

No. 26798

**AUSTRIA
and
UNITED STATES OF AMERICA**

**Air Services Agreement (with annexes and tables). Signed at
Vienna on 16 March 1989**

Authentic texts: German and English.

Registered by Austria on 7 September 1989.

**AUTRICHE
et
ÉTATS-UNIS D'AMÉRIQUE**

**Accord relatif aux services aériens (avec annexes et tableaux).
Signé à Vienne le 16 mars 1989**

Textes authentiques : allemand et anglais.

Enregistré par l'Autriche le 7 septembre 1989.

AIR SERVICES AGREEMENT¹ BETWEEN THE AUSTRIAN FEDERAL GOVERNMENT AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

The Austrian Federal Government and the Government of the United States of America (hereinafter referred to as “the Parties”);

Desiring to promote an international air transport system based on competition among airlines in the marketplace with minimum governmental interference and regulation;

Desiring to facilitate the expansion of international air transport opportunities;

Desiring to make it possible for airlines to offer the traveling and shipping public a variety of service options at the lowest prices that are not predatory or discriminatory and do not represent abuse of a dominant position and wishing to encourage individual airlines to develop and implement innovative and competitive prices;

Desiring to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air services, and undermine public confidence in the safety of civil aviation;

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on December 7, 1944,² and

Desiring to conclude an agreement covering commercial air services;

Have agreed as follows:

Article 1. DEFINITIONS

For the purposes of this Agreement, unless otherwise stated, the term:

(a) “Aeronautical authorities” means, in the case of the Austrian Federal Government, the Federal Minister for Public Economy and Transport, and in the case of the Government of the United States, the Department of Transportation or its successor agency;

(b) “Agreement” means this Agreement, its Annexes, and any amendments thereto;

(c) “Air service” means any scheduled air service performed by aircraft for the public transport of passengers, baggage, cargo and mail, separately or in combination for remuneration or hire;

(d) “Convention” means the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944, and includes:

¹ Came into force on 2 June 1989, i.e., 60 days after the Parties had notified each other (on 16 March and 3 April 1989) of the completion of their constitutional procedures, in accordance with article 18.

² United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 117; vol. 958, p. 217; vol. 1008, p. 213, and vol. 1175, p. 297.

(i) Any amendment which has entered into force under Article 94 (a) of the Convention and has been ratified by both Parties, and

(ii) Any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for both Parties;

(e) “Designated airline” means an airline designated and authorized in accordance with Article 3 of this Agreement;

(f) “Price” means any fare, rate or charge for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in air services charged by airlines, including their agents, and the conditions governing the availability or applicability of such price, and the charges and conditions for ancillary services;

(g) “International air service” means an air service which passes through the air space over the territory of more than one State;

(h) “Stop for non-traffic purposes” means a landing for any purpose other than taking on and/or discharging passengers, baggage, cargo and/or mail in air services;

(i) “Territory” means the land areas under the sovereignty, jurisdiction, protection, or trusteeship of a Party, and the territorial waters adjacent thereto;

(j) “User charge” means a charge made to airlines for the provision of airport, air navigation, or aviation security facilities and services; and

(k) “Full economic costs” means the direct cost of providing service plus a reasonable charge for administrative overhead.

Article 2. GRANT OF RIGHTS

(1) Each Party grants to the other Party the following rights for the conduct of international air services by the airlines of the other Party:

- (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.

(2) Nothing in paragraph (1) of this Article shall be deemed to grant the right for one Party’s airlines to participate in air services between points in the territory of that other Party.

Article 3. DESIGNATION AND AUTHORIZATION

(1) Each Party shall have the right to designate an airline or airlines to conduct international air services in accordance with this Agreement and to withdraw or alter such designations. Such designations shall be transmitted to the other Party in writing through diplomatic channels.

