

## MEMORANDUM OF CONSULTATIONS

Delegations representing the governments of the United States of America and the Republic of Ecuador met on June 3-4, 2010, in Washington, D.C., to discuss further liberalization of the air services relationship between the two countries. The consultations took place in a cordial and constructive atmosphere, reflecting the relations between the two countries. Delegation lists are appended at Appendix A.

The delegations reached agreement, *ad referendum*, on modifications to the Annexes to the Air Transport Agreement between the Government of the United States of America and the Government of the Republic of Ecuador, signed at Washington, D.C., on September 26, 1986 (“the Agreement”). The text of the modifications is set out in a draft protocol to modify the Annexes to the Agreement, which is appended at Appendix B. The delegations intend to submit the draft protocol to their respective governments for signature.

Both delegations affirmed their understanding that nothing in the draft protocol amending the Annexes grants cabotage rights.

Regarding Annex III – cooperative marketing arrangements, both delegations understand that code-sharing between designated airline(s) of one Party and designated airline(s) of the other Party shall be subject to capacity and frequency constraints applicable to the respective Parties. The delegations also noted that Annex III does not confer any route or capacity rights on third-country airlines beyond those already available to such airlines as a matter of bilateral relations between a Party and that third country.

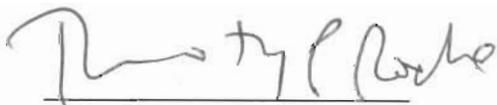
The U.S. delegation raised its desire to include surface operations under Annex III – cooperative marketing arrangements. The Ecuadorian delegation stated that the Ecuadorian authorities would look favorably on proposals for such operations, but that they have not formulated a comprehensive policy in this area.

The U.S. delegation sought Ecuador’s assistance on two ongoing tax issues: tax on remittance of local revenues and tax on fuel. With respect to remittances, the U.S. delegation noted that the taxation of remittances was inconsistent with Article 8(4) of the Agreement, and that the U.S. does not tax remittances by Ecuadorian airlines. The Ecuadorian delegation responded that, due to its legislation, it does not have the authority to implement Article 8(4) of the Agreement, as it had never been ratified by the Ecuadorian National Assembly. The Ecuadorian delegation encouraged the U.S. delegation to continue to work through the U.S. Embassy to pursue a resolution with the proper Ecuadorian authorities.

The U.S. delegation outlined its concern that Ecuador imposes a tax on fuel uplifted by U.S. airlines in Ecuador in connection with their international services. The U.S. noted that both the Chicago Convention and the U.S.-Ecuador Air Transport Agreement call for exemption from national taxes on fuel, based on reciprocity. In connection with the reciprocity standard, U.S. law requires a review of Ecuador's current exemption from the U.S. excise tax on fuel. The U.S. review process was outlined for the Ecuadorian delegation, and the U.S. noted that, should it be determined that Ecuador does tax fuel uplifted by U.S. airlines, U.S. law requires a change in the exemption status of Ecuadorian airlines.

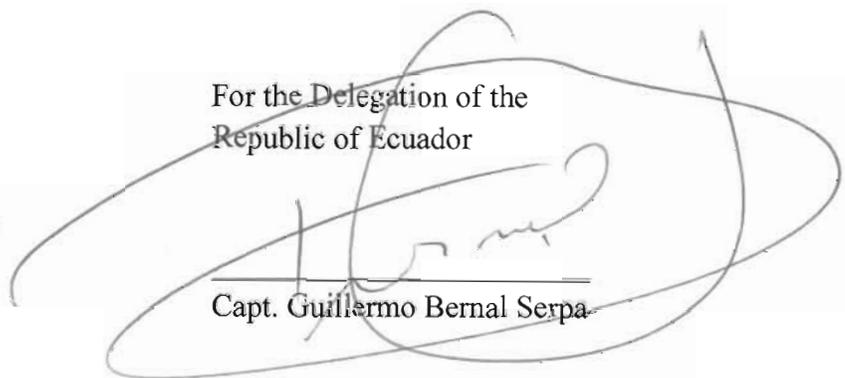
In response, the Ecuadorian delegation acknowledged U.S. concerns and stated that it is currently reviewing the fuel tax situation, with a view to finding a solution. The U.S. delegation took note of this information and said that it looks forward to any additional information Ecuador might provide.

