

National Interest Analysis [2010] ATNIA 56

with attachment on consultation

**Agreement between
the Government of Australia and the Government of the United Mexican States
relating to Air Services,
done at Mexico City on 9 April 2010**

[2010] ATNIF 25

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

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Nature and timing of proposed treaty action

1. The treaty action proposed is to bring into force the *Agreement between the Government of Australia and the Government of the United Mexican States relating to Air Services* (the Agreement).
2. The Agreement was signed on 9 April 2010.
3. Pursuant to Article 19, the Agreement will enter into force thirty days after the Parties have notified each other in writing that their respective requirements for its entry into force have been satisfied. Subject to the Joint Standing Committee on Treaties' (JSCOT) issuing a report recommending the proposed treaty action, the Australian Government will provide its notification to the Government of the United Mexican States (Mexico) after the Agreement has been tabled in both houses of Parliament for 15 sitting days.
4. The Agreement will establish for the first time a treaty level air services relationship between Australia and Mexico. It will allow the airlines of Australia and Mexico to develop international air services between the two countries.
5. The Agreement was preceded by aviation arrangements of less than treaty status, in the form of a Memorandum of Understanding (MOU) signed in 2005. In accordance with established Australian and international practice this MOU applied the provisions of the Agreement on a non-legally binding basis until the Agreement enters into force.

Overview and national interest summary

6. The purpose of the Agreement is to provide a binding legal framework to support the operation of air services between Australia and Mexico. The Agreement will facilitate trade and tourism between the two countries and will provide greater opportunities for airlines to develop expanded air travel options for consumers.

Reasons for Australia to take the proposed treaty action

7. The Agreement grants access for Australian airlines to the Mexican aviation market and allows for the establishment of air services between the two countries. The Agreement will enable Australian and Mexican carriers to provide services between any point in Australia and any point in Mexico, based on capacity levels decided from time to time between the aeronautical authorities of the Parties.

8. Australian travellers and Australian businesses, particularly in the tourism and export industries, will benefit from this Agreement through the opening of increased opportunities.

Obligations

9. Australia and Mexico are both Parties to the *Convention on International Civil Aviation* ([1957] ATS 5) (the Chicago Convention) which opened for signature at Chicago on 7 December 1944. This Agreement was made in accordance with and pursuant to the Chicago Convention.

10. The Agreement obliges Australia and Mexico to allow the designated airlines of each country to operate scheduled air services carrying passengers and cargo between the two countries on specified routes in accordance with the provisions of the Agreement. To facilitate these services, the Agreement also includes reciprocal provisions on a range of aviation-related matters such as safety, security, customs regulation and the commercial aspects of airline operations, including the ability to establish offices in the territory of the other Party and to sell fares to the public.

11. Article 2 of the Agreement allows each Party to designate up to three airlines to operate the agreed services. No more than two designated airlines of each Party can operate between any city pair. Either Party has the right to revoke, suspend or limit the operating authorisations of any airline that fails to maintain conditions for ownership, regulatory control, safety or security as outlined in the Agreement.

12. Under Article 3 of the Agreement, each Party grants to the designated airlines of the other Party the right to fly across its territory without landing and to make stops in its territory for non-traffic purposes. Article 3 also provides the right for designated airlines to operate on the routes specified in the Route Schedule for the purpose of taking on board and discharging passengers, cargo and mail.

13. Article 4 of the Agreement confirms that each Party's domestic laws, regulations and rules relating to the operation and navigation of aircraft apply to the designated airlines when they are entering, within or leaving the territory of that Party. Article 4 also applies each Party's laws, regulations and rules relating to, for example, aviation security, immigration and customs to the passengers, crew, cargo and aircraft while they are within that Party's territory. In applying their laws, the Parties are prevented from giving preference to their own or any other airline.

14. Under Article 5, each Party is required to recognise certificates of airworthiness, competency and licences issued by the other Party, provided the standards under which such documents were issued conform to the standards established by the International Civil

15. Article 5 also provides that each Party may request consultations with the other Party at any time concerning the safety standards maintained by the other Party. If required, the other Party shall be informed of the corrective action required to be undertaken to conform with the minimum standards. The Article also provides that each Party may, in its territory, arrange inspections of aircraft of the other Party to verify the validity of the relevant aircraft documents and those of its crew and ensure that the aircraft equipment and the condition of the aircraft conform to ICAO standards. Each Party can take immediate action essential to ensure the safety of an airline operation if it considers such action to be necessary. Each Party is entitled to suspend the operating authorisation of the other Party's airlines if they consider urgent action is required to ensure the safety of airline operation. In the event of non-compliance, the complaining Party should advise the Secretary-General of the ICAO.