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

(a) Substantial ownership and effective control of that airline are vested in the Party designating the airline, nationals of that Party, 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 services by the Party considering the application or applications; and

(c) The Party designating the airline is maintaining and administering the standards set forth in Article 6 (Safety) and Article 7 (Aviation Security).

Article 4. REVOCATION OF AUTHORIZATION

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

(a) Substantial ownership and effective control of that airline are not vested in the other Party, the other Party's nationals, or both;

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

(c) The other Party is not maintaining and administering the standards as set forth in Article 6 (Safety).

(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 Party.

(3) This Article does not limit the rights of either Party to suspend, limit or condition air services in accordance with the provisions of Article 7 (Aviation Security).

Article 5. APPLICATION OF LAWS

(1) While entering, within or leaving the territory of one Party, its laws and regulations relating to the operation and navigation of aircraft shall be complied with by the other Party's airlines.

(2) While entering, within or leaving the territory of one Party, its laws and regulations relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by or on behalf of such passengers, crew or cargo of the other Party's airlines.

Article 6. SAFETY

(1) Each Party shall recognize as valid, for the purpose of operating the air services provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Party and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards which may be established pursuant to the Convention. Each Party may, however, refuse to recognize as valid for the purpose of flight above its own territory, certificates of competency and licenses granted to or validated for its own nationals by the other Party.

(2) Each Party may request consultations concerning the safety standards maintained by the other Party relating to aeronautical facilities, aircrew, aircraft, and operation of the designated airlines. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards which

may be established pursuant to the Convention, the other Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards; and the other Party shall take appropriate corrective action. Each Party reserves the right to withhold, revoke or limit the operating authorization or technical permission of an airline or airlines designated by the other Party in the event the other Party does not take such appropriate action within a reasonable time.

Article 7. AVIATION SECURITY

(1) In accordance with their rights and obligations under international law, the Parties reaffirm that their obligation to protect, in their mutual relationship, the security of civil aviation against acts of unlawful interference forms an integral part of this relationship.

(2) The Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of aircraft and other unlawful acts against the safety of passengers, crew, aircraft, airports and air navigation facilities and any other threat to aviation security.

(3) The Parties shall act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963,¹ the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970² and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.³

(4) The Parties shall, in their mutual relations, act in conformity with the aviation security standards and, so far as they are applied by them, the recommended practices, established by the International Civil Aviation Organization and designated as annexes to the Convention on International Civil Aviation; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions. Each Party shall give advance notice to the other of its intention to notify any difference relating to such provisions.

(5) Each Party agrees to observe the security provisions required by the other Party for entry into the territory of that other Party and to take adequate measures to protect aircraft and to inspect passengers, crew, their carry-on items as well as cargo and aircraft stores prior to and during boarding or loading. Each Party shall also give positive consideration to any request from the other Party for special security measures to meet a particular threat.

(6) When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports and air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

(7) Should a Party depart from the aviation security provisions of this article, the aeronautical authorities of the other Party may request immediate consultations with the aeronautical authorities of that Party. Failure to reach a satisfactory agree-

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

² *Ibid.*, vol. 860, p. 105.

³ *Ibid.*, vol. 974, p. 177.

ment within 30 days from the date of such request will constitute grounds to withhold, revoke, limit or impose conditions on the operating authorization of an airline or airlines of that Party. When required to meet an immediate or extraordinary threat to the safety of the passengers, crew or aircraft, a Party may take interim action prior to the expiry of 30 days without prejudice to the consultations provided by this paragraph.

Article 8. COMMERCIAL OPPORTUNITIES

(1) The airlines of one Party may establish offices in the territory of the other Party for promotion and sale of air services.

(2) The designated airlines of one Party may, in accordance with the laws and regulations of the other Party relating to entry, residence and employment, bring in and maintain in the territory of the other Party managerial, sales, technical, operational and other specialist staff required for the provision of air services.

(3) (a) Each designated airline may perform its own ground handling in the territory of the other Party ("self-handling") or, at its option, have such ground handling services performed in whole or in part by an agent authorized to provide such services. The right to self-handle 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 if self-handling were possible.