For the Delegation of the  
United States of America



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Timothy P. Roche

For the Delegation of the  
Republic of Ecuador



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Capt. Guillermo Bernal Serpa

June 4, 2010

**U.S. – Ecuador Negotiations  
June 3 - 4, 2010**

**Delegations**

**United States**

Timothy Roche  
Head of Delegation  
Deputy Director for Aviation Negotiations  
U.S. Department of State

Dan Hutchens  
Office of Aviation Negotiations  
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Elizabeth Kiingi  
Attorney Adviser  
Office of the Legal Adviser  
U.S. Department of State

Les Johnston  
Office of Andean Affairs  
U.S. Department of State

Brian Hedberg  
Office of International Aviation  
U.S. Department of Transportation

Jennifer Thibodeau  
Office of International Law  
U.S. Department of Transportation

Eugene Alford  
International Trade Specialist



Office of Service Industries  
U.S. Department of Commerce

**U.S. Industry**

Diane Peterson  
Airports Council International-North America

Donald Fields  
Metropolitan Washington Airports Authority

Cecilia Bethke  
Air Transport Association

Robert Wirick/Michael Wascom  
American Airlines

Russ Pommer  
Atlas Airlines

Dan Weiss  
Continental Airlines

Jeff Morgan  
Delta Airlines

Courtney Felts  
Federal Express

Oracio Marquez  
United Airlines

Dontai Smalls  
United Parcel Service



## **Ecuador**

Cap. Guillermo **Bernal** Serpa, Head of Delegation  
President of the National Civil Aviation Council (CNAC) and  
Under Secretary for Civil Aviation

Dr. Maria Teresa **Lara** Zumarraga  
CNAC Representative from the Ministry of Industry and Production

Freddy **Egüez** Rivera, Economist  
CNAC Representative from the National Federation of Chambers of  
Tourism

Fernando Xavier **Guerrero** Lopez, Engineer  
Director General of Civil Aviation

Dr. Carlos Eduardo **Saenz** Merizalde  
Advisor to CNAC on Aviation Policy

Daniel **Friedman** Matelua, Attorney  
Department of Taxation Rules  
National Legal Directorate of the Internal Revenue Service

Silvia **Espindola**, Counselor  
Embassy of Ecuador

## **Ecuador Industry**

Maria Gabriela **Sommerfeld** Rosero  
Executive President, Aerogal

Manuel Maximiliano **Naranjo** Iturralde  
General Manager, Aerolane

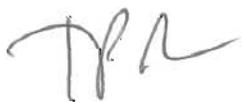
Juan Carlos **Aguirre** Gutierrez

Executive Director LAN Airlines

Marco Antonio **Subia** Martinez  
Advisor on Aviation Policy, TAME Airlines

Dionicio Geovanny **Espinel** Puga  
Vice President of Marketing, TAME Airlines

Luis Cristobal **Grudena** Accini  
General Manager  
Aero Express of Ecuador TRANSAM Co., Ltd.



PROTOCOL TO MODIFY THE ANNEXES TO THE  
AIR TRANSPORT AGREEMENT  
BETWEEN THE  
GOVERNMENT OF THE UNITED STATES OF AMERICA  
AND  
THE GOVERNMENT OF THE REPUBLIC OF ECUADOR

The Government of the United States of America and the Government of the Republic of Ecuador (hereinafter, the "Parties");

DESIRING to promote an international air transport system based on fair competition among airlines in the marketplace;

DESIRING to facilitate the expansion of fair international air transport opportunities in the public interest;

BEING Parties to the Convention on International Civil Aviation opened for signature at Chicago on December 7, 1944;

DESIRING to build on the provisions of the Air Transport Agreement between the Government of the United States of America and the Government of the Republic of Ecuador, signed at Washington on September 26, 1986, (hereinafter, "the Agreement"); and

ACKNOWLEDGING that, since 1986, the competent authorities of the Parties have permitted operations in accordance with Annexes I and II to the Agreement:

Have agreed that the competent authorities of the Parties shall continue to permit operations in accordance with the terms of the Annexes, subject to the following modifications:

## Article 1

### Annex I – Scheduled Services

Annex 1 – Scheduled Services – shall be modified as follows:

1. Paragraphs 1(A) and 1(B) of Section 2 shall be deleted in their entirety and replaced with the following:

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

(i) For scheduled combination (passenger, baggage, cargo, and mail) services: from the United States via 15 intermediate points to points in Ecuador<sup>1</sup> and beyond to Lima, Peru; Santiago, Chile; Buenos Aires, Argentina; La Paz and Santa Cruz, Bolivia; Asuncion, Paraguay; and Rio de Janeiro and Sao Paulo, Brazil and 5 additional points to be selected by the Government of the United States.

