

法規名稱：AN AIR TRANSPORT AGREEMENT BETWEEN THE COORDINATION COUNCIL FOR NORTH AMERICAN AFFAIRS AND AMERICAN INSTITUTE IN TAIWAN (TO SUCCEED ALL PREVIOUS AIR TRANSPORT AGREEMENTS)

簽訂日期：民國 69 年 03 月 05 日

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The Coordination Council for North American Affairs (CCNAA) and the America Institute in Taiwan (AIT). in order to promote extensive, close and friendly commercial, cultural, and other relations; desiring to facilitate the expansion of air transport opportunities on the basis of competition among airlines; 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; wishing to encourage individual airlines to develop and implement innovative and competitive prices; desiring to ensure the highest degree of safety and security in 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 transportation, and undermine public confidence in the safety of civil aviation; desiring to maintain and expand air services by concluding an agreement to succeed all previous Air Transport Agreements;

Have agreed as follows:

ARTICLE 1

Definitions

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

- (a) "Agreement" means this Agreement, its Annexes, and any amendments thereto;
- (b) "Air transportation" means any operation performed by aircraft for the public carriage of traffic in passengers (and their baggage), cargo and mail, separately or in combination, for remuneration or hire;

- (c) "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944;
- (d) "Designated airline" means an air-line designated and authorized in accordance with Article 2 of this Agreement;
- (e) "Full economic costs" means the direct cost of providing service plus a reasonable charge for administrative overhead;
- (f) "Party" means the AIT or the CCNAA, as the context may require;
- (g) "Price" means:
 - (i) any fare, rate or price to be charged by airlines, or their agents, and the conditions governing the availability of such fare, rate or price;
 - (ii) the charges and conditions for services ancillary to carriage of traffic which are offered by airlines; and
 - (iii) amount charged by airlines to air transportation intermediaries;for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in air transportation.
- (h) "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers (and their baggage), cargo and mail in air transportation;
- (i) "User charge" means a charge made to airlines for the provision of airport, air navigation or aviation security property or facilities.

ARTICLE 2

Designation and Authorization

- (1) Each party may designate as many airlines as it wishes to conduct air transportation in accordance with this Agreement and may withdraw or alter such designations. Such designations shall be transmitted to the other party in writing and shall identify what type or types of air transportation the airline is authorized to conduct. Types of air transportation are specified in Annex I and Annex II.
- (2) On receipt of such a designation and of applications in the form and manner prescribed from the designated airline for

operating authorizations and permissions are granted with minimum procedural delay, provided:

- (a) substantial ownership and effective control of that airline are appropriately vested in the party or in persons represented by the party designating the airline;
- (b) the designated airline is qualified to meet the conditions prescribed under the laws and regulations normally applicable to the operation of air transportation; and
- (c) the party designating the airline is ensuring that the standards set forth in Article 5 (Safety) are maintained and administered.

ARTICLE 3

Cabotage

Nothing in this Agreement shall be deemed to grant the right for one party's designated airlines to participate in cabotage.

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 appropriately vested in the party or in person represented by the party designating the airline;
 - (b) that airline has failed to comply with applicable laws and regulations relating to the operation and navigation of aircraft or admission or departure of passengers, crew or cargo on aircraft; or
 - (c) the other party is not ensuring that the standards set forth in Article 5 (Safety) are maintained and administered.
- (2) Unless immediate action is essential to prevent further non-compliance with paragraph (1) of this Article, the rights established by this Article shall be exercised only after consultation with the other party.

ARTICLE 5

Safety

- (1) Subject to Article 32 (b) of the Convention, each party shall recognize as valid, for the purpose of operating the air transportation 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.
- (2) Each party may request consultations concerning safety and security standards 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 ensure the effective maintenance and administration of safety and security 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 ensure that appropriate corrective action is taken. 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 ensure that such appropriate action is taken within a reasonable time.

ARTICLE 6

Aviation Security

The Parties, recognizing their responsibilities to develop international civil aviation in a safe and orderly manner, reaffirm 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 transportation, and undermine public confidence in the safety of civil aviation. To this end, each Party:

- (1) Shall ensure the observance of the provisions of the Conven-

tion on Offenses and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970 and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;

- (2) Shall ensure that its designated airlines act consistently with applicable aviation security provisions established by the International Civil Aviation Organization; and
- (3) Shall ensure that maximum aid is provided 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 for special security measures for 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 in the facilitation of communications intended to terminate such incidents rapidly and safely.

ARTICLE 7

Commercial Opportunities

- (1) The designated airlines of each party may establish offices for the promotion and sale of air transportation.
- (2) The designated airlines of each party may, in accordance with applicable laws and regulations relating to entry, residence and employment, bring in and maintain managerial, sales, technical, operational and other specialist staff required for the provision of air transportation.
- (3) Each designated airline may perform its own ground services ("self-handling") or, at its option, select among competing agents for such services. These rights shall be subject only to physical constraints resulting from considerations of airport safety, where agreed to by both parties. Ground services shall be available on an equal and non-discriminatory basis to all airlines; charges shall be based on the costs of

services provided; and the services provided to an airline that does not self-handle shall be comparable to the kind and quality of services normally available with self-handling. Incorporated by reference as an integral part of this article is the letter of March 5, 1980 between the parties which further elaborates the understanding of the parties.

