

**PROTOCOL
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY TO
AMEND THE AIR TRANSPORT AGREEMENT OF JULY 7, 1955**

The Government of the United States of America and the Government of the Federal Republic of Germany,

Desiring to amend the Air Transport Agreement, signed at Washington on 7 July 1955, in order to implement their common policy of a market-oriented air transport system,

Have agreed as follows:

Article 1

The Air Transport Agreement of 7 July 1955 as amended by the Agreement of 25 April 1989 shall be further amended as follows:

Article I shall be amended as follows:

a. Subparagraphs a), b), c), d), e) and f) shall be redesignated as paragraphs (1), (10), (5), (3), (7) and (9), respectively.

b. In the redesignated paragraph (1), the phrase "Civil Aeronautics Board and any person or agency authorized to perform the functions exercised by the Civil Aeronautics Board" shall be replaced by the phrase "Department of Transportation, or its successor," and the term "Federal Minister of Transport" shall be replaced by the term "Federal Ministry of Transport."

c. The redesignated paragraph (5) shall be amended to read:

"(5) "Designated airline" means an airline designated and authorized in accordance with Article 3 of this Agreement;"

d. The redesignated paragraph (3) shall be amended to read:

"(3) "Air transportation" means any operation performed by aircraft for the public carriage of traffic in passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;"

e. The redesignated paragraph (7) shall be amended to read:

"(7) "International air transportation" means air transportation that passes through the airspace over the territory of more than one State;"

f. In the redesignated paragraph (9), the phrase "passengers, cargo or mail", shall be replaced by the phrase "passengers, baggage, cargo and/or mail in air transportation."

g. New paragraphs (2), (4), (6), (8) and (11) shall be added, and shall read as follows:

"(2) "Agreement" means this Agreement, The Route Schedule, and any amendments thereto;"

"(4) "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on December 7, 1944;"

"(6) "Full cost" means the cost of providing service plus a reasonable charge for administrative overhead;"

"(8) "Price" means any fare, rate or charge for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in air transportation, charged by airlines,

including their agents, and the conditions governing the availability of, such fare, rate or charge;"

"(11.) "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."

2. Article 2 shall be amended as follows:

a. In paragraph (1), all provisions following the phrase "as follows" shall be replaced by the following

- "a. the right to fly across its territory without landing;
- b. the right to make stops in its territory for non-traffic purposes; and
- c. the rights otherwise specified in this Agreement."

b. After paragraph (1) a new paragraph (2) shall be inserted to read as follows:

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

c. The existing paragraph (2) shall be redesignated as paragraph "(3)".

3. Article 3 shall be replaced by the following text:

"Article 3

(1) Each contracting party shall have the right to designate as many airlines as it wishes to conduct international air transportation in accordance with this Agreement and to withdraw or alter such designations. Such designations shall be transmitted to the other contracting party in writing through diplomatic channels, and shall identify which type of air service specified in the Route Schedule the airline is authorized to conduct.

(2) On receipt of such a designation, and of applications from the designated airline, in the form and manner prescribed for operating authorizations and technical permissions, the other contracting party shall grant appropriate authorizations and permissions with minimal procedural delay, provided that:

(a) substantial ownership and effective control of that airline are vested in the contracting party designating the airline, nationals of the contracting party (which may include natural or legal persons), or both;

(b) the designated airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the contracting party considering the application or applications; and

(c) the contracting party designating the airline is maintaining and administering the standards set forth in Article 6 of the Agreement relating to safety and Article 11 of the Agreement relating to aviation security.

(3) Where nationals of either contracting party hold an ownership interest of less than 50 percent in an airline incorporated and having its principal place of business in a third state, each contracting party waives its right to withhold or revoke operating permission from that airline under the applicable article(s) of the relevant bilateral air services arrangements between that contracting party and the third state solely on the basis of that ownership interest or on the basis that the ownership interest constitutes control or effective control, provided that, with respect to an ownership interest of less than 50 percent, the third state permits airlines of both contracting parties to invest in airlines incorporated and having the principal place of business in that third state on an equal

basis, and provided further that the relevant bilateral air services arrangements between each contracting party and that third state are "Open Skies" agreements or the equivalents thereof. For purposes of this provision: (a) the air services arrangements between Germany and other members of the European Union are deemed equivalents of Open Skies agreements; and (b) the current European Union legislation governing investment in European Union airlines is deemed to permit airlines of both contracting parties to invest in airlines incorporated and having their principal place of business in European Union states on an equal basis with respect to an ownership interest of less than 50 percent."

