

No. 22085

BRAZIL
and
UNITED STATES OF AMERICA

Exchange of notes constituting an agreement concerning air transport and approving the final act of 25 April 1982 of the meeting of the aeronautical authorities of both States (with annexes). Brasília, 23 June 1982

Exchange of notes constituting an agreement extending the above-mentioned Agreement. Brasília, 20 April and 2 May 1983

Authentic texts of the Exchanges of notes and of annexes C, D and E: Portuguese and English.

Authentic texts of annexes A and B: Portuguese.

Registered by Brazil on 27 July 1983.

BRÉSIL
et
ÉTATS-UNIS D'AMÉRIQUE

Échange de notes constituant un accord relatif aux transports aériens et approuvant l'acte final en date du 25 avril 1982 de la réunion des autorités aéronautiques des deux pays (avec annexes). Brasília, 23 juin 1982

Échange de notes constituant un accord prorogeant l'Accord susmentionné. Brasília, 20 avril et 2 mai 1983

Textes authentiques des Échanges de notes et des annexes C, D et E : portugais et anglais.

Textes authentiques des annexes A et B : portugais.

Enregistrés par le Brésil le 27 juillet 1983.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN BRAZIL AND THE UNITED STATES OF AMERICA CONCERNING AIR TRANSPORT AND APPROVING THE FINAL ACT OF 25 APRIL 1982 OF THE MEETING OF THE AERONAUTICAL AUTHORITIES OF BOTH STATES

I

[PORTUGUESE TEXT — TEXTE PORTUGAIS]

Em 23 de junho de 1982

DTC/DCS/DAI/68/680.4(B46)(B13)

Senhor Embaixador,

Tenho a honra de referir-me à Reunião de Consulta aeronáutica realizada no Rio de Janeiro, no período de 19 a 25 de abril de 1982, da qual resultou a Ata, que reproduzo a seguir:

“ATA DE CONSULTA

Delegações representando os Governos da República Federativa do Brasil e dos Estados Unidos da América reuniram-se na cidade do Rio de Janeiro, no período de 19 a 25 de abril de 1982, para tratarem de vários assuntos ligados à aviação civil entre os seus respectivos países, para que possam alcançar um entendimento de mútua conveniência.

A relação dos componentes de ambas as delegações se encontram nos anexos A e B. As delegações ajustaram o seguinte:

I. AUTORIZAÇÃO PARA OPERAÇÃO DE SERVIÇOS REGULARES

Cada Parte expedirá autorização de operação na forma estabelecida nesta Ata, para que as empresas aéreas regulares indicadas de cada país possam realizar serviços regulares transportando passageiros, carga e correio ou somente carga, de acordo com o anexo D sobre as rotas constantes do anexo C desta Ata.

As delegações concordaram que a autorização de operação deixará às empresas aéreas regulares indicadas a faculdade de implementar os detalhes operacionais normais de seus serviços, tais como mudanças de itinerário e de dia e hora das operações e de mudanças de frequência e de capacidade na conformidade do anexo C e anexo D. Cada empresa aérea regular indicada apresentará seus horários à Autoridade Aeronáutica do outro país, com antecedência de pelo menos trinta (30) dias antes da data prevista para sua vigência. Tais horários entrarão em vigor, conforme propostos pelas empresas, sempre que esteja em acordo aos termos desta Ata. As autoridades aeronáuticas poderão aceitar que os horários sejam apresentados em um período menor.

II. DESIGNAÇÕES

Cada Parte terá o direito de designar empresas para os serviços regulares de acordo com o anexo E.

¹ Came into force on 23 June 1982, the date of the note in reply, in accordance with the provisions of the said notes.