(ii) For scheduled all-cargo services:

(a) From points behind the United States, via the United States and intermediate points, to a point or points in Ecuador and beyond.

(b) From Ecuador to any point or points.

(iii) Points shall be selected by the Government of the United States and notified to the Government of the Republic of Ecuador by diplomatic note. The points may be changed by giving 60 days written notice by diplomatic note. Points chosen must be in a country with which both Parties have diplomatic relations.

B. Routes for the airline or airlines designated by the Government of the Republic of Ecuador:

(i) For scheduled combination (passengers, baggage, cargo and mail) services: from the Republic of Ecuador via 15 intermediate points to Miami, Orlando, Washington, New York, Chicago, Los Angeles, and four additional points in the United States and beyond to Madrid, Spain; Montreal and Toronto, Canada; and 5 additional points in Europe via code share only.

(a) Effective July 1, 2011, 5 additional points in the United States to be selected by the Government of the Republic of Ecuador.

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<sup>1</sup> Airlines designated by the Government of the United States may provide direct service to Quito, Guayaquil, Latacunga, Manta, and other airports as they become available for international service. All other airports may be served by code-share service only.

- (b) Effective July 1, 2011, 5 additional points in the United States to be selected by the Government of the Republic of Ecuador for code-share services only.
- (c) Effective July 1, 2012, 5 additional points in the United States to be selected by the Government of the Republic of Ecuador for code-share services only.
- (ii) For scheduled all-cargo services:
  - (a) From points behind Ecuador, via Ecuador and intermediate points, to a point or points in the United States and beyond.
  - (b) From the United States to any point or points.
- (iii) Points shall be selected by the Government of the Republic of Ecuador and notified to the Government of the United States by diplomatic note. The points may be changed by giving 60 days written notice by diplomatic note. Points chosen must be in a country with which both Parties have diplomatic relations.

2. The following new paragraphs (4) and (5) shall be added to Section 2:

"(4) For all-cargo services, each designated airline may, on any or all flights and at its option:

- (a) operate flights in either or both directions;
- (b) combine different flight numbers within one aircraft operation;
- (c) serve behind, intermediate, and beyond points and points in the territories of the Parties on the routes in any combination and in any order;
- (d) omit stops at any point or points;
- (e) transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes; and
- (f) serve points behind any point in the territory with or without change of aircraft or flight number and may hold out and advertise such services to the public as through services;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement; provided that, for combination services only, the service serves a point in the territory of the Party designating the airline.



(5) For all-cargo services, on any segment or segments of the routes above, any designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that, for combination services only, in the outbound direction, the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point.”

3. Section 3 shall be deleted in its entirety and replaced with the following:

“Section 5 - Capacity

1. The designated airlines of each Party may operate a maximum number of 120 round trip combination frequencies per week over the routes specified in Section 2 of this Annex.

2. The airlines of each Party designated for all-cargo service may operate an unlimited number of round trip all-cargo frequencies per week over the routes specified in Section 2 of this Annex.

3. The aeronautical authorities of each Party shall have the right to distribute these frequencies among its designated airlines.”

4. Section IV shall be deleted in its entirety and replaced with the following:

“Section 6 - Termination

Unless otherwise agreed, this Annex will expire on June 30, 2013.”

**Article 2**

**Annex II – Charters**

Annex II – Charters – shall be deleted in its entirety and replaced with the following:



“ANNEX II – Charter Air Transportation

Section 1

A. Airlines of each Party designated under this Annex shall, in accordance with the terms of their designation, have the right to carry international charter traffic of passengers (and their accompanying baggage) and/or cargo (including but not limited to, freight forwarder, split, and combination (passenger/cargo) charters):

1. Between any point or points in the territory of the Party that has designated the airline and any point or points in the territory of the other Party; and
2. Between any point or points in the territory of the other Party and any point or points in a third country or countries, provided that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to the homeland for the purpose of carrying local traffic between the homeland and the territory of the other Party.

