

No. 23049

BRAZIL
and
UNITED STATES OF AMERICA

Exchange of notes constituting an agreement regulating the entrance into effect of the memorandum of consultations adopted at the conclusion of the XIth meeting on aeronautical consultation held at Washington from 11 to 14 June 1984 (with memorandum of consultations). Brasília, 11 July 1984

Authentic texts: Portuguese and English.

Registered by Brazil on 24 August 1984.

BRÉSIL
et
ÉTATS-UNIS D'AMÉRIQUE

Échange de notes constituant un accord portant approbation du mémorandum adopté lors de la XI^e réunion de consultations aéronautiques tenue à Washington du 11 au 14 juin 1984 (avec mémorandum de consultations). Brasília, 11 juillet 1984

Textes authentiques : portugais et anglais.

Enregistré par le Brésil le 24 août 1984.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE FEDERATIVE REPUBLIC OF BRAZIL AND THE UNITED STATES OF AMERICA REGULATING THE ENTRANCE INTO EFFECT OF THE MEMORANDUM OF CONSULTATIONS ADOPTED AT THE CONCLUSION OF THE XIth MEETING ON AERONAUTICAL CONSULTATION HELD AT WASHINGTON FROM 11 TO 14 JUNE 1984

I

[PORTUGUESE TEXT — TEXTE PORTUGAIS]

DTC/DCS/DAI/69/680.4(B46)(B13)

O Ministério das Relações Exteriores cumprimenta a Embaixada dos Estados Unidos da América e tem a honra de referir-se à Reunião de Consulta aeronáutica, realizada em Washington, D.C., no período de 11 a 14 de junho de 1984, na qual foi aprovado o Memorando, cujo texto é reproduzido a seguir:

MEMORANDO DE CONSULTA

Delegações representando os Governos da República Federativa do Brasil e dos Estados Unidos da América reuniram-se em Washington, D.C., no período de 11 a 14 de junho de 1984, para tratarem de vários assuntos ligados à aviação civil, inclusive as condições gerais do transporte de carga, e para alcançar entendimentos mutuamente satisfatórios.

As relações dos componentes de ambas as Delegações se encontram nos anexos A e B.

Em atenção à preocupação manifestada pelo Governo dos Estados Unidos da América de que determinadas leis, regulamentos e práticas brasileiras resultam em um tratamento preferencial, que favorece a escolha das empresas brasileiras, em prejuízo das empresas norte-americanas que competem pelo transporte de carga aérea, a Delegação brasileira fez uma série de propostas com o objetivo de reduzir a extensão dos alegados efeitos da legislação brasileira.

Especificamente, a Delegação brasileira informou à Delegação dos Estados Unidos da América sobre medidas tomadas pelo Governo brasileiro para modificar a legislação brasileira, as quais eliminarão as preocupações manifestadas pelo Grupo Técnico dos Estados Unidos da América, constantes da ata da reunião dos Grupos Técnicos do Brasil e Estados Unidos da América, realizada no período de 21 a 25 de maio de 1984.

A Delegação dos Estados Unidos da América manifestou seu reconhecimento por estas propostas, bem como as modificações à legislação brasileira e observou que o Governo norte-americano esperava que a implementação destas mudanças criaria condições operacionais justas e equitativas para as empresas de ambos os países competirem pelo transporte de carga aérea.

Em consequência da mútua boa vontade e cooperação, ambas Delegações concordaram em que as autoridades de ambos os países prorrogarão, até 25 de novembro de 1984, as autorizações de operação para as empresas designadas das duas Partes realizarem serviços regulares e não-regulares, de passageiros e carga, no mercado Brasil-Estados Unidos da América.

As Delegações de ambos os países concordaram em que estatísticas serão coligidas, com respeito ao tráfego de carga aérea transportada no mercado Brasil-Estados Unidos da

¹ Came into force on 11 July 1984 by the exchange of the said notes, with retroactive effect from 15 June 1984.

[TRANSLATION — TRADUCTION]

DTC/DCS/DAI/69/680.4(B46)(B13)

The Ministry of Foreign Affairs presents its compliments to the Embassy of the United States of America and has the honour to refer to the aeronautical consultations held at Washington, D.C. from 11 to 14 June 1984, at which the following Memorandum was adopted:

[Memorandum of consultations as under note II]

ANNEX A

BRAZILIAN DELEGATION

Waldir Pinto da Fonseca
President of CERNAI

Oswaldo Eurico Balthazar Portella
Representative of the Ministry of Foreign Affairs

Milsiades sá Freire
Adviser to the Minister of Finance

Antonio Henrique Browne Pereira do Rêgo
Member of CERNAI

José Simões Henriques
Member of CERNAI

José Antonio Marcondes de Carvalho
Representative of the Ministry of Foreign Affairs
Embassy of Brazil to Washington, D.C.

Accácio Gomes
Planning Division of CACEX

João Batista Andrade
Representative of VARIG

João Luis Birnes de Souza
Representative of VARIG

Joseph Halfim
Representative of TRANSBRASIL

Pompilio Mercadanti
Representative of VASP

[Annexes B and C as under note II]

2. The Ministry of Foreign Affairs hereby informs the Embassy of the United States of America that the Brazilian Government is in agreement with the terms of the above Memorandum of Consultations.