(b) A Party reserves the right to require a designated airline or airlines of the other Party to enter into a contract with a specified agent or agents for ground handling services in that first Party's territory in the event that:

(i) Domestic laws, regulations or considerations of airport management of the other Party preclude the authorization of competing agents from which an airline designated by the first Party may contract to perform ground handling services in whole or in part in that other Party's territory, and

(ii) The airline designated by the first Party is being handled in an unreasonable and/or discriminatory manner.

(c) The right stated in subparagraph (b) shall be exercised only after consultations with the other Party, unless immediate action is required under the domestic laws of the first Party.

(4) Each designated airline may engage in the sale of air services in the territory of the other Party directly and, at the airline's discretion, through its agents. Each airline may sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies.

(5) Each designated airline may convert and remit to its country, on demand, local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly without restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions and remittance.

Article 9. CUSTOMS DUTIES AND CHARGES

(1) Aircraft operated in international air services by the designated airlines of one Party, as well as their regular equipment, fuel, lubricants, consumable technical

supplies, spare parts (including engines), aircraft stores (including but not limited to 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 aircraft engaged in international air services on board such aircraft, shall be exempt, on the basis of reciprocity, from import restrictions and from all customs duties, inspection fees, and other duties, fees, taxes or charges, not based on cost of services provided, imposed by national authorities on arriving in the territory of the other Party, provided such equipment and supplies remain on board the aircraft.

(2) There shall also be exempt, on the basis of reciprocity, from the same duties, fees, taxes and other charges, with the exception of charges based on the cost of services provided:

(a) Aircraft stores taken on board in the territory of a Party, within reasonable limits fixed by the authorities of said Party, and for use on board the aircraft of a designated airline of the other Party, engaged in international air services, even when these stores are to be used on part of a journey performed over the territory in which they are taken on board;

(b) Ground equipment and spare parts (including engines) entered into the territory of a Party for the servicing, maintenance or repair of aircraft used in international air services by the designated airlines of the other Party;

(c) Fuel, lubricants and consumable technical supplies destined to supply an aircraft of a designated airline of a Party engaged in international air services, even if these supplies are to be used on part of a journey performed over the territory in which they are taken on board.

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

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

Article 10. USER CHARGES

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

(2) User charges imposed on the designated airlines of the other Party may reflect, but shall not exceed, an equitable portion of the full economic cost to the competent charging authorities or bodies of providing the airport, air navigation, and aviation security facilities and services, and in the case of airport charges, may provide for a reasonable rate of return, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis. Reasonable notice shall be given prior to changes in user charges. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and 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.

Article 11. FAIR COMPETITION

(1) Each Party shall allow a fair and equal opportunity for the designated airlines of both Parties to compete in the international air services covered by this Agreement.

(2) Each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the airlines of the other Party.

(3) In the operation by the designated airlines of either Party of the air services described in this Agreement, the interest of the designated airlines of the other Party shall be taken into consideration so as not to affect unduly the services which the latter provide on all or part of the same route. The air services made available to the public by the designated airlines operating under this Agreement shall bear a close relationship to the requirements of the public for such services.

(4) Services provided by a designated airline under this Agreement shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such airline is a national and the countries of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the routes specified in this Agreement shall be exercised in accordance with the general principles of orderly development to which both Parties subscribe and shall be subject to the general principle that capacity should be related:

(a) To traffic requirements between the country of origin and the countries of ultimate destination of the traffic;

(b) To the requirements of through airline operations; and

(c) To the traffic requirements of the area through which the airline passes after taking account of local and regional services.

(5) Neither Party may unilaterally impose any restriction on the designated airline or airlines of the other Party with respect to capacity, frequency, scheduling or type of aircraft employed in connection with services over any of the routes specified in Annex I of this Agreement, except as may be required for customs, technical, operational or environmental reasons under uniform conditions consistent with Article 15 of the Convention.

