America



Mr. Thomas S. Engle

For the Delegation of
the People's Republic of China



Dr. Liu Fang

¹ For the purposes of this memorandum, the term "open jaw" refers to an operation where the third-country termination point of an outbound flight from the U.S. is different from the third-country origination point of a corresponding inbound flight to the U.S. For example, the following is an "open jaw" pattern: the outbound flight's route is ANC-PVG-NRT, and the corresponding inbound flight's route is FRA-PVG-ANC.

U.S.-China Civil Aviation Negotiations
Washington D.C.
April 25-27, 2007

United States Delegation List

Mary Peters
Secretary of Transportation
U.S. Department of Transportation

Thomas Engle, Head of Delegation
Director, Office of Aviation Negotiations
U.S. Department of State

Andrew Steinberg
Assistant Secretary for Aviation and International Affairs
U.S. Department of Transportation

Ed Oppler
Deputy Director, Office of International Aviation
U.S. Department of Transportation

Keith Glatz
Aviation Negotiator, Office of International Aviation
U.S. Department of Transportation

Jeffrey Horwitz
International Transportation/Commercial Officer, Office of Aviation
Negotiations
U.S. Department of State

Kathleen Milton
Attorney Adviser, Office of the Legal Adviser
U.S. Department of State

Eugene Alford
Air Transport Specialist
Department of Commerce

Chinese Delegation List

Mr. Yang Yuanyuan
Minister
CAAC

Dr. Liu Fang
Deputy Director General
Department of International Affairs and Cooperation
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Ms. Tao Yehong
Official
Department of International Affairs and Cooperation
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Mr. Sun Ying
Official
Department of International Affairs and Cooperation
CAAC

**PROTOCOL TO AMEND THE AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
RELATING TO CIVIL AIR TRANSPORT**

The Government of the United States of America and the Government of the People's Republic of China (hereinafter, the "Parties") desiring to:

Increase travel and tourism between their countries and promote cultural, business and governmental exchanges between them;

Promote their shared, ultimate objective of full liberalization of their bilateral air transport market; and

Facilitate cooperative agreements between their air carriers so as to enable the mutually beneficial development of their aviation industries;

Have agreed to further amend the Agreement between the Government of the United States of America and the Government of the People's Republic of China Relating to Civil Air Transport, signed September 17, 1980, as amended (hereinafter "the Agreement") as follows:

Article 1

Designations

Subparagraphs (d) and (e) of Paragraph (1) of Article 3 of the Agreement shall be deleted in their entirety and replaced by the following:

- (d) The People's Republic of China may designate an unlimited number of airlines to operate the agreed services on China Routes A and B. Airlines designated pursuant to this subparagraph may begin services as of August 1, 2007.
- (e) The United States may designate one additional airline to operate the agreed services on U.S. Route A or one additional airline to operate the agreed services on U.S. Route B. Airlines designated pursuant to this subparagraph may begin services as of August 1, 2007.
- (f) The United States may designate one additional airline to operate the agreed services on U.S. Route A and one additional airline to operate the

agreed services on U.S. Route B. Airlines designated pursuant to this subparagraph may begin services as of March 25, 2009.

- (g) The United States may designate one additional airline to operate the agreed services on U.S. Route A or one additional airline to operate the agreed services on U.S. Route B. Airlines designated pursuant to this subparagraph may begin services as of March 25, 2010.
- (h) The United States may designate an unlimited number of airlines to operate the agreed services on U.S. Route B. Airlines designated pursuant to this subparagraph may begin services as of March 25, 2011.

Article 2

Frequencies

Paragraphs (2) and (3) of Annex V of the Agreement shall be deleted in their entirety and replaced by the following:

(2) In addition to the frequencies available under paragraph (1) above, the designated airlines of each Party shall be entitled to operate weekly frequencies for combination services on Routes LA or II.A of Annex I on flights to and from Beijing, Shanghai and Guangzhou (hereinafter "China Zone 1") or to and from Fujian, Guangdong (except Guangzhou), Hebei, Jiangsu, Shandong, Tianjin, and Zhejiang (hereinafter "China Zone 2") according to the following schedule:

- (a) Effective August 1, 2004: an additional 14 weekly frequencies
- (b) Effective March 25, 2005: an additional 7 weekly frequencies
- (c) Effective March 25, 2006: an additional 7 weekly frequencies
- (d) Effective March 25, 2007: an additional 7 weekly frequencies
- (e) Effective August 1, 2007: an additional 7 weekly frequencies
- (f) Effective March 25, 2008: an additional 7 weekly frequencies (restricted to nonstop Guangzhou service)
- (g) Effective March 25, 2009: an additional 28 weekly frequencies
- (h) Effective March 25, 2010: an additional 21 weekly frequencies
- (f) Effective March 25, 2011: an additional 14 weekly frequencies

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(g) Effective March 25, 2012: an additional 14 weekly frequencies

Airlines designated by the People's Republic of China may freely convert these frequencies between combination and all-cargo services, and between Route ILA and Route ILB of Annex I. U.S. airlines designated on Route LA may use these frequencies for combination services only.