II

EMBASSY OF THE UNITED STATES OF AMERICA

Brasília, June 23, 1982

No. 171

Excellency:

I have the honor to refer to your note number DTC/DCS/DAI/68/680.4(B46) (B13), dated June 23, 1982, which states:

“MEMORANDUM OF CONSULTATIONS

Delegations representing the governments of the Federative Republic of Brazil and the United States of America met in Rio de Janeiro from April 19 to 25, 1982, to discuss various civil aviation issues and to reach mutually satisfactory agreements. Lists of the delegations are attached as annexes A and B. The delegations agreed to the following:

I. AUTHORIZATION FOR OPERATION OF SCHEDULED SERVICES

Each Party will expedite the issuance of operating authority in the manner established in this Memorandum of Consultations so that the airlines designated by each country might operate scheduled passenger, cargo and mail or all-cargo services in accord with annex D over routes in annex C of this Memorandum of Consultations. The delegations agreed that the operating authorization will provide the designated scheduled airlines the choice of implementing the normal operational details of their services such as changes of itinerary and time of operations and changes of frequency and capacity in accordance with annex C and annex D. Each designated airline will transmit its schedule to the aeronautical authorities of the other country at least 30 days prior to its entry into effect. The schedule will become effective as proposed by the airline whenever the schedule is in conformity with this Memorandum of Consultations. The aeronautical authorities may accept schedules filed within a shorter period.

II. DESIGNATIONS

Each Party shall have the right to designate airlines for scheduled services in accordance with annex E.

III. ROUTES

The airlines designated by the Parties may operate over the routes established in annex C.

IV. EQUIPMENT

The frequencies indicated in annex D may be operated freely, at the judgment of the airlines, with B-747 aircraft currently certificated for use in commercial aviation, or with similar or smaller airplanes.

V. TRAFFIC RIGHTS

The two delegations agreed that the airlines designated by both Parties may operate the scheduled services mentioned in this Memorandum of Consultations and its annexes without any restriction on traffic rights of 3rd, 4th, 5th and 6th freedoms.

VI. OPERATING RIGHTS

1. The delegations agreed that, among acceptable scheduling practices, an airline of one country may, at any authorized point in the territory of the other country, consolidate two or more flights into a single flight in such a way that only one aircraft continues transporting the traffic of the flights.

2. The two delegations agreed that in the execution of services authorized by this Memorandum of Consultations the designated airlines may use their own aircraft or aircraft that are leased, chartered or interchanged, observing the norms and regulations of each Party.

3. The delegations agreed that their authorities would continue to authorize the designated airlines of the other Party to conduct all-cargo operations, in both directions, that are the same or similar to those that are currently approved for operation by the U.S. designated airline.

VII. PRICING

Passenger fares and cargo rates (prices) for scheduled services shall be related to the operational costs of the airlines and shall be approved by both Parties before they become effective. Designated airlines shall file proposed prices thirty days in advance of the proposed date of effectiveness. If either Party is dissatisfied with a proposed price, a formal notice of dissatisfaction shall be given to the other Party through diplomatic channels no later than fifteen days before the proposed date of effectiveness. Upon request of either Party, pricing consultations shall be held within thirty days of receipt of the notice of dissatisfaction, or as agreed by both Parties. Without agreement during the consultation, no proposed price shall become effective. In the absence of agreement between the Parties that would permit a proposed price to become effective, as proposed by the designated airline(s) or as agreed by the Parties as the result of pricing consultations, prices in effect at the time of the filing of the proposed prices shall continue in effect until new prices are mutually approved.

VIII. CHARTER FLIGHTS

1. Each Party shall authorize, each year, airlines of the other Party to perform third and fourth freedom charter operations of up to 75 round-trip cargo charter flights and up to 75 round-trip passenger charter flights between any point or points in the territory of one Party to any point or points in the territory of the other Party. Applications for charter flights in excess of these numbers by airlines of either Party will be treated sympathetically by the aeronautical authorities of the other Party.

2. Each Party will provide the other Party with the names of its airlines authorized to perform the above-referenced charter operations.

3. The charter operations by airlines of both Parties will be treated on a non-discriminatory basis.

4. Each Party may require that notification along with minimal required information for the operation of an authorized charter flight or series of charter flights be furnished 15 days in advance for passenger charter flights and 48 hours in advance for cargo charter flights. In exceptional instances, notification for passenger and cargo charter flights may be given in less than the periods stated above and shall be treated on a sympathetic and expedited basis.

5. Each airline can agree on the charter price directly with the charterer, observing the regulations in force in the territory of the Party where the traffic originates.