4. Article 4 shall be replaced by the following text:

"Article 4

(1) Either contracting party may revoke, suspend, or limit the operating authorizations or technical permissions of an airline designated by the other contracting party where:

(a) substantial ownership and effective control of that airline are not vested in the other contracting party, the other contracting party's nationals (which may include natural or legal persons), or both;

(b) that airline has failed to comply with the laws and regulations referred to in Article 5 of this Agreement; or

(c) the other contracting party is not maintaining and administering the standards as set forth in Article 6.

(2) Unless immediate action is essential to prevent further non-compliance with subparagraphs (1) (b) or (1) (c) of this Article, the rights established by this Article shall be exercised only after consultation with the other contracting party.

(3) This Article does not limit the rights of either contracting party to withhold, revoke, limit, or impose conditions on the operating authorization or technical permissions of an airline or airlines of the other contracting party in accordance with the provisions of Article 11 (Aviation Security)."

5. Article 6 shall be amended as follows:

a. The existing paragraph shall be designated as paragraph "(1)".

b. In the second sentence of that paragraph, the phrase "or validated for" shall be inserted after the phrase "licenses granted to".

c. A new paragraph (2) shall be inserted, to read as follows:

"(2) Either contracting party may request consultations concerning the safety standards maintained by the other contracting party relating to aeronautical facilities, aircrews, aircraft, and operation of the designated airlines. If, following such consultations, one contracting party finds that the other contracting party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards that may be established pursuant to the Convention, the other contracting party shall be notified of such findings and the steps considered necessary to conform with these minimum standards, and the other contracting party shall take appropriate corrective action. Each contracting party reserves the right to withhold, revoke, or limit the operating authorization or technical permissions of an airline or airlines designated by the other contracting party in the event the other contracting party does not take such appropriate corrective action within a reasonable time."

6. Article 7 shall be replaced by the following text:

"Article 7

(1) On arriving in the territory of one contracting party, aircraft operated in international air transportation by the designated airlines of the other contracting party, their regular equipment, ground equipment, fuel, lubricants, consumable technical supplies, spare parts (including engines), aircraft stores (including but not limited to such items as food, beverages and liquor, tobacco and other products destined for sale to or use by passengers in limited quantities during flight), and other items intended for or used solely in connection with the operation or servicing of their aircraft engaged in international air transportation shall be exempt, on the basis of reciprocity, from all import restrictions, property taxes and capital levies, value added taxes, customs duties, excise taxes, import charges and similar fees and charges that are (1) imposed by the national authorities, and (2) not based on the cost of services provided, provided that such equipment and supplies remain on board the aircraft.

(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 contracting party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other contracting party engaged in international air transportation, even when these stores are used on part of the journey performed over the territory of the contracting party in which they are taken on board;

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

(c) fuel, lubricants, and consumable technical supplies introduced into or supplied in the territory of a contracting party for use in an aircraft of an airline of the other contracting party engaged in international air transportation, even when these supplies are to be used on part of the journey performed over the territory of the contracting party in which they are taken on board; and

(d) promotional and advertising material introduced into or supplied in the territory of one contracting party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other contracting party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the contracting party in which they are taken on board.

(3) Equipment and supplies referred to in paragraphs (1) and (2) of this Article may be required to be kept under the supervision or control of the appropriate authorities.

(4) The exemptions provided by this Article shall also be available where a designated airline of one contracting party has contracted with another airline, which similarly enjoys such exemptions from the other contracting party, for the loan or transfer in the territory of the other contracting party, of the items specified in paragraphs (1) and (2) of this Article.

(5) Insofar as the above-mentioned supplies are exempted from duties, fees, and charges, they shall not be subject to the otherwise applicable economic prohibitions and restrictions relating to import, export, and transit."

7. After Article 7 a new Article 7bis shall be inserted to read as follows:

"Article 7bis

(1) User charges that may be imposed by the competent charging authorities or bodies of each contracting party on the airlines of the other contracting 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 contracting party on terms not less favourable than the most favourable terms available to any other airline at the time the charges are assessed.

(2) User charges imposed on the airlines of the other contracting 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 contracting 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 contracting 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 contracting party shall be held, resolution procedures pursuant to Article 13 of this Agreement, to be in breach of a provision of this Article, unless (a) it fails to undertake a review of the charge or practice that is the subject of complaint by the other contracting party within a reasonable amount of time; or (b) 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 8 shall be replaced by the following text:

"Article 8

(1) Each contracting party shall allow a fair and equal opportunity for the designated airlines of both parties to compete in the international air transportation covered by the Agreement.