3. Accordingly, and pursuant to section XIII of the Memorandum, the Ministry of Foreign Affairs proposes that this note and the reply of the Embassy of the United States of America on the same subject and of the same date be considered an agreement between the two Governments, to enter into force as of today's date, and that the Memorandum of Consultations remain in effect until 25 November 1984.

Brasília, 11 July 1984

RAMIRO SARAIVA GUERREIRO

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No. 251

The Embassy of the United States of America presents its compliments to the Ministry of External Relations of the Federative Republic of Brazil and refers to the Memorandum of Consultations initialled at Washington on June 14, 1984, a copy of which is attached, and to the Ministry of External Relations Note Number 69 dated July 11, 1984.

Pursuant to paragraph 13 of the Memorandum of Consultations, the Embassy of the United States has the honor to confirm that the terms of the Memorandum of Consultations are acceptable to the Government of the United States and agrees that the referenced Note of the Ministry and this Note in reply shall constitute an agreement between the two Governments, bringing the Memorandum of Consultations, the English and Portuguese versions of which are equally authentic, into force on the date of this Note.

The Embassy of the United States of America takes this opportunity to renew to the Ministry of External Relations of the Federative Republic of Brazil the assurances of its highest consideration.

Brasilia, July 11, 1984

Embassy of the United States of America

Attachment:

Memorandum of Consultations

MEMORANDUM OF CONSULTATIONS

Delegations representing the Governments of the Federative Republic of Brazil and the United States of America met in Washington, D.C. June 11-14, 1984, to discuss various civil aviation issues, including the air freight operating environment, and to reach mutually satisfactory agreements. Lists of the delegations are attached as annexes A and B.

As a result of the U.S. Government's stated concern that certain Brazilian laws, regulations and practices produce preferential treatment favoring the use of Brazilian airlines to the disadvantage of U.S. airlines competing for air freight, the Brazilian delegation made a number of proposals which are intended to reduce the extent of the alleged effects under this Brazilian legislation.

Specifically, the Brazilian delegation informed the U.S. delegation of a number of actions the Government of Brazil had taken to amend Brazilian legislation which will eliminate the concerns expressed by the U.S. technical working group in the minutes of the U.S. and Brazil Technical Working Groups of May 21-25, 1984.

The U.S. delegation stated its appreciation for these proposals, as well as amendments of Brazilian legislation and noted that the U.S. Government hoped that implementation of these changes would create a fair and equitable operating environment for the airlines of both countries to compete for air freight. As a result of this mutual good will and cooperation, both delegations agreed that the aeronautical authorities of both countries will extend through November 25, 1984, the operating authority for the designated airlines of the other country to provide scheduled and charter passenger, combination and all-cargo services in the U.S.-Brazil market.

The delegations of both countries agreed that statistics will be collected concerning the freight traffic carried in the U.S.-Brazil market and that these statistics will be exchanged during upcoming meetings of the delegations of both countries.

After full and frank discussion of civil aviation issues, the delegations representing both countries also agreed:

I. OPERATING AUTHORITY FOR AIRLINES

For this interim period, airlines currently designated by each Party for scheduled services may operate over the routes established in annex C. Either Party may replace a designated airline.

II. OPERATIONAL CONDITIONS

1. The designated airlines of each Party may operate up to 22 roundtrips per week for combination services and up to 5 roundtrips per week for all-cargo services.

2. The flights authorized above shall be operated on the routes listed in the Route Schedule shown in annex C, at the discretion of the airlines.

3. The number of all-cargo flights authorized in paragraph II (1) above are expressed as units representing wide-body aircraft. For these 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.

4. 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. Each Party must advise the other Party when one of its designated airlines temporarily or permanently suspends its services or when that airline desires to reactivate those services.

5. Each Party may allocate or redistribute the frequencies authorized in paragraph II (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.

6. Each Party agreed that each designated airline will transmit its complete schedule to the aeronautical authorities of the other Party at least 30 days prior to its entry into effect. The schedule will become effective as proposed by the designated airline whenever the schedule is in conformity with this Memorandum. The aeronautical authorities may accept schedules filed within a shorter period.

7. The frequencies described in paragraph II (1) may be operated freely, at the judgment of the airlines, with wide-bodied or smaller airplanes.

8. Airlines designated by each Party 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.

9. Each Party will grant approval of applications for extra section flights by the airlines of the other Party so long as those extra sections are not above the weekly frequency allocations described in paragraph II (1). Applications for extra sections above the weekly frequency allocations shall be treated sympathetically by the aeronautical authorities of both countries.

III. 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 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.

IV. LEASING OF AIRCRAFT BETWEEN GALEAO 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 Rio de Janeiro and São Paulo 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 São Paulo 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 Rio de Janeiro International Airport and São Paulo Congonhas airport 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.