IX. BUSINESS CONDITIONS AND COMMERCIAL OPPORTUNITIES

The authorities of each country shall make all possible efforts to ensure that the airlines of each country can operate at maximum efficiency with a fair and equal opportunity to compete for traffic on a non-discriminatory basis. In particular, each government will provide for: (1) fair and equal opportunity to carry commercial traffic without discrimination among airlines; (2) simple procedures for prompt conversion and remittance of currency; (3) airport and airways charges and fuel charges on a non-discriminatory basis; (4) exemption from federal taxes to the maximum extent possible; (5) unrestricted opportunities for advertising and other promotion of all of the services of the designated airlines, and (6) the opportunity for airlines to provide ground handling services for themselves or to contract with a company of their choice for the provision of those services in accordance with national legal requirements.

X. LEASING OF AIRCRAFT BETWEEN GALEÃO AND CONGONHAS AIRPORTS

The delegations agreed that:

1. The designated airlines of the United States would be allowed to contract with Brazilian airlines for the leasing of aircraft to provide services between Galeão and Congonhas airports in connection with U.S. airline services over the agreed routes.
2. All international clearance formalities for the services provided under these contracts will take place at Congonhas airport.
3. U.S. airlines will be permitted in their schedules to assign their own flight numbers to the connecting flights of aircraft of a Brazilian airline between Galeão Airport and Congonhas pursuant to the leasing contracts, and U.S. airlines will be permitted to operate one or more of such flights, using their own aircraft, beyond Rio de Janeiro to points on their routes in third countries.

XI. AVIATION SECURITY

Each Party:

1. Reaffirms its commitment to act consistently with the provisions of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963,¹ the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970,² and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;³
2. Shall require that operators of aircraft of its registry act consistently with applicable aviation security provisions established by the International Civil Aviation Organization and adopted by both Parties; and,
3. Shall provide maximum aid to the other Party with a view to preventing unlawful seizure of aircraft, sabotage to aircraft, airports, and air navigation facilities, and threats to aviation security; give sympathetic consideration to any request from the other Party for special security measures for its aircraft or passengers to meet a particular threat; and, when incidents or threats of hijacking or sabotage against aircraft, airports or air navigation facilities occur, assist the other Party by facilitating communications intended to terminate such incidents rapidly and safely.

XII. INTERMODAL FREIGHT SERVICE

The aeronautical authorities of each country, on a reciprocal basis, will provide the airlines of the other Party the right to offer intermodal freight services in conjunction with their international freight operations at maximum efficiency with a fair and equal opportunity to compete for traffic on a non-discriminatory basis.

XIII. CONSULTATIONS

Either Party, at any time, may request consultations with respect to any issues that may arise during the effectiveness of this Memorandum of Consultations. Such consultations shall begin within sixty days from the date the other Party receives the request, unless it is mutually agreed to meet at another date.

XIV. ENTRY INTO FORCE

This Memorandum of Consultations will enter into force provisionally upon its signature, pending an exchange of diplomatic notes, and will remain in effect for a period of one (1) year from this date.

¹ United Nations, *Treaty Series*, vol. 704, p. 219.

² *Ibid.*, vol. 860, p. 105.

³ *Ibid.*, vol. 974, p. 177.

The delegations agreed to meet, at a time mutually accepted, to determine whether adjustments should be made in this Memorandum of Consultations and to initiate discussions on a permanent agreement.

DONE in the city of Rio de Janeiro, April 25, 1982, in English and Portuguese, each being equally valid.

JAMES FERRER, Jr.
Chairman
U.S. Delegation

PEDRO IVO SEIXAS
Chairman
Brazilian Delegation"

[TRANSLATION — TRADUCTION]