(3) In addition to the frequencies available under paragraphs (1) and (2) above, the designated airlines of each Party shall be entitled to operate additional weekly frequencies for all-cargo services on any of the routes provided in Annex I on flights to and from points in China Zone 1 or China Zone 2 according to the following schedule:

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|-------------------------------|---|
| (a) Effective August 1, 2004: | an additional 21 weekly frequencies |
| (b) Effective March 25, 2005: | an additional 18 weekly frequencies |
| (c) Effective March 25, 2006: | an additional 12 weekly frequencies |
| (d) Effective March 25, 2007: | an additional 15 weekly frequencies |
| (e) Effective March 25, 2008: | an additional 15 weekly frequencies |
| (f) Effective March 25, 2009: | an additional 15 weekly frequencies |
| (g) Effective March 25, 2010: | an additional 15 weekly frequencies |
| (h) Effective March 25, 2011: | unlimited frequencies for the airlines designated by each Party |

Airlines designated by the People's Republic of China may freely convert the frequencies listed in (a) through (g) between combination and all-cargo services, and between Route ILA and Route ILB of Annex I. U.S. airlines designated for Route LA may not use these frequencies for combination or passenger services.

Article 3

Special Aviation Area

Annex V of the Agreement shall also be amended by deleting paragraph (6) in its entirety and replacing it with the following:

- (6) All U.S. and Chinese airlines may be designated to operate services between the United States and points in China Zone 3 notwithstanding the limitation on the number of designations provided in Article 3 of this Agreement.

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Such services may be operated without frequency limitations. China Zone 3 consists of the points in the following areas: Anhui, Chongqing, Gansu, Guangxi, Guizhou, Hainan Island, Heilongjiang, Henan, Hubei, Hunan, Inner Mongolia, Jiangxi, Jilin, Liaoning, Ningxia, Qinghai, Shaanxi, Shanxi, Sichuan, Tibet, Xinjiang, and Yunnan. Notwithstanding any other provisions of the Agreement, each Party may choose 5 points in China Zone 3 that its airlines may serve without limitations on the number of designations and without frequency limitations on: 1) services carrying fifth-freedom traffic between such points and intermediate or beyond points in third countries on the specified routes, and 2) combination services carrying fifth-freedom traffic between such points and Japan. Each Party shall notify the other Party of the five points it has selected, with not less than 30 days' written notice. The points selected may, at the discretion of each Party, be changed with not less than 30 days' written notice to the other Party. However, service to a point in China Zone 3 via a point in China Zone 1 or Zone 2 shall be subject to the designation, frequency and Japan fifth-freedom traffic rights limitations set forth in Annex V of this Agreement.

Article 4

Code Sharing

Subparagraphs (1)(b) and (c) of paragraph 5 of Article 11 of the Agreement shall be deleted in their entirety and replaced by the following:

- (b) Airlines of each Party may code share with airlines of the same Party, on the specified routes, without an airline of the other Party, according to the following:
 - (i) Each Party shall be permitted one such code share arrangement as of January 1, 2006; and
 - (ii) Each Party shall be permitted one additional such code share arrangement as of January 1, 2008; and
 - (iii) Each Party shall be permitted one additional such code share arrangement as of March 25, 2009; and
 - (iv) One of the three arrangements under this subparagraph (b) may include two airlines and the other two may include up to three airlines.
- (c) If a code share arrangement permitted under subparagraph (b) above is expanded to include an airline of the other Party, such code share arrangement shall be governed by subparagraph (a) above and therefore shall no longer count against the limit of three such arrangements permitted in subparagraph (b).

Article 5

Future Negotiations

The Parties acknowledge that their mutual, ultimate objective is the full liberalization of their bilateral air transport market. The Parties agree to begin no later than March 25, 2010, to negotiate an agreement and timetable for the full liberalization of their bilateral air transport market and to work together to complete the new agreement as soon as possible.

Article 6

Guam and the Northern Mariana Islands

A new Annex VI shall be added to the Agreement and read as follows:

ANNEX VI

Service to Guam and the Northern Mariana Islands

1. Notwithstanding any other provision of this Agreement, the airlines of the People's Republic of China may provide unlimited scheduled air services between the People's Republic of China and Guam and the Northern Mariana Islands.
2. Notwithstanding any other provision of this Agreement, the airlines of the United States may provide unlimited scheduled air services between three points in the People's Republic of China and Guam and the Northern Mariana Islands. The points selected by the United States in the People's Republic of China shall not include either Beijing or Shanghai. The United States shall notify the People's Republic of China in writing of the points it has selected with at least 30 days' advance notice. The points selected may be changed at the discretion of the United States with not less than 30 days' written notice.
3. Air services provided pursuant to paragraphs (1) and (2) of this Annex shall not be subject to limitations as to the number of designations or frequencies.