(6) If a Party requires filing of schedules or operational plans, it shall minimize the administrative burden of filing requirements on designated airlines of the other Party.

Article 12. PRICING

(1) Each Party shall allow prices for air services to be established by each designated airline based on commercial considerations in the marketplace. Intervention by the Parties shall be limited to prevention of predatory or unreasonably discriminatory prices or practices; protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position; and protection

of airlines from prices that are artificially low because of direct or indirect governmental subsidy or support.

(2) Neither Party shall take unilateral action to prevent the institution or continuation of any price for international air services between the territories of the two Parties proposed or offered by a designated airline of the other Party, except in the case of the institution of a price where:

(a) The first point on the itinerary (as evidenced by the document authorizing transportation by air) is in its own territory; and

(b) In the case of scheduled passenger prices, where the proposed price is also outside the zones set forth in Annex II. Any modifications to this Annex shall be agreed upon between the appropriate authorities of the Parties.

(3) Where both Parties permit designated airlines to participate in price-coordination activities of the International Air Transport Association (IATA), or another airline tariff coordination forum, and where both Parties have approved an IATA or other airline tariff agreement in any market between the territories of the Parties, prices filed by designated airlines pursuant to that approved agreement for the markets that are the subject of that agreement shall be approved by both Parties. Where any designated airline has chosen, however, not to adhere to such an agreement, prices proposed to be charged by that airline shall be reviewed in accordance with the objectives and procedures contained in this Article, and the failure of any airline to participate in such price-coordination activities or the non-conformity of any price to the terms of an IATA or other airline tariff agreement shall not, in itself, constitute a valid reason for either Party to disapprove a price.

(4) Each Party may require filing with its aeronautical authorities of prices proposed to be charged to or from its territory by designated airlines of the other Party. Such filings may be required not more than 30 days before the proposed date of effectiveness. In individual cases, a Party may permit a filing on shorter notice than normally required. If a Party permits an airline to file a price on short notice, the price shall become effective on the proposed date for traffic originating in the territory of that Party.

(5) If a Party is dissatisfied with a price proposed by a designated airline of the other Party for international air services between the territories of the Parties, or by an airline of the other Party for international air services between the territory of the first Party and a third country including, in both cases, transportation on an interline or intraline basis, it shall notify the other Party of the reasons for its dissatisfaction as soon as possible, but in no event later than 15 days after the filing date. Either Party may then request consultations, which shall be held as soon as possible, and in no event later than 30 days after receipt of a notice of dissatisfaction. The Parties shall cooperate on a continuing basis in securing information necessary for reasoned resolution of the issue. If notification of dissatisfaction is not given as provided in this paragraph, the price shall be deemed to be approved and shall become effective on the proposed date.

(6) If the Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Party shall use its best efforts to put that agreement into effect. If a Party prevents a proposed price from becoming effective in accordance with the provisions of paragraphs (2) and (5), the comparable price previously in effect will continue to be in effect.

(7) Notwithstanding paragraphs (2) and (5) each Party shall allow

(a) Any airline of either Party to meet any authorized scheduled service price, including combinations of prices, for international air services between the territories of the Parties, and

(b) Any airline of one Party to meet any authorized scheduled service price, including combinations of prices via points in the territory of one or both Parties, for international air services between the territory of the other Party and a third country, and

(c) Any airline of one Party to establish prices for international air services from the territory of the other Party to that of the first Party which meet authorized scheduled service prices for international air services between the other Party and a country adjacent to the first party.

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 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.

Article 13. CONSULTATIONS

The competent authorities of either Party may, at any time, request consultations relating to this Agreement. Such consultations shall begin at the earliest possible date, but not later than 60 days from the date of the request.

Any modifications or revisions to this Agreement or its annexes which are agreed to as a result of such consultations shall be confirmed by formal agreement.