ANNEX A

XIth MEETING OF CONSULTATIONS BRAZIL/UNITED STATES OF AMERICA

Brazilian Delegation

Chairman: Brig. Pedro Ivo Seixas
President of CERNAI

Members: Dr. José Da Silva Pacheco
Member of CERNAI—Legal Adviser of the Minister
Councillor Nuno Alvaro Guilherme D'Oliveira
Representative of the Ministry of Foreign Affairs—Member of CERNAI
Col. Hélio Klein Lontra
Member of CERNAI—Adviser of the Minister
Secretary Oswaldo Eurico Balthazar Portella
Representative of the Ministry of Foreign Affairs—Member of CERNAI
Lieutenant Colonel Antonio Carlos Rodrigues Serra de Castro
Assistant to the President of CERNAI
Lieutenant Colonel Antonio Henrique Brown Pereira do Rêgo
Member of CERNAI
Dr. José Simões Henriques
Member of CERNAI
Dr. Expedito Albano da Silveira
Member of CERNAI

Adviser: Mr. João Batista Andrade
VARIG Representative

[TRANSLATION — TRADUCTION]

ANNEX B

XIth MEETING OF CONSULTATIONS BRAZIL/UNITED STATES OF AMERICA

United States Delegation

Chairman: Mr. James Ferrer, Jr.
Director, Office of Aviation, Department of State

Members: Mrs. Gloria Schaffer
 Member, Civil Aeronautics Board
 Mrs. Rosalind Ellingsworth
 Office for International Policy and Programmes
 Department of Transportation of the United States
 Mr. Douglas V. Leister
 Deputy-Director for Negotiations and Policy
 Civil Aeronautics Board of the United States
 Mrs. Carolyn K. Coldren
 Cabinet Officer of the Civil Aviation Board for Latin America
 Mrs. Ann Verber
 Office of the Legal Consultant
 Department of Transportation of the United States
 Mr. George Kenney
 Economic Adviser at the United States Embassy in Brasília
 Mr. James Sartorius
 Chief of the Economic Section of the United States Consulate in Rio de Janeiro
 Mr. Nathaniel Wilson
 Representative of the Air Transport Association of America
 Mr. Ralph Ditano
 Representative of the National Air Transport Association

“ANNEX C

ROUTE SCHEDULE

A. In accordance with this Memorandum of Consultations, and specifically annex E, the airlines designated by the Government of the United States of America are accorded the right to pick up and discharge international traffic in passengers, cargo and mail, separately or in combination, on the following routes, in both directions:

1. From the United States of America, via intermediate points in the Caribbean, Central America, and countries on the West Coast of South America to São Paulo and Rio de Janeiro.
2. From the United States of America, via intermediate points in the Caribbean and South America to Belém, Recife and beyond to Africa.
3. From the United States of America, via intermediate points in the Caribbean, Panama, and countries on the North and East Coasts of South America to Belém or Manaus, Brasília, Rio de Janeiro, São Paulo, Porto Alegre and beyond Brazil to Uruguay and Argentina and beyond to Antarctica and beyond.
4. From the United States of America, via intermediate points in Middle America and countries on the North and East Coasts of South America to Belém or Manaus, Brasília, Rio de Janeiro, São Paulo, Porto Alegre and beyond Brazil to Uruguay and Argentina.
5. From the United States of America, via intermediate points in the Caribbean and South America to Rio de Janeiro and São Paulo and beyond to points in Africa south of the Equator.

B. In accordance with this Memorandum of Consultations, and specifically annex E, the airlines designated by the Government of the Federative Republic of Brazil are accorded the right to pick up and discharge international traffic in passengers, cargo and mail, separately or in combination, on the following routes in both directions:

1. From the Federative Republic of Brazil, via intermediate points in South America and Middle America, to Los Angeles. (Note 1.)
2. From the Federative Republic of Brazil, via intermediate points in South America and the Caribbean, to Miami and Chicago.
3. From the Federative Republic of Brazil, via intermediate points in South America, the Caribbean and Panama, to Washington and New York.
4. From the Federative Republic of Brazil, via intermediate points on the East and North Coasts of South America and in the Caribbean, to Miami and New York beyond to Canada.
5. From the Federative Republic of Brazil, via intermediate points in South America, to New York and beyond to Japan and beyond, via the intermediate point Anchorage. (Note 1.)

NOTE 1. Operations over Route 1 may be extended beyond Los Angeles via the intermediate point Honolulu to Japan and beyond, until a Brazilian airline commences operations beyond New York over Route 5, at which time all rights to operate beyond Los Angeles over Route 1 shall terminate automatically.