V. 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 effective date. If either Party is dissatisfied with the 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 effective date. Upon request of either Party, pricing consultations shall be held within thirty days of receipt of a notice of dissatisfaction, or as agreed by both Parties. Without agreement during the consultations, no proposed price shall become effective. In the absence of agreement, prices in effect at the time of the filing of the proposed prices shall continue in effect until new prices are mutually approved.

VI. CHARTER FLIGHTS

1. Each Party shall authorize for the period June 25, 1984, through November 25, 1984, the airlines of the other Party to perform third and fourth freedom charter operations of up to 75 round-trip passenger-only charter flights and 36 round-trip combination (passenger and freight) or all-cargo charter flights between any point or points in the territory of one Party and 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. Both Parties will allow passenger charter flights to be sold to the public, beyond the November 25, 1984, termination date of this Memorandum of Consultations on the understanding that the operation of flights after that date will be subject to governmental approval.

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

4. The charter operations by airlines of each Party will be treated on a non-discriminatory basis.

5. Each Party will provide the other Party, on a monthly basis, an accounting of the charter flights actually operated by its airlines.

6. 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 and combination charters and two business days in advance for all-cargo charters. In exceptional circumstances, notification for passenger, combination and all-cargo

charter flights may be given in less than the periods stated above and shall be treated on a sympathetic and expedited basis.

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

VII. BUSINESS CONDITIONS AND COMMERCIAL OPPORTUNITIES

Each Party affirmed its commitment to make all possible efforts to ensure that the airlines of each country can operate at the 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 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. In addition, the delegations agreed that a designated airline of either Party may notify directly the aeronautical authorities of the other Party of any problems which the airline has encountered regarding discrimination or unfair practices; such notification shall impose an obligation on the aeronautical authorities of that Party to investigate fully such allegations and, if considered substantiated, the aeronautical authorities shall immediately take steps to eliminate the discrimination of unfair practices complained of.

VIII. FUEL PURCHASES

The delegations of both countries stated that the designated airlines of both countries may purchase local services and fuel in local currency or in freely convertible currencies at the option of the airline. The Brazilian delegation stated that studies are being conducted with a goal of eliminating all additional charges which may occur in the processing of payments for these local services and fuel.

IX. REMITTANCES

The delegations representing both countries noted that the designated airlines of both countries have the right to convert on demand and remit to their countries local transportation revenues in excess of sums locally disbursed. Conversion and remittance of transportation revenues shall be permitted promptly without restrictions or remittance taxation at the rate of exchange applicable to current transactions and remittance.

In addition, the Brazilian delegation noted that local transportation revenues which previously had not been remitted by airlines for lack of documentation would be given expedited treatment.

X. AVIATION SECURITY

Each Party:

1. Reaffirms its commitments 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,

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

² *Ibid.*, vol. 860, p. 105.

³ *Ibid.*, vol. 974, p. 177.

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.

XI. 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.

XII. SCHEDULE FOR FUTURE NEGOTIATIONS

The delegations stated that the next meeting between technical working groups representing both countries would be held August 20-24, 1984, in Washington, D.C. The technical working groups will be instructed to begin work on the construction of a new civil aviation bilateral agreement and to review current circumstances in the U.S.-Brazil market. The next plenary session negotiations will be held October 22-26, 1984, in Rio de Janeiro. At the plenary session, progress during the five-month interim period will be discussed as well as the progress of the technical working group. Both delegations agreed that they were hopeful future agreements would be less restrictive in duration and would provide expanded opportunities for the air transport industries of both Parties.

XIII. ENTRY INTO FORCE

This Memorandum of Consultations will become operative on June 15, 1984, will enter into force upon an exchange of diplomatic notes, and will remain in effect through November 25, 1984.

ANNEX B

U.S.-Brazil Civil Aviation Consultations June 11-14, 1984, Washington, D.C.

UNITED STATES DELEGATION

Larry C. Williamson, Chairman
Aviation Negotiations Division
Department of State

Members

James R. Smith, Member
Civil Aeronautics Board

Rosalind Ellingsworth
Office of International Policy and Programs
Department of Transportation

Gary D. DeVight
Aviation Negotiations Division
Department of State

Donald L. Litton, Chief
Negotiations Division
Civil Aeronautics Board

Edward Robinson
Office of International Policy and Programs
Department of Transportation

Irving A. Williamson, Jr.
Bureau of Inter-American Affairs
Department of State

Carolyn K. Coldren
Negotiations Division
Civil Aeronautics Board

Michael Jennison
Office of the General Counsel
Department of Transportation

Thomas A. Johnson
Office of the Legal Adviser
Department of State

Linda Lundell
Negotiations Division
Civil Aeronautics Board

William Schofield
United States Embassy, Brasília

Nat Wilson
Air Transport Association

Ralph Ditano
National Air Carrier Association

Steve Brian
Airport Operators Council International

Observer

Laura Kirkconnell
Office of International Policy and Programs
Department of Transportation

ANNEX C

ROUTE SCHEDULE

A. In accordance with this Memorandum of Consultations, 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, Middle 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 Belem, 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 Belem 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 Belem 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, 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 and 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 airline designated by one Party will be permitted to operate other services across the territory of the other Party, without obligation of 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 the 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.