16. Under Article 6, both Parties are required to protect the security of civil aviation against acts of unlawful interference and, in particular, to act in conformity with multilateral conventions relating to aviation security. A Party may require the designated airlines of the other Party to observe the Party's aviation security provisions for entry into, departure from or while within the territory of that Party and shall ensure that adequate measures are applied to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. The Parties shall assist each other in the event of an incident or threat of an incident. Each aeronautical authority may request to conduct a security assessment of the other Party's territories. Such assessments are to be conducted in accordance with arrangements agreed between the aeronautical authorities without delay. Each Party may request immediate consultations if it believes that the other Party has departed from the provisions of this Article.

17. Article 7 requires that each Party encourage those responsible for airport, airport environmental, air navigation and aviation security facilities and services to not levy charges that are unreasonable, inequitable or discriminatory.

18. Article 8 provides that a Party may request statistics from the other Party's designated airlines.

19. Article 9 lists the equipment and stores that the Parties are required, in accordance with international practice, to exempt from customs duties, excise taxes, inspection fees and other related charges. Baggage, cargo and mail in direct transit shall be exempt from customs duties and other similar taxes.

20. Article 10 allows the designated airlines of a Party to set their own fares after having due regard to the relevant factors outlined in the Article. This Article also provides a framework for the aeronautical authorities to regulate air fares and other charges. The decision to regulate air fares is a policy consideration for the aeronautical authorities of each Party, in accordance with domestic legislation.

21. Under Article 11, both Parties are obliged to ensure that there is a fair and equal opportunity for the designated airlines of both Parties to operate the agreed services. The capacity that can be operated between the two countries shall be decided between the aeronautical authorities before the services commence. The capacity was initially settled in

the MOU signed in March 2005, when the Agreement was negotiated. These capacity arrangements are intended to continue once the Agreement enters into force.

22. Article 12 provides a framework that allows designated airlines of one Party to conduct business in the territory of the other Party. The framework includes provisions allowing designated airlines to establish offices, bring in and employ staff, sell air transport services to the public, perform ground handling and use the services and personnel of any organisation, company or airline operating in the territory of the other Party, to conduct its business. Each Party shall permit airlines of the other Party to freely convert and move currency. The Article allows airlines to utilise leased aircraft to conduct their services, provided they meet the applicable operating and safety standards and requirements of the Parties. Designated airlines may also enter into code share arrangements with any other appropriately authorised airline.

23. Article 13 confirms that each Party's competition laws apply to the operation of designated airlines within their respective jurisdictions. It also requires each Party to coordinate their actions with the relevant authorities, consider alternative options and take into account the views and international obligations of the other Party when undertaking consultations on the issues of discrimination and unfair practices.

24. Article 14 provides that each Party may at any time request consultations on the implementation, interpretation, application or amendment of the Agreement.

25. Article 16 provides for dispute resolution between the Parties. With the exception of disputes concerning air fares or the application of national competition laws, if the Parties fail to resolve any dispute by consultation, negotiation, or mediation (if previously agreed), there is provision for the dispute to be submitted to an arbitral tribunal. Awards of the arbitral tribunal are binding. If and for so long as either Party fails to comply with an award, the other Party may limit, suspend or revoke any rights or privileges granted pursuant to the Agreement.

26. The Annex contains a route schedule which specifies the routes that may be operated by designated airlines.

Implementation

27. The Agreement is to be implemented through existing legislation, including the *Air Navigation Act 1920* and the *Civil Aviation Act 1988*. The *International Air Services Commission Act 1992* provides for the allocation of capacity to Australian airlines. No amendments to these Acts or any other legislation are required for the implementation of the Agreement.

Costs

28. No direct financial costs to the Australian Government are anticipated in the implementation of the Agreement. There are no financial implications for State or Territory Governments.

Regulation Impact Statement

29. The Office of Best Practice Regulation, Department of Finance and Deregulation, has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

30. Article 15 provides that any amendment to the Agreement, including the Annex, shall enter into force when the two Parties have notified each other, through an exchange of diplomatic notes, that they have completed their domestic procedures for entry into force of the amendment. Article 15 also provides that the Agreement will be deemed to be amended so far as is necessary to comply with any multilateral air transportation agreement that may come into force for both Parties.

31. Any amendment to the Agreement will be subject to Australia's domestic treaty procedures, including consideration by JSCOT.

Withdrawal or denunciation

32. Article 17 provides for termination of the Agreement. Either Party may give notice in writing at any time to the other Party of its decision to terminate the Agreement and must also lodge a notice of termination with ICAO. The Agreement shall terminate one year after the date of receipt of the notice of termination.

33. Any notification of withdrawal from the treaty by Australia will be subject to Australia's domestic treaty-making processes, including tabling in Parliament and consideration by JSCOT.

