

No. 33370

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**MEXICO
and
BRAZIL**

**Agreement concerning air services (with annex). Signed at
Brasília on 26 May 1995**

Authentic texts: Spanish and Portuguese.

Registered by Mexico on 18 November 1996.

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**MEXIQUE
et
BRÉSIL**

**Accord relatif aux services aériens (avec annexe). Signé à
Brasília le 26 mai 1995**

Textes authentiques : espagnol et portugais.

Enregistré par le Mexique le 18 novembre 1996.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED MEXICAN STATES AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL CONCERNING AIR SERVICES

The Government of the United Mexican States and the Government of the Federative Republic of Brazil (hereinafter referred to as the “Contracting Parties”), being parties to the Convention on International Civil Aviation, opened for signature in Chicago on 7 December 1944,²

Desiring to contribute to the development of international civil aviation,

Desiring to conclude an Agreement for the purpose of establishing air services between and beyond their respective territories,

Have agreed as follows:

Article 1

DEFINITIONS

For the interpretation and purposes of this Agreement and its Route Schedule, the following terms shall have the following meaning:

A. The term “the Convention” means the Convention on International Civil Aviation, opened for signature in Chicago on 7 December 1944 and any amendment thereto which has been ratified by both Contracting Parties;

B. The term “this Agreement” includes the Route Schedule annexed hereto and any amendments to this Agreement or to the Route Schedule;

C. The term “aeronautical authorities” means, in the case of the United Mexican States, the Ministry of Communications and Transport and, in the case of the Federative Republic of Brazil, the Ministry of Aeronautics, or, in both cases, any person or body authorized to perform any function currently exercised by the above-mentioned authorities;

D. The terms “air services”, “international air services”, “airline” and “stop for non-commercial purposes” have the meanings respectively given to them in article 96 of the Convention;

E. The term “designated airline” means an airline which has been designated and authorized in accordance with article 3 of this Agreement.

F. The term “tariff” has any of the following meanings:

- i) The fare charged by an airline for the carriage of passengers and their baggage on air services and the rates and conditions applicable to auxiliary services;

¹ Came into force on 28 June 1996 by notification, in accordance with article 19.

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.

- (ii) The freight charged by an airline for the carriage of cargo (with the exception of mail) on air services;
- (iii) The conditions governing the availability or application of such fare or freight charge, including any advantages connected with the passenger fare or freight charge;
- (iv) The amount of the commission paid by an airline to an agent for tickets sold or air waybills issued by the agent for carriage on air services.

G. The term “aeronautical tariff” means the price charged by airlines for the use of airport facilities and services relating to air navigation and aviation security;

H. The term “frequency” means the number of round-trip flights operated by an airline on a specific route over a given period;

I. The term “specified routes” means the routes established in the Route Schedule attached to this Agreement;

J. The term “territory” in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty, dominion or trusteeship of such State.

Article 2

GRANTING OF RIGHTS

1. Each Contracting Party shall grant to the other Contracting Party the rights specified in this Agreement for the purpose of operating international air services on the specified routes. While an agreed service is being operated on a specific route, the designated airlines of each Contracting Party shall enjoy:

- (a) The right to overfly the territory of the other Contracting Party;
- (b) The right to land in that territory for non-traffic purposes;
- (c) The right to embark and disembark in the said territory, at the points on the specified routes, passengers, baggage, cargo and mail, separately or together, to or from points in the territory of the other Contracting Party;
- (d) The right to embark and disembark in the territories of third countries, at the points on the specified routes, passengers, baggage, cargo and mail, separately or together, to or from points in the territory of the other Contracting Party. This right shall be exercised only after prior consultations between the aeronautical authorities.

2. Nothing in paragraph 1 of this article shall be deemed to confer on a designated airline of one Contracting Party the privilege of embarking, in the territory of the other Contracting Party, passengers, baggage, cargo and mail carried for remuneration or hire and destined for another point in the territory of the other Contracting Party.

Article 3

DESIGNATION AND AUTHORIZATION

1. Each Contracting Party shall have the right to designate, through a diplomatic note addressed to the other Contracting Party, an airline or airlines for the purpose of operating the agreed services.