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Article 7

Entry into Force

This Protocol shall enter into force upon completion of an exchange of notes through diplomatic channels confirming that each Party has completed its necessary internal procedures.

IN WITNESS WHEREOF, the undersigned being duly authorized by their respective governments, have signed the present Protocol.

DONE at _____, in two originals, this _____ day of _____, 2007, in the Chinese and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF CHINA:

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:





DEPARTMENT OF STATE
ASSISTANT SECRETARY FOR CONSULAR AFFAIRS
WASHINGTON

May 14, 2007

Dear Director General Wei:

Travel from China to the United States is expanding *rapidly* and visa issuance growth in China is among the fastest in the world. Overall nonimmigrant visa issuance in China was up 19 percent in Fiscal Year 2006, 27 percent in FY 2005, and 25 percent in FY 2004, and we expect such growth to continue. Both total issuances and issuance *rates* are rising. Regarding the *latter*, so far in FY 2007 almost four-fifths of all Chinese visa applicants have qualified for and received visas. The future is hard to predict, but if the experience of most of China's neighbors is a guide, we would expect the issuance rate to continue rising as prosperity in China spreads. Student visa issuance increased 33 percent in FY 2006 alone *and 64 percent* between FY 2004 and 2006. Increased flows of people between China and the United States are an important and welcome trend. We hope to bring the benefits of this trend to all segments of the traveling population including tourism and leisure travel.

We are fully committed to facilitating all legitimate travel of Chinese citizens to the United States and have increased our resources in China to handle visa processing. Since 2001 we have increased consular officer staff handling visas by 47 percent. We have established new office facilities in Shanghai and Guangzhou and will open new facilities in Beijing in 2008. We have streamlined visa procedures and reduced processing times; 97 percent of qualified applicants receive their visas in two to three days. The time required to conduct Security Advisory Opinions, when these are necessary, varies according to seasonal workload demands; we have also made considerable progress in reducing it. Our commitment to improving the visa process is evident in the measures we have taken to date.

We are never fully satisfied with our process, and are continually working to make it even easier for valid travelers. In the past year we have implemented two special processes specifically tailored to meet the growing needs of tour groups.

Mr. Wei Wei
Director General,
Consular Department,
Ministry of Foreign Affairs,
Beijing, China.

Our Visa Information Call Center in Beijing allows tour groups to make appointments as a block and pay a lower processing fee. In addition, our TourTrak program, still in its pilot stages, allows embassy-approved tour groups to use reserved appointment slots. Over 170 tour groups and 1600 applicants have used these programs to date.

Regarding travel by senior government officials, such travelers do not need to be fingerprinted when traveling on official business. For those making private visits to the United States, we are considering global changes that may reduce the fingerprinting requirement for senior, central-government officials. In any case, technological advances will continue to make the visa process more effective and less burdensome. Concerning the visa interview requirement for public passport holders, while we cannot waive this requirement, public passport holders are accorded several privileges under our visa processing system. They receive, for example, priority interview appointments, resulting in significantly shorter wait times for interviews.

We also work hard to ensure that business travelers receive expedited processing. The Business Visa Program in China allows employees of companies registered with the program to apply at the Embassy any day of the week and bypass the standard waiting period for a visa interview. Over 1000 companies that are members of the American Chamber of Commerce in China, as well as major State Owned Enterprises, participate. In FY 2006, over 18,000 visas in Beijing, Shanghai, and Guangzhou were processed through this program. In addition, the State Department's Washington-based Business Facilitation Center is available to explain the visa process to U.S. companies that invite current and prospective Chinese business clients to the United States.

As in all of our embassies and consulates, all application procedures are done in accordance with applicable U.S. legislation and regulations. If an application is successful, we promptly issue a visa to the applicant and return it through established means. Visas will be issued with the maximum validity allowed under U.S. law, a validity that is determined by reciprocal treatment of U.S. citizens seeking Chinese visas.

I cannot emphasize enough that we welcome all legitimate travelers and currently place no limitations on the ability of individuals to seek tourist or business visas. We do believe there is disconnect between the Chinese public's understanding of U.S. visa practices and processing and the significant progress in the several areas I have described above. We look forward to continuing our work

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with you to accomplish our shared goal of increasing lawful travel and *exchanges* between the United States and China. We would be prepared to cooperate on public outreach efforts to ensure that the Chinese public is well informed about these matters.

Sincerely,

Mauna Harty

A handwritten signature in black ink, appearing to read 'Mauna Harty', located in the bottom right corner of the page.