

EMBASSY OF THE  
UNITED STATES OF AMERICA

No. 81

Mr. Secretary General

Vienna, June 14, 1995

I have the honor to present my compliments and to refer to the March 16, 1989 Air Services Agreement between the Government of the United States of America and the Austrian Federal Government, with Annexes (the Agreement), and to the recent discussions held by representatives of our two governments in Washington, March 7-8, 1995, to consider revisions to the Agreement.

In light of the understandings reached in those discussions, I have the honor to propose, on behalf of the Government of the United States of America that the Agreement be amended according to the Attachment to this note.

Dr. Wolfgang Schallenberg  
Secretary General,  
Ministry of Foreign Affairs, Republic of Austria.

If this proposal is acceptable to your Government. I have the further honor to propose that this note and Your note in reply shall constitute an agreement between our two Governments, which shall enter into force on the first day of the second month following the date of your note in reply. Accept the renewed assurances of my highest consideration.

Enclosure:

Amendments to U.S.-Austria Air Services Agreement

Attachment

Amendments to U.S.-Austria Air Services Agreement

1. Article 1, Definitions, shall be amended to reflect the following changes and additions:

- (a) Delete the word "scheduled" from paragraph (c).
- (b) Delete the words "and the charges and conditions for ancillary services;" at the end of paragraph (f) and replace the preceding comma with a semi-colon.
- (c) Amend paragraph (j) to read as follows: "'User Charge' means a charge imposed on airlines for the provision of airport, air navigation, or aviation security facilities or services including related services and facilities."
- (d) Delete the words "economic" and "direct" from paragraph (k).

2. Paragraph (2) of Article 2, Grant of Rights, shall be

amended to read as follows:

(2) Nothing in this Article shall be deemed to confer on the airline or airlines of one Party the rights to take on board, in the territory of the other Party, passengers, their baggage, cargo or mail carried for compensation and destined for another point in the territory of that other Party.

3. Article 3, Designation and Authorization, shall be amended by adding the following to the end of the second sentence of paragraph (1): "and shall identify whether the airline is authorized to conduct the type of air service specified in Annex I or Annex II or both."

4. Article 7, Aviation Security, shall be amended as follows:

(a) Paragraph (3) shall be amended by adding the following words at the beginning of the first sentence: "Without limiting the scope of their rights and obligations under international law," and by adding at the end of the paragraph the words: "and its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on February 24, 1988."

(b) Paragraph (4) shall be amended by replacing the words "security standards and, so far as they are applied by them, the recommended practices," with the word "provisions" and by deleting the last sentence.

(c) Paragraph (7) shall be amended to read as follows:

(7) When a Party has reasonable grounds to believe that the other Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Party may request immediate consultations with the aeronautical authorities of the other Party. Failure to reach a satisfactory agreement within 15 days from the date of such request shall constitute grounds to withhold, revoke, limit, or impose conditions on the operating authorization and technical permissions of an airline or airlines of that Party. When required by an emergency, a Party may take interim action prior to the expiry of 15 days.

5. Article 8, Commercial Opportunities, shall be amended as follows:

(a) Paragraph (3) shall be amended to read in its entirety as follows:

(3) Each designated airline shall have the right to perform its own ground-handling in the territory of the other Party ("self-handling") or, at its option, select among competing agents for such services in whole or in part. These rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground services shall be available on an equal basis to all airlines; charges shall be based on the costs of services provided; and such services shall be comparable to the kind and quality of services as if self-handling were possible.

(b) Paragraph (4) shall be amended by adding, at the end of the first sentence, the words "except as may be specifically provided by the charter regulations of the country in which the charter originates that relate to the protection of passenger funds, and passenger cancellation and refund rights."

(c) Paragraph (5) shall be amended by adding the words "on the date the carrier makes the initial application for remittance" at the end of the second sentence.

(d) The following paragraphs (6) and (7) shall be added to read as follows:

(6) The airlines of each Party shall be permitted to pay for local expenses, including purchases of fuel, in the territory of the other Party in local currency. At their discretion, the airlines of each Party may pay for such expenses in the territory of the other Party in freely convertible currencies according to local currency regulation.