2. On receipt of notification of designation, the aeronautical authorities of each Contracting Party shall, in accordance with their laws and regulations, without delay grant to the airline or airlines designated by the other Contracting Party the appropriate operating authorizations.

3. Each Contracting Party shall have the right to refuse to issue the authorizations referred to in the preceding paragraph, or to issue such authorization under the conditions it deems to be necessary for the exercise by a designated airline or airlines of the rights specified in article 2 of this Agreement, in cases where it is not satisfied that substantial ownership and effective control of the airline or airlines are vested in the Contracting Party which has designated it or in its nationals or in both.

4. The aeronautical authorities of one Contracting Party may require an airline or airlines designated by the other Contracting Party to satisfy them that they are qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities.

5. When an airline has been designated and authorized, it may begin to operate the agreed services, assuming that it complies with the applicable provisions of this Agreement.

6. Each Contracting Party shall have the right to withdraw the designation of an airline and to designate another one through a diplomatic note.

Article 4

REVOCATION OR SUSPENSION OF AUTHORIZATIONS

1. The aeronautical authorities of each Contracting Party shall have the right to revoke or suspend authorizations to exercise the rights specified in article 2 of this Agreement by the designated airline or airlines of the other Contracting Party, or to impose such conditions as it may deem necessary, on a temporary or permanent basis, on the exercise of such rights if:

(a) The airline or airlines fail to comply with the laws and regulations of the Contracting Party granting these rights;

(b) The authorities are not satisfied that substantial ownership and effective control of the airline or airlines are vested in the Contracting Party designating the airline or in its nationals or in both;

(c) The said airline or airlines fail to operate in accordance with the conditions prescribed under this Agreement.

2. Such right shall be exercised only after consultation with the other Contracting Party, unless immediate revocation or suspension of the authorization provided for under paragraph 1 of this article or the imposition of conditions is essential to prevent further infringements of laws or regulations.

Article 5

APPLICABILITY OF LAWS AND REGULATIONS

1. The laws and regulations governing entry into, sojourn in and departure from the territory of each Contracting Party of aircraft engaged in international air

navigation of passengers, crews, baggage, cargo and mail, together with immigration and customs procedures and sanitary measures, shall also apply in that territory to operations by the designated airlines of the other Contracting Party.

2. In the application of the laws and regulations referred to in this article, neither Contracting Party shall grant less favourable treatment to the designated airline or airlines of the other Contracting Party than to its own airline or airlines.

Article 6

RECOGNITION OF CERTIFICATES OF AIRWORTHINESS AND LICENCES

1. Certificates of airworthiness, certificates of competency and licences issued or validated by one Contracting Party and still in force shall be recognized as valid by the other Contracting Party for the purpose of operating on the routes described in the Route Schedule.

2. Nevertheless, each Contracting Party reserves the right to refuse to recognize, for the purpose of flight over its own territory, the validity of certificates of competency and licences issued to its own nationals by another State.

Article 7

CHARGES FOR THE USE OF AIRPORTS

Each Contracting Party may impose or permit to be imposed on the aircraft of the other Party just and reasonable charges for the use of airports and other facilities. Each Contracting Party agrees, however, that these charges shall not be higher than those paid by aircraft operated by its nationals engaged in similar international air services for the use of such airports and facilities.

Article 8

CUSTOMS DUTIES

1. Aircraft used for international air services by the airlines designated by either Contracting Party and standard equipment used for the operation of the aircraft, fuel, lubricants, consumable technical supplies, spare parts and stores (including food, beverages and tobacco) on board such aircraft shall be exempt, on a basis of reciprocity, from all customs duties, taxes and similar charges, and from charges which are not based on the cost of services provided upon arrival, provided that such standard equipment and other supplies remain on board the aircraft.