Contact details

Aviation Industry Policy Branch
Aviation and Airports Business Division
Department of Infrastructure and Transport

ATTACHMENT ON CONSULTATION

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CONSULTATION

34. It is the practice ahead of negotiations of an air services agreement for the Department of Infrastructure and Transport to consult government and non-government bodies that may have an interest in the outcome of the negotiations and to take into account their views in developing a negotiating position for the Minister's approval.

35. Prior to the negotiation of the Agreement, extensive consultations were held with industry and Commonwealth and State and Territory government agencies. The following stakeholders were advised by letter and/or email of the proposal to negotiate an Agreement between Australia and Mexico and invited to comment on issues of importance to them:

Commonwealth Government Agencies

- Attorney-General's Department
- Austrade
- Australian Competition and Consumer Commission
- Australian Customs and Border Security Service
- Australian Quarantine and Inspection Service
- Civil Aviation Safety Authority
- Department of Agriculture, Fisheries and Forestry
- Department of Finance and Deregulation
- Department of Foreign Affairs and Trade
- Department of Immigration and Citizenship
- Department of Industry, Tourism and Resources
- Department of Prime Minister and Cabinet
- International Air Services Commission
- The Treasury
- Tourism Australia

State Government Agencies

- ACT Government Chief Minister's Department
- Cairns Port Authority
- Queensland Government Aviation Secretariat
- Queensland Government Department of Transport
- NSW Government Ministry of Transport and Department of State and Regional Development
- South Australian Government Department of Transport and Urban Planning
- Tasmanian Government Department of Infrastructure, Energy & Resources
- Victorian Government Department of Innovation, Industry and Regional Development

- Victorian Government Department of Infrastructure
- Western Australian Government Department of Transport
- Western Australian Government Department of Planning and Infrastructure
- NT Department of Transport and Works
- South Australian Tourism Commission
- Tourism New South Wales
- Tourism Queensland
- Tourism Tasmania
- Tourism Victoria
- Tourism Northern Territory
- Tourism Western Australia

Industry

- Adelaide Airport Limited
- Alice Springs Airport Pty Ltd
- Australian Federation of International Forwarders
- Air Freight Export Council of NSW Inc
- Air Freight Council of Queensland Ltd
- Australian Airports Association
- Australian and International Pilots Association
- Australian Aviation
- Australian Federation of Travel Agents
- Australian Seafood Industry Council
- Australian Tourism Export Council
- Backpackers Xpress
- Board of Airline Representatives of Australia
- Brisbane Airport Corporation Ltd
- Broome International Airport Holdings
- Canberra International Airport
- Darwin International Airport Pty Ltd
- Global Aviation Services
- Gold Coast Airport Ltd
- Hobart International Airport
- Horticulture Australia
- Kimberley Tourism Association
- Launceston Airport
- Melbourne Airport
- National Food Industry Strategy Ltd
- National Tourism Alliance
- Newcastle Airport Ltd
- Northern Territory Airports Pty Ltd
- Overnight Airfreight Operators' Association
- Perishables Taskforce to the Victorian Airfreight Council
- Perth Airport
- Qantas Airways Ltd
- Queensland Tourism Industry Corporation
- Regional Aviation Association of Australia
- South Australian Freight Export Council Inc
- Sydney Airport Corporation Ltd

- Tasmanian Export Council
- Travel Compensation Fund
- Tourism Council of the Chamber of Commerce- Northern Territory
- Tourism Task Force
- Tourism Top End
- Townsville Airport
- Townsville Enterprise Ltd
- Tropical Tourism North Queensland
- Virgin Blue
- Westralia Airports Corporation Pty Ltd

36. Comments were received from: Qantas, Tourism Queensland, the South Australian Department of Transport and Urban Planning, the Australian Government Department of Industry, Tourism and Resources and the Treasury.

37. Stakeholders who provided comments supported the negotiation of a new air services agreement with Mexico to open market access for airlines of both sides.

38. Qantas supported arrangements including liberal cooperative marketing provisions and route rights.

39. Tourism Queensland supported establishing a comprehensive set of aviation rights with Mexico. The South Australian Department of Transport and Urban Planning indicated that it would welcome the Agreement which would provide flexibility to Australian and foreign carriers to serve the State. The Department of Industry, Tourism and Resources, together with Tourism Australia, supported a formal air services agreement with Mexico so as to provide the framework to undertake commercial relationships which would have marketing benefits and to promote more seamless travel options and tourism growth.

40. Comments on the Agreement were received from the Attorney-General's Department, the Department of Foreign Affairs and Trade, the Treasury, CASA, Customs and the Department of Immigration and Citizenship. These agencies cleared the text of the Agreement prior to its approval by the Federal Executive Council.

41. The Agreement was included in the Schedule of Treaties provided to the Commonwealth-State/Territory Standing Committee on Treaties in January 2008, September 2008 and July 2009 prior to signature of the Agreement.

42. The Agreement was approved for signature by the Federal Executive Council on 17 September 2009.