Article 14. SETTLEMENT OF DISPUTES

(1) Any dispute arising under this Agreement which is not resolved by a first round of formal consultations, except those which may arise under paragraph (5) of Article 12 (Pricing), may be referred by agreement of the Parties for decision to some person or body. If the Parties do not so agree, the dispute shall at the request of either Party be submitted to arbitration in accordance with the procedures set forth below.

(2) Arbitration shall be by a tribunal of three arbitrators to be constituted as follows:

(a) Within 30 days after the receipt of a request for arbitration, each Party shall name one arbitrator. Within 60 days after these two arbitrators have been named, they shall by agreement appoint a third arbitrator, who shall act as President of the arbitral tribunal;

(b) If either Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph (a) of this paragraph, either Party may request the President of the International Court of Justice to appoint the necessary arbitrator or arbitrators within 30 days. If the President of the Court is of the same nationality as one of the Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.

(3) Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedure. At the direction of the tribunal or at the request of either of the Parties, a

conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held no later than 15 days after the tribunal is fully constituted.

(4) Except as otherwise agreed, each Party shall submit a memorandum within 45 days of the time the tribunal is fully constituted. Replies shall be due 60 days later. The tribunal shall hold a hearing at the request of either Party or at its discretion within 15 days after replies are due.

(5) The tribunal shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date both replies are submitted. The decision of the majority of the tribunal shall prevail.

(6) The Parties may submit requests for clarification of the decision within 15 days after it is rendered and any clarification given shall be issued within 15 days of such request.

(7) Each Party shall, consistent with its national law, give full effect to any decision or award of the arbitral tribunal.

(8) The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Parties. Any expenses incurred by the President of the International Court of Justice in connection with the procedures of paragraph (2) (b) of this Article shall be considered to be part of the expenses of the arbitral tribunal.

Article 15. TERMINATION

Either Party may, at any time, give notice in writing to the other Party of its decision to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. Notice shall also be sent to the Secretary General of the United Nations. This Agreement shall terminate at midnight (at the place of receipt of the notice to the other Party) immediately before the first anniversary of the date of receipt of the notice by the other Party, unless the notice is withdrawn by agreement of the Parties before the end of this period.

Article 16. MULTILATERAL AGREEMENT

If a multilateral agreement, accepted by both Parties, concerning any matter covered by this Agreement enters into force, this Agreement shall be amended so as to conform with the provisions of the multilateral agreement.

Article 17. REGISTRATION WITH ICAO

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization and the Secretary General of the United Nations.

Article 18. ENTRY INTO FORCE

This Agreement shall enter into force sixty days following the date on which the two parties have notified each other in an exchange of diplomatic notes that the requirements for its entry into force under their respective constitutional procedures have been fulfilled.

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

DONE in duplicate at Vienna, in the German and English languages, each of which shall be of equal authenticity, this 16th day of March, Nineteen Hundred and Eighty nine.

For the Austrian Federal Government:

THOMAS KLESTIL m.p.

For the Government of the United States
of America:

HENRY A. GRUNWALD m.p.

ANNEX I

AIR SERVICES

Section 1

Airlines of one Party whose designation identifies this Annex shall, in accordance with the terms of their designation, be entitled to perform international air services.

- (1) Between points on the following routes, and
- (2) Between points on such routes and points in third countries through points in the territory of the Party which has designated the airlines.

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

- (1) From the United States of America via intermediate points to Vienna and beyond.

No more than three U.S. airlines may serve this route during the same traffic season, with no more than two U.S. airlines serving this route from New York during the same traffic season. These airlines may not serve the same intermediate or beyond point during the same traffic season.

Prior to the 1991 summer traffic season, service to Vienna may be operated via two intermediate points and to two beyond points. These intermediate points may be selected from among any points but shall not include Paris, Dusseldorf or Munich. The beyond points may be Budapest and Bucharest.