B. In the performance of services covered by this Annex, airlines of each Party designated under this Annex shall also have the right: (1) to make stopovers at any points whether within or outside of the territory of either Party; (2) to carry transit traffic through the other Party’s territory; (3) to combine on the same aircraft traffic originating in third countries; and (4) to perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that, except with respect to cargo charters, in the outbound direction, the transportation beyond such point is a continuation of transportation from the territory of the Party that has designated the airline and in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation beyond such point.

C. Each Party shall extend favorable consideration to applications by airlines of the other Party to carry traffic not covered by this Annex on the basis of comity and reciprocity.

Section 2

A. Any airline designated by either Party performing international charter air transportation originating in the territory of either Party, whether on a one-way or round-trip basis, shall have the option of complying with the charter laws, regulations, and rules either of the homeland or of the other Party. If a Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines of different countries, each designated airline shall be subject to the least restrictive of such criteria.

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B. However, nothing contained in the above paragraph shall limit the rights of either Party to require airlines designated under this Annex by either Party to adhere to requirements relating to the protection of passenger funds and passenger cancellation refund rights.

### Section 3

Except with respect to the consumer protection rules referred to in the preceding paragraph, neither Party shall require an airline designated under this Annex by the other Party, in respect of the carriage of traffic from the territory of that other Party or of a third country on a one-way or round-trip basis, to submit more than a declaration of conformity with the applicable laws, regulations and rules referred to under section 2 of this Annex or a waiver of these laws, regulations, or rules granted by the applicable aeronautical authorities.”

### Article 3

#### **Annex III – Cooperative Marketing Arrangements**

A new Annex III shall be added to read as follows:

#### **“ANNEX III – Cooperative Marketing Arrangements**

In operating or holding out the authorized services on the agreed routes, any designated airline of one Party may enter into cooperative marketing arrangements such as blocked-space, code-sharing or leasing arrangements, with

1. an airline or airlines of either Party;
2. an airline or airlines of a third country; and
3. a surface transportation provider of any country;

provided that all participants in such arrangements (a) hold the appropriate authority; and (b) meet the requirements applied to such arrangements. The Parties shall only count frequencies for the operating airline engaged in a cooperative marketing arrangement, regardless of whether the arrangement involves airlines of the same country or of another country or countries.”

### Article 4

#### **Annex IV – Pricing**

A new Annex IV shall be added to read as follows:

## "ANNEX IV – Pricing

The Parties shall apply the following pricing arrangements to services provided pursuant to Annexes I, II and III to the Agreement:

### Pricing

1. Each Party shall allow prices for air transportation to be established by airlines of both Parties based upon commercial considerations in the marketplace. Intervention by the Parties shall be limited to:

- (a) prevention of unreasonably discriminatory prices or practices;
- (b) protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position; and
- (c) protection of airlines from prices that are artificially low due to direct or indirect governmental subsidy or support.

2. Either Party may require notification to or filing with its aeronautical authorities of prices to be charged to or from its territory by airlines of the other Party. Such notification of filing by the airlines may be required to be made not later than the initial offering of a price, regardless of the form, electronic or other, in which the price is offered.

3. Neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by (i) an airline of either Party for international air transportation between the territories of the Parties, or (ii) an airline of one Party for international air transportation between the territory of the other Party and any other country, including in both cases transportation on an interline or intraline 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 such mutual agreement, the price shall go into effect or continue in effect."

**Article 5**

**Registration with ICAO**

This Protocol shall be registered with the International Civil Aviation Organization.

**Article 6**

**Entry into Force**

1. The competent authorities of the United States of America and the Republic of Ecuador shall permit operations in accordance with the terms of this Protocol upon signature.
2. This Protocol shall enter into force upon an exchange of diplomatic notes between the Parties confirming that all necessary internal procedures for entry into force of this Protocol have been completed.

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

DONE at [city], this                      day of [month], 2010, in duplicate, in the English and Spanish languages, both texts being equally authentic.

**For the Government of  
the United states of America:**

**For The Government of the  
Republic of Ecuador:**