(7) (a) Provided that all airlines in such arrangements 1) hold the appropriate authority and 2) meet the requirements normally applied to such arrangements, in operating or holding out the authorized services on the agreed routes, any designated airline of one Party may enter into cooperative marketing arrangements, such as blocked-space, code-sharing, and other cooperative arrangements, with

i) an airline or airlines of either Party; and

ii) an airline or airlines of a third country, provided that such third country authorizes or allows comparable arrangements to, from and via such third country.

(b) Notwithstanding the proviso of (ii) above, if an airline of one Party holds out service between a point in the other Party and a point in a third country by means of a code-share arrangement on any segment of that service with an airline of the other Party, the first Party must authorize or allow any airline of the other Party to code share with any airline on any segment of services between that third country and the other Party via a point or points in the first Party.

6. Article 9, Customs Duties and Charges, shall be amended as follows:

(a) Paragraph 1 shall be amended by (1) substituting the words "import restrictions, property taxes and capital levies, customs duties, excise taxes, and similar fees and charges" in place of the words "import restrictions and from all customs duties, inspection fees, and other duties, fees, taxes or charges" and (2) deleting the words "on arriving in the territory of the other Party."

b) Paragraph 2 shall be amended to read as follows:

(2) There shall also be exempt, on the basis of reciprocity, from the taxes, levies, duties, fees and charges referred to in paragraph 1 of this Article, with the exception of charges based on the cost of the service provided:

(a) aircraft stores introduced into or supplied in the territory of a Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Party engaged in international air service, even when these stores are to be used during flight over this territory;

(b) ground equipment and spare parts (including engines) introduced into the territory of a Party for the servicing, maintenance, or repair of aircraft of an airline of the other Party used in international air service;

(c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Party for use in an aircraft of an airline of the other Party engaged in international air service, even when these supplies are to be used during flight over this territory; and

(d) promotional and advertising materials introduced into or supplied in the territory of one Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Party engaged in international air service, even when these materials are to be used during flight over this territory.

7. Article 10, User Charges, shall be amended to read as follows:

#### Article 10

##### User Charges

(1) User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favorable than the most favorable terms available to any other airline at the time the charges are assessed.

(2) User charges imposed on the airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full cost may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

(3) Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs (1) and (2) of this Article. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

(4) Neither Party shall be held, in dispute resolution procedures pursuant to Article 14, to be in breach of a provision of this Article, unless (i) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or (ii) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

8. Article 11, Fair Competition, shall be amended by deleting paragraphs (2) through (6), and replacing them with the following:

(2) Each Party shall allow each designated airline to determine the frequency and capacity of the international air transportation it offers based upon commercial considerations in the marketplace. Consistent with this right, neither Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the designated airlines of the other Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.

(3) Neither Party shall impose on the other Party's designated airlines a first-refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to capacity, frequency or traffic that would be inconsistent with the purposes of this Agreement.

(4) Neither Party shall require the filing of schedules, programs for charter flights, or operational plans by airlines of the other Party for approval, except as may be required on a non-discriminatory basis to enforce the uniform conditions foreseen by paragraph 2 of this Article or as may be specifically authorized in an Annex to this Agreement. If a Party requires filings for information purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Party.

9. Article 12, Pricing, shall be amended to read as follows:

## Article 12

### Pricing

(1) Each Party shall allow prices for air service to be established by each designated airline based upon commercial considerations in the marketplace. Intervention by the Parties shall be limited to:

- (a) prevention of unreasonably discriminatory prices or practices;
- (b) protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position; and
- (c) protection of airlines from prices that are artificially low due to direct or indirect governmental subsidy or support.

(2) Each Party may require notification to or filing with its aeronautical authorities of prices to be charged to or from its territory by airlines of the other Party. Notification or filing by the airlines of both Parties may be required no more than 30 days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required. Neither Party shall require notification or filing by airlines of the other Party of prices charged by charterers to the public, except as may be required on a non-discriminatory basis for information purposes.