- (4) Designated airlines of each party may engage in the sale of air transportation directly and, at the airline's discretion, through its agents, except as may be specifically provided by the charter regulations in force at the point at which a charter originates. Each designated airline may sell such transportation, and any person shall be free to purchase such transportation, in local currency or in freely convertible currencies.
- (5) Each designated airline may convert and remit to its home offices, 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 8

Customs Duties and Taxes

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

- ost of services provided, provided such equipment and supplies remain on board the aircraft.
- (2) There shall also be exempt, on the basis of reciprocity, from the taxes, duties, fees and charges referred to in paragraph (1) of this Article, with the exception of charges based on the cost of the services provided:
- (a) aircraft stores introduced into or supplies in the territory of a party and taken on board, within reasonable limits, for use on outbound aircraft of a designated airline of the other party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the party in which they are taken on board;
 - (b) ground equipment and spare parts including engines introduced into the territory of a party for the servicing., maintenance or repair of aircraft of a designated airline of the other party used in international air transportation; and
 - (c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a party for use in an aircraft of a designated airline of the other party engaged in international air transportation, even when these supplies are to be used on a part of the journey performed over the territory of the party in which they are taken on board.
- (3) Equipment and supplies referred to in paragraphs (1) and (2) of this Article may be required to be kept under the supervision or control of the appropriate authorities.
- (4) The exemption 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 for the loan or transfer in the territory of the other party of the items specified in paragraphs (1) and (2) of this Article.
- (5) The exemptions provided for by this Article shall apply only

to those taxes, duties, fees and charges for which the parties are authorized to provide for exemption. The parties undertake to use their best efforts to secure similar exemptions, on the basis of reciprocity, with respect to other such charges, except to the extent that such charges are based on the actual cost of providing a service.

ARTICLE 9

User Charges

- (1) User charges imposed by the competent charging authorities on designated airlines shall be just, reasonable, and nondiscriminatory.
- (2) User charges imposed on designated airlines may reflect, but shall not exceed, an equitable portion of the full economic cost to the competent charging authorities of providing the airport, air navigation, and aviation security facilities and services. 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 the competent charging authorities and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges, and shall arrange for consultations as appropriate to discuss these charges.

ARTICLE 10

Fair Competition

- (1) The designated airlines of each party shall have a fair and equal opportunity to compete in the air transportation covered by this Agreement.
- (2) Each party shall ensure that appropriate action is taken to eliminate all forms of discrimination or unfair competition practices adversely affecting the competitive position of the designated airlines of the other party.
- (3) Unilateral limitations on the volume of traffic, frequency or regularity of service, or aircraft type or types shall not be imposed, except as may be required for customs, techn-

ical, operational or environmental reasons under uniform conditions consistent with Article 15 of the Convention.

- (4) Designated airlines of either party shall not be subjected to a first refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to the capacity, frequency or traffic which would be inconsistent with the purposes of this Agreement.
- (5) Designated airlines shall not be required to file schedules, programs for charter flights, or operational plans for approval, except as may be required on a nondiscriminatory basis to enforce uniform conditions as foreseen by paragraph (3) of this Article or as may be specifically authorized in an Annex to this Agreement. If filings are required for information purposes, the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines shall be minimized.

ARTICLE 11

Pricing

- (1) Prices for air transportation shall be established by each designated airline based upon commercial considerations in the market place. Intervention shall be limited to:
 - (a) prevention of predatory or discriminatory prices or practices;
 - (b) protection of consumers from prices that are unduly high or restrictive because of the abuse of a dominant position; and
 - (c) protection of airlines from prices that are artificially low because of direct or indirect subsidy or support.
- (2) Each party may require notification to or filing with the respective aeronautical authorities of prices proposed to be charged to or from its territory by designated airlines of the other party. Notification or filing may be required no more than 60 days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required. Neither party sha-