(2) Each contracting 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 contracting 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 contracting 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 contracting party shall impose on the other contracting 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 contracting party shall require the filing of schedules, programs for charter flights, or operational plans by airlines of the other contracting 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 a provision of this Agreement. If a contracting 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 contracting party.

(5) Each contracting party reaffirms the importance of the principle of non-discrimination and will take all necessary steps to ensure that there is no discrimination between its designated airlines and designated airlines of the other contracting party."

9. Article 9 of the Agreement shall be deleted and replaced by the following provision:

"Article 9

(1) The airlines of one contracting party shall have the right, in accordance with such laws and regulations as may pertain, to establish offices in the territory of the other party for business purposes and for the promotion and sale of their services.

(2) The designated airline or airlines of one contracting party shall have the right, in accordance with the laws and regulations relating to entry, residence and employment of the other contracting party, to bring in and maintain in the territory of the other contracting party their own managerial, technical, operational and other specialist staff who are required to support the provision of air transportation.

(3) Any airline of each contracting party may engage in the sale of air transportation in the territory of the other contracting party directly and, at the airline's discretion, through its agents, 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 to passenger cancellation and refund rights. Each airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies.

(4) Each contracting party shall grant to any airline of the other contracting party the right to remit to its country freely, without restrictions or taxation in respect thereof, in any freely convertible currency, and at any legal rate of exchange applicable on the date the carrier makes the initial application for or initiates remittance, the revenue in excess of sums locally disbursed realized through the sale of air transport services.

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

(6) In operating or holding out the authorized services, any designated airline of one contracting party may enter into cooperative marketing arrangements such as blocked-space, code-sharing, or leasing arrangements, with

- (i) an airline or airlines of either contracting 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

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

(7) Notwithstanding any other provision of this Agreement, and consistent with the intention of both contracting parties to create an operating environment for cargo services that allows airlines of the two contracting parties the maximum degree of flexibility to operate on a comparable basis in both countries, airlines of the two contracting parties shall be permitted, subject to the relevant laws and regulations and on the basis of reciprocity, to employ in connection with international air transportation any surface transport for cargo to or from any points in the territories of the contracting 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. 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.

(8) As agreed in 1978, each designated airline shall have the right to perform its own ground handling in the territory of the other contracting party, or, at its option, to use the services of an authorized agent of its choice. Such agents shall be freely authorized, subject to the availability of airport facilities. This provision shall be subject to the following:

a) For the period November 1, 1993 - October 31, 1997, and except as otherwise permitted by a German airport, each airline designated by the Government of the United States of America can perform on all existing and new services the types of ground-handling services that it was performing in Germany as of November 1, 1993, but not new types, if any.

b) An airline designated by the United States whose code is carried by another airline as part of the latter airline's scheduled aircraft operations may not provide airside ground-handling services for that flight.

c) After 31 October 1997, each designated airline shall have the right to perform its own ground-handling in the territory of the other contracting party ("self-handling") or, at its option, select among authorized agents for such services in whole or in part. Notwithstanding this right, with respect solely to types of airside ground-handling services that that designated airline was not performing at an airport or airports in the territory of the other contracting party as of 1 November 1993, the right to perform such additional types of services at such airport or airports shall, until 31 December 1998, be subject to (and only to) physical constraints resulting from considerations of airport safety. Where such considerations preclude such additional self-handling at a specific airport, 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.

d) Both contracting parties reserve the right to consult further on accelerating or further extending the 31 December 1998 date. In this regard, the United States is prepared to consider, without commitment, demonstrated evidence of physical constraints resulting from considerations of airport safety at specific airports, including such evidence as Germany may present to the European Union as grounds for a further waiver of EU regulation on ground-handling."

10. Article 10 shall be deleted and replaced by the following text:

"Article 10

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

1. prevention of unreasonably discriminatory prices or practices;
2. protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position; and
3. protection of airlines from prices that are artificially low because of direct or indirect governmental subsidy or support.

(2) Neither contracting 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 contracting party for international air transportation between the territories of the contracting parties, or (b) an airline of one contracting party for international air transportation between the territory of the other contracting party and any other country, including in both cases transportation on an interline or intraline basis, provided that, in the case of services to or from third countries to which Council Regulation (EEC) no. 2409/92 of 23 July 1992 applies on the date that the 1996 Protocol is signed, or to which a not more restrictive successor regulation applies, such price is not specifically prohibited under that Regulation. If either contracting 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 contracting 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 contracting parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the contracting parties reach agreement with respect to a price for which a notice of dissatisfaction has been given,

each contracting 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.