(3) Neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by (a) an airline of either Party for international air service between the territories of the Parties, or (b) an airline of one Party for international air service between the territory of the other Party and any other country, including in both cases transportation on an interline or intraline basis, provided that, in the case of service to or from third countries that are members of the European Union on the date that this Agreement enters into force, such price is not specifically prohibited under Council Regulation (EEC) no. 2409/92 of 23 July 1992 on fares and rates for air services as applicable to the European Union. If either Party believes that any such price is inconsistent with the considerations set forth in Paragraph (1) of this article, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request, and the Parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Parties reach agreement with respect to a price for which

notice of dissatisfaction has been given, each Party shall use its best efforts to put that agreement into effect. Without such mutual agreement, the price shall go into effect or continue in effect.

(4) Notwithstanding paragraphs (1) through (3) above, each designated airline has the right to match any price offered in the marketplace.

10. Add the following Article 12 Bis, Intermodal Services:

#### ARTICLE 12 Bis

##### Intermodal Services

Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transportation of both Parties shall be permitted to employ in connection with international air service 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.

11. Article 14, Settlement of Disputes, shall be amended as follows:

(a) In paragraph (1), the reference to paragraph (5) of Article 12 shall be changed to read paragraph (3) of Article 12.

(b) In subparagraph (2) (b) change the term "International Court of Justice" to "Council of the International Civil Aviation Organization" and the term "Court" to "Council."

(c) In paragraph (3), insert the following sentence after the first sentence: "The tribunal, once formed, may recommend interim relief measures pending its final determination." The remainder of the paragraph shall remain the same.

(d) In paragraph (4) insert the words "or as directed by the tribunal" after the word "agreed" in line one.

(e) In paragraph (7) insert the words "to the degree" before the word "consistent" in line one.

(f) In paragraph (8) change the term "International Court of Justice" to "Council of the International Civil Aviation Organization."

12. Article 16, Multilateral Agreement, shall be amended to read as follows:

#### ARTICLE 16

##### Multilateral Agreement

If, after entry into force of this Agreement, both Parties become Party to a multilateral agreement that addresses matters covered by this Agreement, they shall consult to determine whether this Agreement should be revised to take into account the multilateral agreement.

13. Annex I to this Agreement, Scheduled Air Service, shall be amended to read as follows:

#### ANNEX I

##### Scheduled Air Service

##### Section 1

##### Routes

Airlines of each Party designated under this Annex shall, in accordance with the terms of their designation, be entitled to perform scheduled international air service between points on the following routes:

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

From points behind the United States via the United States and intermediate points to a point or points in Austria and beyond.

B. Routes for the airline or airlines designated by the Government of Austria:

From points behind Austria via Austria and intermediate points to a point or points in the United States and beyond.

Section 2

Operational Flexibility

Each designated airline may, on any or all flights and at its option:

- (1) operate flights in either or both directions;
- (2) combine different flight numbers within one aircraft operation;
- (3) serve behind, intermediate, and beyond points and points in the territories of the Parties on the routes in any combination and in any order;
- (4) omit stops at any point or points;
- (5) transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes; and
- (6) serve points behind any point in its territory with or without change of aircraft or flight number and may hold out and advertise such services to the public as through services:

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement; provided that the service serves a point in the territory of the Party designating the airline.

Section 3

Change of Gauge

On any segment or segments of the routes above, any designated airline may perform international air service 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 service beyond such point is a continuation of the service from the territory of the Party that has designated the airline and, in the inbound direction, the service to the territory of the Party that has designated the airline is a continuation of the service from beyond such point.

14. Annex II to the Agreement, Zones of Fare Flexibility, shall be deleted.

15. Annex III to the Agreement, Charter Air Services, shall be redesignated as Annex II and amended as follows:

(a) Section 1 of Annex II shall be amended to read as follows:

Section 1

Airlines of each Party designated under this Annex shall, in accordance with the terms of their designation, 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 designated 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 service constitutes part of a continuous operation, with or without a change of aircraft, that

includes air service to the homeland for the purpose of carrying local traffic between the homeland and the territory of the other Party.

In the performance of services covered by this Annex, airlines of each Party designated 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, traffic originating in the other Party's territory, and traffic originating in third countries.

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.

(b) The first unnumbered paragraph of Section 2 of Annex II shall be amended to read as follows:

Any airline designated by either Party performing international charter air service originating in the territory of either Party, whether on a one-way or round-trip basis, shall have the option of complying with the charter laws, regulations, and rules either of its homeland or of the other Party. If a Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines, of different countries, each designated airline shall be subject to the least restrictive of such criteria.