C. Any point or points on any route or routes contained in this route schedule may be omitted in either or both directions at the option of the airline designated to operate such route or routes.

D. The airlines designated by one Party will be permitted to operate other services across the territory of the other Party, without obligation on landing, by the most direct route between the points to be served so long as the safety of operation is not affected. In any case, the use of uneconomic and circuitous routings shall be avoided.

E. Flights of a designated airline which do not serve all the points granted in the routes contained in this route schedule may be operated by the most direct route between the points to be served so long as the safety of operation is not affected. In any case, the use of uneconomic and circuitous routings shall be avoided.

F. The airlines designated by one Party in accordance with the provisions of this Memorandum of Consultations will be permitted to land for non-traffic purposes in the territory of the other Party. Every airport in the territory of one of the Parties which is open to international operation shall be open under uniform conditions to the aircraft of the other Party for such non-traffic purposes.

G. For the purposes of this route schedule, the term "Middle America" is interpreted as including only those countries situated on the mainland between South America and the continental United States of America.

ANNEX D

FREQUENCIES

1. The designated airlines of each Party may operate up to 22 round-trips per week for combination services and up to 4 round-trips per week for all cargo services.
2. The flights authorized by paragraph 1 above shall be operated on the routes listed in the route schedule shown in annex C, at the discretion of the airlines.
3. The Parties will also consider applications for extra sections of flights when needs so require. The airlines shall file their applications for extra sections directly with the aeronautical authorities of the other Party and shall provide a copy to their own aeronautical authorities.
4. The numbers of flights specified in paragraph 1 above are expressed as units representing wide-body aircraft. Each Party may, at its discretion, assign up to two wide-body frequencies for combination services to one of the airlines designated for combination services to operate them with narrow-body aircraft in the ratio of one wide-body frequency equals two narrow-body frequencies. For the all-cargo services, one or more wide-body aircraft may be

substituted by narrow-body aircraft in the ratio of one wide-body equals two narrow-body frequencies.

5. If any airline of a Party suspends its services, either temporarily or permanently, the Party may allocate that airline's frequencies to other airlines designated to perform the same category of services.

6. Each Party may allocate or redistribute the frequencies authorized in paragraph 1 above, at its discretion, with the understanding that frequencies of the airlines performing combination services may be transferred only to other designated airlines performing combination services; all-cargo frequencies may be transferred to any of the designated airlines.

ANNEX E

DESIGNATIONS

I. The designations by the United States Government will be as follows:

A. For all-cargo services (1): The Flying Tiger Line.

B. For combination and all-cargo services (2), (3): Pan American World Airways, Braniff International, American Airlines.

II. The Brazilian Government will designate VARIG Airlines to operate all of the services mentioned in annex D. The Brazilian Government, furthermore, may also designate another airline to operate combination services, and a third airline to operate all-cargo services, in accordance with the services mentioned in annex D of this Memorandum of Consultations. Any one of the airlines may be replaced by another one, at the discretion of the Brazilian Government, to operate the services that correspond to the replaced airline.

(1) The United States Government, at its discretion, may replace the airline designated to perform these services.

(2) If one or more airlines designated to provide the services listed in this category suspends all services temporarily, there will be no replacement, but that airline may resume services at a later date, using capacity authorized for the airlines of the United States in annex D of this Memorandum of Consultations. The Government of the United States shall determine if the airline(s) has suspended or terminated its services.

(3) If, in the future, the United States determines that two or more airlines designated to perform services listed in this category have terminated all services, the United States Government, at its discretion, may name replacements provided that, after the replacements are made, the total number of airlines performing services listed in this category does not exceed two.

I would like to indicate my agreement that during the said Civil Aviation Consultation, agreement was reached that the airlines referred to in annex E of the Memorandum would be designated and that therefore these airlines are hereby designated and accepted by both of the Parties.

I would like to express to your Excellency the agreement of the United States Government with the terms of the Memorandum of Consultations, as well as with the understanding consistent with the immediately preceding paragraph.

In this form, I propose to your Excellency that this note, together with your Excellency's note of equal text and of the same date shall constitute an agreement between our two governments which will enter into force upon the date of this note, and will remain in effect until April 25, 1983.