(3) Prices for international air transportation between the territories of the contracting parties shall not be required to be filed, unless such filing shall be required for the purposes of implementing a mutual agreement reached under paragraph (2) of this Article. Neither contracting party shall require the notification or filing by airlines of the other contracting party of prices charged by charterers to the public, except as may be required on a non-discriminatory basis for information purposes. Notwithstanding the foregoing, the designated airlines of the contracting parties shall continue to provide immediate access, on request, to information on historical, existing, and proposed prices to the aeronautical authorities of the contracting parties in a manner and format acceptable to those aeronautical authorities.

(4) Neither contracting party shall require the approval or filing of prices proposed or charged by indirect providers of air cargo transportation between the territories of the contracting parties.

(5) Notwithstanding paragraph (2) of this Article, each contracting party shall allow any designated airline of one contracting party to meet any price, including combinations of prices, charged in the marketplace for air transportation between the territory of the other contracting party and a third country. As used herein, the term "meet" means the right to continue or institute, on a timely basis, using such expedited procedures as may be necessary, an identical or similar (but not lower) price or such price through a combination of prices on a direct, interline or intraline basis, notwithstanding differences in conditions including, but not limited to, those relating to airports, routing, distance, timing, connections, aircraft type, aircraft configuration, or change of aircraft.

11. The existing Article 11 shall be deleted, and Article 11bis, inserted into the Agreement by the 1989 agreement shall be redesignated as Article 11 and amended as follows:

a. In paragraph (1), the word "and" following "1970" shall be deleted, and the phrase "and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on, February 24, 1988" shall be inserted immediately before the final period.

b. In paragraph (3), the phrase "security provisions" shall be replaced by the phrase "security standards and appropriate recommended practices," and the phrase "to the extent that such security provisions are applicable to the contracting parties" shall be deleted.

c. In paragraph (4), first sentence, the phrase "and checked baggage" shall be inserted after the phrase "carry-on items"

d. In paragraph (6), second sentence, the phrase "and technical permissions" shall be inserted after the phrase "the operating authorization".

Article 12 shall be amended as follows:

A new paragraph (5) shall be added after paragraph (4) to read as follows:

"11(5) Notwithstanding paragraph 1, where either contracting party deems that the circumstances so require, it may request immediate consultations, which shall be held within 15 days of the receipt of the request. The purpose of such consultations shall be to: (a) consider any matter that may affect the operation of the Agreement; and (b) resolve disputes that may arise regarding its interpretation or application."

13. A new article 12bis, shall be added to read as follows:

"Article 12bis

(1) The United States shall, to the full extent permitted by U.S. law, offer German carriers the benefit of any U.S. legislation that provides carriers of other European Union member

states opportunities in the areas of cabotage and foreign ownership and control of U.S. carriers. Germany shall, to the full extent permitted by German and European Union law, offer U.S. carriers the benefit of any German or European Union legislation that provides carriers of any other North American state opportunities in the areas of cabotage and foreign ownership and control of German carriers.

(2) Each contracting party shall keep the other contracting party informed of the extent to which it makes available to carriers of other countries opportunities that have not been made available to carriers of the other contracting party. If opportunities for passenger seventh-freedom rights are made available by one contracting party to carriers of another country, comparable opportunities shall be made available to carriers of the other contracting party, with the understanding that prior consultations will be required at which the contracting parties must agree on what constitutes comparable opportunities and on the implementation of such opportunities, and on comparable reciprocal passenger seventh-freedom opportunities for the carriers of the first contracting party. With respect to other types of opportunities that a contracting party might make available to carriers of other countries, the contracting parties shall promptly consult if the other contracting party requests the extension of comparable opportunities to its carriers, with the objective of reaching a balanced and fair solution.

"

Article 2

This Protocol shall enter into force on the day on which both contracting parties have informed each other by an exchange of diplomatic notes that the necessary internal procedures for entry into force of this Protocol have been completed.

Upon entry into force of this Protocol Amending the Air Transport Agreement of 1955, the provisional application of the 1978 and 1994 agreements relating thereto between the United States and Germany shall be terminated.

DONE at Milwaukee this 23rd day of May, 1996 in duplicate in the English and German languages, both texts being equally authentic.

**FOR THE GOVERNMENT OF THE
THE
UNITED STATES OF AMERICA:
GERMANY:**

**FOR THE GOVERNMENT OF
FEDERAL REPUBLIC OF**