2. The following items shall be also be exempt, on a basis of reciprocity, from such duties, taxes and charges, with the exception of charges for services performed: lubricating oils, consumable technical supplies, spare parts, tools and special maintenance equipment, uniforms, stores (including food, beverages and tobacco), airline documentation such as tickets, pamphlets, timetables and other printed material required by the airline for its operations, and advertising material which is deemed necessary and which is exclusively for use in the airline's activities, when sent by or for the airline of one Contracting Party to the territory of the other Contracting Party, together with materials taken on board aircraft of the airlines of

one Contracting Party in the territory of the other Contracting Party for use on international air services.

3. Standard equipment taken on board an other materials and supplies retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the authorization of the customs authorities of the territory. In such cases, they may be stored under the supervision of the said authorities up to such time as they are exported or otherwise disposed of in accordance with the relevant legal provisions.

4. Treatment in respect of taxes and national or local charges on fuel, lubricants, consumable technical supplies, spare parts, standard equipment and stores (including but not limited to food, beverages and tobacco) taken on board aircraft of one Contracting Party in the territory of the other Contracting Party, shall not be less favourable than that granted to the national airlines of the latter Contracting Party.

5. The exemptions established in this article shall also be valid when an airline designated by one Contracting Party concludes agreements with another airline or airlines on loans or transfers in the territory of the other Contracting Party of standard equipment and the other materials referred to in paragraphs 1 and 2 of this article provided that the other airline or airlines are also entitled to such exemptions from the other Contracting Party.

6. Passengers, baggage and cargo in direct transit across the territory of one Contracting Party and not leaving the area of the airport reserved for such purpose shall be subject to a very simplified control. Baggage and cargo in direct transit shall be exempt from duties and taxes, customs duties included.

Article 9

OPERATION OF THE AGREED SERVICES

1. The designated airlines of the Contracting Parties shall have fair and equal opportunity to carry on the agreed services to the routes specified.

2. In the operation of the agreed services, the designated airlines of each Contracting Party shall not take any action that is contrary to the interest of the designated airlines of the other Contracting Party so as not to affect unduly the services provided by the latter airlines on all or part of the same routes.

3. The agreed services provided by the designated airlines of the Contracting Parties shall bear a close relationship to the requirements of the public for transportation on the specific routes and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to meet the current and reasonably predictable requirements for the carriage of passengers and cargo, including mail, originating in or destined for the territory of the Contracting Party which has designated the airline. Provision for the carriage of passengers and cargo, including mail, both taken up and put down at other points on the specified routes which are not in the territory of the Contracting Party designating the airline, shall be made in accordance with the general principles that the capacity provided shall be related to:

(a) Traffic requirements to and from the territory of the Contracting Party which has designated the airline;

(b) Traffic requirements of the area through which the agreed service passes, after taking account of other services established by airlines of the States comprising the area; and

(c) The financial requirements of operating the airline.

4. The capacity to be provided on specified routes shall be determined jointly by the Contracting Parties from time to time.

Article 10

TARIFFS

1. The tariffs to be applied by the airlines of the Parties for transportation to or from the territory of the other Party shall be established at reasonable levels, due regard being paid to all relevant factors, especially the cost of operation, the interest of the users, reasonable profit and the tariffs charged by other airlines.

2. The tariffs referred to in paragraph 1 of this article shall, if possible, be agreed by the designated airlines of both parties and shall be submitted for approval to the aeronautical authorities of both Parties at least sixty (60) days before the proposed date of their introduction. In special cases, this time may be reduced, subject to the agreement of the said authorities. No tariff shall come into force unless it has been approved in advance by the aeronautical authorities of both Parties.

3. If agreement cannot be reached on a tariff in accordance with the provisions of paragraph 2 of this article, the aeronautical authorities of both Parties shall endeavour to establish a tariff by mutual agreement; if they cannot agree on a tariff which has been referred to them, the dispute shall be settled in accordance with the provisions of article 14 of this Agreement.

4. If the aeronautical authorities cannot reach agreement on a tariff submitted to them in accordance with the provisions of paragraph 2 of this article on the establishment of tariffs or the provisions of paragraph 3 of this article, the dispute shall be settled in accordance with the provisions of article 15 of this Agreement.