Beginning with the 1991 summer traffic season, service to Vienna may be operated either via the two intermediate points and the two beyond points referred to above or three intermediate points and one beyond point during the same traffic season. The third intermediate point will be agreed upon by the two Parties no later than February 1, 1991. If a third intermediate point is used, the one beyond point may be selected from Budapest and Bucharest.

During any traffic season that this Annex is in effect, one U.S. airline may serve both Budapest and Bucharest in the same traffic season if no other U.S. airline is serving a beyond point and only two intermediate points are being served.

- (2) From a point or points in the United States of America other than New York via intermediate points to Vienna.

Route two may be used only for all-cargo flights.

B. *Routes for the airline or airlines designated by the Austrian Federal Government*

- (1) From Austria to New York.
- (2) From Austria via an intermediate point to a point in the United States of America to be named by the Austrian Federal Government.

C. Both Parties' airlines may switch among their intermediate points and the U.S. airlines may switch among the beyond points at the beginning of a traffic season upon 60 days' prior notice to the other Party's aeronautical authorities.

Section 2

Each designated airline may, on any or all flights and at its option, operate flights in either or both directions and without directional or geographic limitation, serve points on the routes in any order, and omit stops at any point or points outside the territory of the Party which has designated that airline without loss of any right to carry traffic otherwise permissible under this Agreement.

Section 3

Each designated airline may, on any or all flights and at its option, change aircraft in the territory of the other Party or at points in other countries, provided that:

(a) With regard to change of aircraft in the territory of the other Party, operations beyond the point of change of aircraft shall be performed by a single aircraft of capacity equal to or less, for services outbound from the homeland or equal to or more for services inbound, than that of the arriving aircraft, and

(b) Aircraft for such operations shall be scheduled in coincidence with the inbound or outbound aircraft, as the case may be, provided, however, that if a flight is delayed by unforeseen operational or mechanical problems, the onward flight or flights may operate without regard to the requirements of this subparagraph.

Section 4

The provisions of this Annex will expire three years from the date of its entry into force unless otherwise agreed by the Parties. The Parties agree to consult one year in advance of the expiration date to determine whether the provisions of the Annex should be continued or modified.

Nothing in this Section is intended to modify any other provision of the Agreement regarding consultations, suspension or termination of services, or termination of the Agreement.

ANNEX II

ZONES OF FARE FLEXIBILITY

For purposes of Paragraph (2) of Article 12, zones of fare flexibility shall be constructed by applying to the appropriate reference fare level of Table 1 below, the percentage ranges of the appropriate zones in Table 2 below.

DEFINITIONS

(1) "First class fare" and "Business class fare" shall be defined by the airline establishing the fare.

(2) "Economy fare" means a fare offering space equivalent to a seating pitch of not more than 34 inches and not less than 9 seats abreast in Boeing 747 aircraft, 8 in DC-10 and L-1011 aircraft, 7 abreast in A310 and B-767 aircraft, and 5 abreast in narrow-bodied aircraft.

(3) "Discount fare" means any fare which satisfies one of the following sets of conditions:

(a) A fare sold subject to mandatory round-trip travel and a minimum stay of not less than 7 days excluding the date of departure and including the date of return.

(b) A fare sold subject to mandatory round-trip travel and where reservations and full payment and ticketing for both outbound and inbound travel are completed:

(i) Not less than seven days in advance of outbound travel with penalty for cancellation or change to reservation of not less than 20 percent of the fare paid.

(ii) Not less than 14 days in advance of outbound travel with a penalty for cancellation or change to reservation of not less than 10 percent of the fare paid.

(c) A fare for travel by an incentive group comprised of ten or more employees and/or agents of the same business firm, and accompanying spouses, where travel is not paid for by the participants directly or indirectly. (Such fares may be included on a one-way basis when travel in one direction is by a different mode.)

(d) A fare sold subject to mandatory round-trip travel, where full payment and ticketing for both outbound and inbound travel are completed at the time of reservation, with no stopover other than at the point of turnaround, and with a penalty for cancellation or change to reservation of not less than 15 percent of the fare paid.