Please accept Excellency, the renewed assurance of my highest consideration.

RAMIRO SARAIVA GUERREIRO"

I have the further honor to accept your proposal that your note, together with this note in reply shall constitute an agreement between our two governments which will enter into force upon date of this note, and will remain in effect through April 25, 1983.

Please accept, Excellency, the renewed assurances of my highest consideration.

[Signed]

LANGHORNE ANTHONY MOTLEY

His Excellency Ramiro Saraiva Guerreiro
Minister of Foreign Affairs
Brasília, D.F.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN BRAZIL AND THE UNITED STATES OF AMERICA EXTENDING THE AGREEMENT OF 23 JUNE 1982 CONCERNING AIR TRANSPORT AND APPROVING THE FINAL ACT OF 25 APRIL 1982 OF THE MEETING OF THE AERONAUTICAL AUTHORITIES OF BOTH STATES²

I

[PORTUGUESE TEXT — TEXTE PORTUGAIS]

[TRANSLATION — TRADUCTION]

Em 20 de abril de 1983

20 April 1983

DTC/DCS/DAI/63/680.4(B46)(B13)

DTC/DCS/DAI/63/680.4(B46)(B13)

Senhor Embaixador,

Sir,

Tenho a honra de dirigir-me a Vossa Excelência, com referência à Ata de Consulta aeronáutica, firmada em Washington, D.C., em 24 de março último.

I have the honour to refer to the final act of aeronautical consultation signed in Washington, D.C. on 24 March last.

2. Nos termos da citada Ata, comunico a Vossa Excelência que o Governo brasileiro está de acordo com a prorrogação por um ano, a partir de 26 de abril corrente, da vigência da Ata de Consulta, assinada no Rio de Janeiro, em 25 de abril de 1982, a qual foi objeto da troca de notas diplomáticas, em 23 de junho de 1982.

2. In accordance with this final act, I wish to inform you that the Brazilian Government agrees to the extension for one year, starting on 26 April 1983, of the period of validity of the final act of consultations, signed in Rio de Janeiro on 25 April 1982, which was the subject of an exchange of diplomatic notes on 23 June 1982.²

3. Caso o Governo dos Estados Unidos da América manifeste sua concordância a respeito, proponho a Vossa Excelência que esta nota juntamente com a resposta de Vossa Excelência sejam consideradas como um acordo entre os nossos dois Governos, passando a Ata de Consulta de 25 de abril de 1982 a vigor até 25 de abril de 1984.

3. If the Government of the United States of America agrees, I propose that this note together with your reply shall be considered as an agreement between our two Governments extending the final act of consultations of 25 April 1982 until 25 April 1984.

Aproveito a oportunidade para renovar a Vossa Excelência os protestos da minha mais alta consideração.

I take this opportunity to renew to Your Excellency the assurances of my highest consideration.

A sua Excelência
o Senhor Langhorne Anthony Motley
Embaixador dos Estados Unidos
da América

His Excellency
Langhorne Anthony Motley
Ambassador of the United States
of America

¹ Came into force on 2 May 1983 by the exchange of the said notes.

² See p. 50 of this volume.

II

EMBASSY OF THE UNITED STATES OF AMERICA

Brasília, May 2, 1983

No. 174

Excellency:

I have the honor to refer to Your Excellency's note DTC/DCS/DAI/63/680.4(B46) (B13), dated April 20, 1983, regarding the Interim Agreement between the Government of the United States of America and the Government of the Federative Republic of Brazil on air transport services which was effected by exchange of notes at Brasília on June 23, 1982.

The Government of the United States is in agreement with the extension of the Agreement for one year, from April 26, 1983.

Your note and this note will be considered an agreement between our two governments, extending the Memorandum of Consultations of April 25, 1982, until April 25, 1984.

Accept, Excellency, the renewed assurances of my highest consideration.

[Signed — Signé]¹

His Excellency Ramiro Saraiva Guerreiro
Minister of Foreign Relations
Brasília, D.F.

¹ Signed by Langhorne Anthony Motley — Signé par Langhorne Anthony Motley.