5. (a) No tariff shall come into force unless the aeronautical authorities of both Contracting Parties have approved it, except in accordance with the provisions of article 15, paragraph 4, of this Agreement.

(b) Where tariffs were established in accordance with the provisions of this article, they shall remain in force until new tariffs have been established in accordance with the provisions of this article or of article 15 of this Agreement.

6. If the aeronautical authorities of either Contracting Party do not agree with the tariff established, the aeronautical authorities of the other Contracting Party shall be so notified and the designated airlines shall, where necessary, endeavour to reach an understanding. If a new tariff has been established in accordance with the provisions of paragraphs 2 and 3 of this article within a period of ninety (90) days from the date of receipt of such notification, the procedures provided for in paragraphs 3 and 4 of this article shall be applied.

7. The aeronautical authorities of the two Contracting Parties shall make every effort to ensure that:

(a) The tariffs charged and received conform to the tariffs agreed by the two aeronautical authorities, and that

(b) Neither airline grants discounts on those tariffs.

Article 11

COMMERCIAL ACTIVITIES

1. The designated airlines of one Contracting Party may, in accordance with the laws and regulations of the other Contracting Party relating to entry, residence and employment, bring in and maintain in the territory of the other Contracting Party managerial, sales, technical, operational and other expert staff exclusively at the managerial level required for the operation of the agreed services.

2. In particular, each Contracting Party shall grant to the designated airlines of the other Contracting Party the right to engage in the sale of air transportation in its territory directly and, at the airlines' discretion, through its agencies. Each airline shall have the right to sell such transportation, and, subject to the national laws and regulations, any person shall be free to purchase such transportation in the currency of that country or in freely convertible currencies of other countries.

Article 12

CONVERSION AND REMITTANCE OF REVENUES

Each Contracting Party shall grant the designated airlines of the other Contracting Party the right to remit the excess overexpenditure of receipts earned in the territory of the first Contracting Party, in accordance with the national regulations in force. The procedure for such remittances, however, must conform to the foreign exchange regulations of the Contracting Party in whose territory the income was earned.

Article 13

AVIATION SECURITY

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall, in particular, act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed in Tokyo on 14 September 1963,¹ the Convention for the Suppression of Unlawful Seizure of Aircraft, signed in The Hague on 16 December 1970² and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed in Montreal on 23 September 1971,³ or any other multi-lateral convention or amendment thereto provided that both Contracting Parties accept it.

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

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

² *Ibid.*, vol. 860, p. 105.

³ *Ibid.*, vol. 974, p. 177 and vol. 1217, p. 404 (corrigendum to volume 974).

3. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Contracting Parties. They shall require operators of aircraft of their nationality, or operators of aircraft that have their principal place of business or permanent residence in their territory, and operators of airports situated in their territory to act in conformity with such aviation security provisions.

4. Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3 above required by the other Contracting Party for entry into, departure from or sojourn in the territory of that other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airport or air navigation occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

Article 14

CONSULTATIONS AND AMENDMENTS

1. In a spirit of close cooperation, the aeronautical authorities of the two Contracting Parties shall consult each other with a view to ensuring the implementation of and compliance with the provisions of this Agreement.

2. Either Party may, at any time, request consultations on the interpretation, application or amendment of this Agreement or any dispute relating thereto. Such consultations may be requested orally or in writing, through the diplomatic channel, and shall begin within a period of sixty (60) days from the date of receipt of the request unless the aeronautical authorities of the Parties agree to extend that period.

3. If the Contracting Parties agree to amend this Agreement, the amendments shall be formalized through an exchange of diplomatic notes and shall enter into force through a further exchange of notes in which the two Contracting Parties inform each other that they have fulfilled their domestic legal requirements.

4. The annex may be amended by mutual agreement between the aeronautical authorities of the two Contracting Parties and shall be formalized through an exchange of diplomatic notes.

Article 15

SETTLEMENT OF DISPUTES

1. Except as otherwise provided in this Agreement, any dispute between the Contracting Parties concerning the interpretation or application of this Agreement

which cannot be settled through consultation shall be submitted to an arbitral tribunal.