(4) "Deep discount fare" means any fare which satisfies one of the following sets of conditions:

(a) A fare sold subject to mandatory round-trip travel, a minimum stay of not less than 6 days excluding the day of departure and including the day of return, and where reservations and full payment and ticketing for both outbound and inbound travel are completed not less than 21 days in advance of outbound travel with a penalty for cancellation or change to reservation of not less than 10 percent of the fare paid, provided, however, that no penalty need be collected for such change or cancellation made prior to the minimum advance purchase period.

(b) A fare sold subject to mandatory round-trip travel, a ground package of not less than U.S.\$ 15 (or its equivalent) a day for the duration of the trip, and a minimum stay of not less than 6 days.

In the event outbound travel commences on Thursday, Friday or Saturday, the minimum stay requirement will be considered satisfied if inbound travel commences on the following Sunday or Monday.

(c) A fare sold subject to mandatory round-trip travel, a minimum stay of not less than 6 days excluding the day of departure and including the day of return, a penalty for cancellation or change to reservation of not less than 10 percent of the fare paid, and where full

payment and ticketing for both outbound and inbound travel are completed at the time of reservation.

(d) A fare sold subject to mandatory round-trip transportation where reservations and full payment and ticketing are completed not less than 21 days in advance of travel subject to a penalty for cancellation or change to reservation of not less than 25 percent of the fare paid.

(e) A fare for travel by an incentive group comprised of ten or more employees and/or agents of the same business firm, and accompanying spouses, where travel is not paid for by the participants directly or indirectly, sold subject to mandatory round-trip travel, a minimum stay of not less than 4 days, and a maximum stay of not more than 14 days excluding the date of departure and including the day of return and where reservations and full payment and ticketing for both outbound and inbound travel are completed not less than 15 days in advance of outbound travel with a penalty for cancellation or change to reservation of not less than 10 percent of the fare paid.

(f) A fare sold subject to mandatory round-trip travel, a penalty for cancellation or change to reservation of not less than U.S. \$ 75 (or its equivalent) or 10 percent of the fare paid, and where full payment and ticketing for both outbound and inbound travel are completed at the time of reservation. Outbound transatlantic travel shall commence on a Thursday, Friday or Saturday and return transatlantic travel shall commence on the following Sunday or Monday.

(g) A fare sold subject to mandatory round-trip travel, a minimum stay of not less than 7 days excluding the day of departure and including the day of return, a penalty for cancellation or change to reservation of not less than U.S. \$ 100 (or its equivalent), and where full payment and ticketing for both outbound and inbound travel are completed at the time of reservation which must be 48 hours or less prior to departure from point of origin.

TABLE 1. ROUND-TRIP REFERENCE FARE LEVEL⁽¹⁾

	Eastbound — US Dollars			Westbound — Austrian Schillings		
	Basic	Shoulder/ All-Year	Peak	Basic	Shoulder/ All-Year	Peak
Between Vienna, Graz, Innsbruck, Klagenfurt, Linz, Salzburg and						
New York	1,256	1,427	1,598	23,350	25,800	28,250
Chicago	1,399	1,570	1,741	25,930	28,380	30,830
Los Angeles	1,684	1,855	2,026	31,090	33,540	35,990
Miami	1,513	1,684	1,855	27,990	30,440	32,890
Washington	1,327	1,498	1,669	24,640	27,090	29,540

GENERAL NOTE. The peak season shall include the period June 15 — August 14. Otherwise, seasons shall be established by each filing carrier.

¹ Reference fare levels in each column relate to round-trip travel. One-way reference fare levels are established by halving the corresponding round-trip level.

TABLE 2. ZONES OF FARE FLEXIBILITY

First Class	150%+
Business Class	110-160%
Economy Class	80-120%
Discount	60-90%
Deep Discount	40-70%