(c) Section 3 of Annex II shall be amended to read as follows:

### Section 3

Except with respect to the consumer protection rules referred to in the preceding paragraph, neither party shall require an airline designated under this Annex by the other party, in respect of the carriage of traffic from the territory of that other party or of a third country 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.

16. A new Annex III, Principles of Non-Discrimination Within and Competition Among Computer Reservations Systems, shall be added to the Agreement that reads as follows:

### ANNEX III

#### Principles of Non-Discrimination Within and Competition Among Computer Reservations Systems

Recognizing that Article 11 (Fair Competition) of the U.S. - Austria Agreement guarantees the airlines of both Parties "a fair and equal opportunity to compete,"

Considering that one of the most important aspects of the ability of an airline to compete is its ability to inform the public of its services in a fair and impartial manner, and that, therefore, the quality of information about airline services available to travel agents who directly distribute such information to the traveling public and the ability of an airline to offer those agents competitive computer reservations systems (CRSs) represent the foundation for an airline's competitive opportunities, and

Considering that it is equally necessary to ensure that the interests of the consumers of air transport products are protected from any misuse of such information and its misleading presentation and that airlines and travel agents have access to effectively competitive computer reservations systems:

1. The Parties agree that CRSs shall have integrated primary displays for which:

a. Information regarding international air services, including the construction of connections on those services, shall be edited and displayed based on non-discriminatory and objective criteria that are not influenced, directly or indirectly, by airline or market identity. Such criteria shall apply uniformly to all participating airlines.

b. CRS data bases shall be as comprehensive as possible.

c. CRS vendors shall not delete information submitted by participating airlines; such information shall be accurate and transparent; for example, code-shared and change-of-gauge flights and flights with stops should be clearly identified as having those characteristics.

d. All CRSs that are available to travel agents who directly distribute information about airline services to the traveling public in either Party's territory shall not only be obligated to, but shall also be entitled to, operate in conformance with the CRS rules operated.

e. Travel agents shall be allowed to use any of the secondary displays available through the CRS so long as the travel agent makes a specific request for that display.

2. A Party shall require that each CRS vendor operating in its territory allow all airlines willing to pay any applicable non-discriminatory fee to participate in its CRS. A Party shall require that all distribution facilities that a system vendor provides shall be offered on a non-discriminatory basis to participating airlines. A Party shall require that CRS vendors display, on a non-discriminatory, objective, carrier-neutral and market-neutral basis, the international air services of participating airlines in all markets in which they wish to sell those services. Upon request, a CRS vendor shall disclose details of its database update and storage procedures, its criteria for editing and ranking information, the weight given to such criteria, and the criteria used for selection of connect points and inclusion of connecting flights.

3. CRS vendors operating in the territory of one Party shall be entitled to bring in, maintain, and make their CRSs freely available to travel agencies or travel companies whose principal business is the distribution of travel-related products in the territory of the other Party, if the CRS complies with these principles.

4. Neither Party shall, in its territory, impose or permit to be imposed on the CRS vendors of the other Party more stringent requirements with respect to access to and use of communication facilities, selection and use of technical CRS hardware and software, and the technical installation of CRS hardware, than those imposed on its own CRS vendors.

5. Neither Party shall, in its territory, impose or permit to be imposed on the CRS vendors of the other Party more restrictive requirements with respect to CRS displays (including edit and display parameters), operation, or sale than those imposed on its own CRS vendors.

6. CRSs in use in the territory of one Party that comply with these principles and other relevant non-discriminatory regulatory, technical, and security standards shall be entitled to effective and unimpaired access in the territory of the other Party. One aspect of this is that a designated airline shall participate in such a system as fully in its homeland territory as it does in any system offered to travel agents in the territory of the other Party. Owners/operators of CRSs of one Party shall have the same opportunity to own/operate CRSs that conform to these principles within the territory of the other Party as do owners/operators of that Party. Each Party shall ensure that its airlines and its CRS vendors do not

discriminate against travel agents in their homeland territory because of their use or possession of a CRS also operated in the territory of the other Party.