2. Arbitration shall be carried out by a tribunal of three arbitrators, which shall be established as follows:

(a) Within thirty (30) days from the date of receipt of the request for arbitration, each Contracting Party shall appoint an arbitrator. Within the next sixty (60) days, the two arbitrators who have been appointed shall appoint, by mutual agreement, a third arbitrator, who shall act as President of the arbitral tribunal and may not be a national of either Contracting Party.

(b) If either Contracting Party fails to appoint an arbitrator or if the third arbitrator is not appointed in accordance with subparagraph (a) of this paragraph, either Contracting Party may request the President of the Council of the International Civil Aviation Organization to appoint the necessary arbitrator or arbitrators within a period of thirty (30) days. Where the President possesses the nationality of one of the Contracting Parties, the Vice-President who has the most seniority and who is not ineligible for the same reason shall make the necessary appointment.

3. Except where otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedure.

4. Each Contracting Party, in accordance with its national legislation, shall comply fully with any decision or ruling of the arbitral tribunal.

5. The costs of the arbitral tribunal, including the cost of the arbitrators, shall be shared equally by the Contracting Parties.

Article 16

MULTILATERAL CONVENTION

If a general multilateral convention on aviation enters into force and is binding on both Contracting Parties, the provisions of that convention shall prevail. In accordance with article 14 of this Agreement, consultations may be held with a view to determining the extent to which this Agreement may be affected by the provisions of the multilateral convention.

Article 17

REGISTRATION WITH THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

This Agreement and any amendments thereto shall be registered with the International Civil Aviation Organization.

Article 18

TERMINATION

This Agreement is concluded for an indefinite period, unless either Contracting Party, expresses its desire to terminate it by sending, through the diplomatic channel, written notification to the other Contracting Party twelve (12) months in advance. Such notification shall be communicated simultaneously to the International Civil

Aviation Organization, unless it is withdrawn by mutual agreement before the expiry of this period. In default of acknowledgement of receipt by the other Contracting Party, the notification shall be deemed to have been received fourteen (14) days after the date on which it is received by the International Civil Aviation Organization.

Article 19

ENTRY INTO FORCE

1. This Agreement shall enter into force on the date on which both Contracting Parties notify each other, through the diplomatic channel, that they have completed the formalities and procedures required by their national legislations.

2. Upon its entry into force, this Agreement shall supersede the Air Transport Agreement between the Government of the United Mexican States and the Government of the Federative Republic of Brazil, signed in Mexico City on 17 October 1966.

DONE at Brasília on 26 May 1995, in duplicate in the Spanish and Portuguese languages, both texts being equally authentic.

For the Government
of the Federative Republic of Brazil:

LUIS FELIPE LAMPREIA
Minister of State for Foreign Affairs

For the Government
of the United Mexican States:

JOSÉ ÁNGEL GURRÍA TREVIÑO
Minister for Foreign Affairs

ROUTE SCHEDULE

Section I

The designated airlines of the Government of the United Mexican States shall have the right to operate air services along the following route:

Points in Mexico—intermediate points—two points in Brazil: Rio de Janeiro and São Paulo—points beyond.

Section II

The designated airlines of the Government of the Federative Republic of Brazil shall have the right to operate air services along the following route:

Points in Brazil—intermediate points—two points in Mexico: Mexico City and Cancún—points beyond.

Notes

1. The designated airlines of each Contracting Party may freely select the intermediate points and points beyond; traffic rights shall be agreed in accordance with the provisions of article 2, paragraph (d), of this Agreement.
 2. The airlines designated by the United Mexican States may, on any or all flights, omit stops on the routes specified above and may serve the points in any order, provided that the agreed services on those routes begin in Mexico.
 3. The airlines designated by the Federative Republic of Brazil may, on any or all flights, omit stops on the routes specified above and may serve the points in any order, provided that the agreed services on those routes begin in Brazil.
 4. Each airline shall submit its timetable, which must conform to the provisions of this Agreement, to the aeronautical authorities of the other Contracting Party for information at least thirty (30) days prior to the date on which they are scheduled to become effective.
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