- ll require the notification or filing by airlines of the other party or by airlines of third parties of prices charged by charterers to the public for traffic originating in the territory of that other party.
- (3) Unilateral action shall not be taken to prevent the inauguration or continuation of a price proposed to be charged or charged by (a) a designated airline of either party or an airline of a third party for air transportation between the territories of the parties of (b) a designated airline of one party or an airline of a third party for air transportation between the territory of the other party and any intermediate or beyond point including in both cases transportation on an interline or intra-line basis. If either party believes that any such price is inconsistent with the considerations set forth in paragraph (1) of this Article, it shall request consultations and notify the other party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request, and the parties shall cooperate in securing information necessary for reasoned resolution of the issue. 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. Without mutual agreement, that price shall go into or continue in effect.
- (4) Notwithstanding paragraph (3) of this Article, each party shall allow (a) any designated airline of either party or any airline of a third party to meet a lower or more competitive price proposed or charged by any other airline or charterer for air transportation between the territories of the parties, and (b) any designated airline of one party to meet a lower or more competitive price proposed or charged by any other airline or charterer for air transportation between the territories of the parties, and (b) any designated airline of one party to meet a lower or more competitive price prop-

used or charged by any other airline or charterer for air transportation between the territory of the other party and an intermediate or beyond point. As used herein, the term "meet" means the right to establish on a timely basis, using such expedited procedures as may be necessary, an identical or similar price on a direct, interline or intra-line basis, notwithstanding differences in conditions relating to routing, roundtrip requirements, connections, type of service or aircraft type, or such price through a combination of prices.

ARTICLE 12

Consultations

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 the other party receives the request unless otherwise agreed. Each party shall prepare and present during such consultations relevant evidence in support of its position in order to facilitate informed, rational and economic decisions.

ARTICLE 13

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 3 of Article 11 (Pricing), may be referred to arbitration in accordance with the procedures set forth below, unless the parties agree on other procedures.
- (2) Arbitration shall be by a tribunal of three arbitrators. 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.
- (3) Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with th-

is 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, whichever is sooner. 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 use its best efforts to ensure that any decision or award of the arbitral tribunal is given effect in accordance with domestic law.
- (8) The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the parties.

ARTICLE 14

Termination

Either party may, at any time, give notice in writing to the other of its decision to terminate this Agreement. This Agreement shall terminate at midnight (at the place of receipt of 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 before the end of this period.

ARTICLE 15

Entry into Force

This Agreement will come into force on the date of signature, In witness whereof, the undersigned, being duly authorized, have signed the present Agreement. Done in duplicate at Washington in the English language this 5th day of March, 1980.

(Signed) Konsin C. Shah

Coordination Council for

North American Affairs

(Signed) David Dean

American Institute in Taiwan

ANNEX I

Scheduled Air Service

Section 1

Airlines designated to perform the type of air transportation specified in this Annex shall, in accordance with the terms of their designation, be entitled to perform air transportation (1) between points on the following routes, and (2) between points on such routes and other points through points in the territory of the party which has designated the airline.

A Routes for the airline or airlines designated by AIT:

from points in the United States via intermediate points to Taipei and Kaohsiung and beyond via intermediate points to the United States.

B Routes for the airline or airlines designated by CCNAA:

from Taipei/Kaohsiung via intermediate points in the Pacific to Guam, Honolulu, Seattle 1/, San Francisco, Los Angeles, Dallas 1/, and New York 1/, and beyond to a point in Europe and a point in either Central or South America.

1/ Only two of these three cities may be served prior to January 1, 1984.

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, witho-

ut loss of any right to carry traffic otherwise permissible under this Agreement.

Section 3

A designated airline may perform air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated, provided that in the outbound direction the transportation beyond such point is a continuation of the transportation from the territory of the party which has designated the airline and, in the inbound direction, the transportation to the territory of the party which has designated the airline is a continuation of the transportation beyond such point.

Section 4

Airlines designated by one party to perform the type of air transportation specified in this Annex shall, in accordance with the terms of their designation, enjoy the right to over fly the other party's territory without landing and the right to make stops in the other party's territory for non-traffic purposes.

ANNEX II

Charter Air Service

Section 1

Airlines designated to perform the type of air transportation specified in this Annex shall, in accordance with the terms of their designation, be entitled to perform air transportation to, from and through any point or points in the territory of the other either directly or with stopovers en route, for one-way or roundtrip carriage of the following traffic:

- (a) any traffic to or from a point or points in the territory of the party which has designated the airline;
- (b) any traffic to or from a point or points beyond the territory of the party which has designated the airline and carried between the territory of that party and such beyond point or points (i) in transportation other than under this Annex; or (ii) in transportation under this Annex with the traffic making a stopover of at least two consecutive nights in the t-

territory of that party.

Section 2

With regard to traffic originating in the territory of either party, each designated airline performing air transportation under this Annex shall comply with the laws, regulations and rules in force at the point at which the traffic originates, whether on a one-way or roundtrip basis. Airlines designated to perform the type of air transportation specified in this Annex shall be subject to the least restrictive terms, conditions or limitations applicable on any airline.

Section 3

No designated airline carrying traffic originating in the territory of the other party on a one-way or roundtrip basis shall be required to submit more than a declaration of conformity with the laws, regulations and rules referred to under Section 2 of this Annex or of a waiver of these rules.

Section 4

Airlines designated by one party to perform the type of air transportation specified in this Annex shall, in accordance with the terms of their designation, enjoy the right to over fly the other party's territory without landing and the right to make stops in the other party's territory for non-traffic purposes.