

PROTOCOL TO THE AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
RELATING TO CIVIL AIR TRANSPORT

The Government of the United States of America and the Government of the People's Republic of China (hereinafter the "Parties"),

Have agreed to amend the Agreement between the Government of the United States of America and the Government of the People's Republic of China Relating to Civil Air Transport, signed September 17, 1980, as amended (hereinafter "the Agreement") as follows:

Article 1

Designations

Article 3, paragraph (1) of the Agreement shall be replaced by the following:

(1) Each Party shall have the right to designate in writing through diplomatic channels to the other Party, four (4) airlines to operate the agreed services on either Route A or Route B in Annex I, as applicable, and to withdraw or alter such designations. Airlines designated for Route A may operate combination services, all-cargo services, or both. Airlines designated for Route B may operate all-cargo services only.

The Parties shall also have the right to designate additional airlines in writing through diplomatic channels to the other Party, in accordance with the following schedule, and to withdraw or alter such designations:

- (a) The United States may designate one additional airline to operate the agreed services on U.S. Route B and the People's Republic of China may designate one additional airline to operate the agreed services on China Route A or one additional airline to operate the agreed services on China Route B. Airlines designated pursuant to this subparagraph may begin services as of August 1, 2004.
- (b) The United States may designate one additional airline to operate the agreed services on U.S. Route A, and the People's Republic of China may designate one additional airline to operate the agreed services on China Route A or one additional airline to operate the agreed services on China Route B. Airlines designated pursuant to this subparagraph may begin services as of March 25, 2005.

- (c) The United States may designate one additional airline to operate the agreed services on U.S. Route A or one additional airline to operate the agreed services on U.S. Route B, and the People's Republic of China may designate one additional airline to operate the agreed services on China Route A or one additional airline to operate the agreed services on China Route B. Airlines designated pursuant to this subparagraph may begin services as of March 25, 2006.
- (d) The United States may designate one additional airline to operate the agreed services on U.S. Route A or one additional airline to operate the agreed services on U.S. Route B, and the People's Republic of China may designate one additional airline to operate the agreed services on China Route A or one additional airline to operate the agreed services on China Route B. Airlines designated pursuant to this subparagraph may begin services as of March 25, 2008.
- (e) The United States may designate one additional airline to operate the agreed services on U.S. Route A or one additional airline to operate the agreed services on U.S. Route B, and the People's Republic of China may designate one additional airline to operate the agreed services on China Route A or one additional airline to operate the agreed services on China Route B. Airlines designated pursuant to this subparagraph may begin services as of March 25, 2010.

Article 2

Frequencies

Paragraphs (3) and (4) of Annex V shall be renumbered as paragraphs (7) and (8), and paragraphs (1) and (2) of Annex V shall be replaced by the following:

- (1) Notwithstanding any other provisions of this Agreement, designated airlines of each Party shall be entitled to operate 54 weekly frequencies on the specified routes. For the People's Republic of China, the 54 frequencies may be freely allocated and converted between combination and all-cargo services and between Route II.A and Route II.B of Annex I. For the United States, 34 frequencies shall be available only for combination services and 20 frequencies shall be available only for all-cargo services, except that a total of 18 of the 54 frequencies may be freely converted between combination and all-cargo services and between Route I.A and Route I.B of Annex I. The remaining 36 frequencies for the United States may not be converted between types of service or routes. With respect to the 18 frequencies that may be converted between types of service or routes, the Government of the United States will notify the Government of the People's Republic of China of any conversion of frequencies with not less than 30 days' written notice.

(2) In addition to the frequencies available under paragraph (1) above, the designated airlines of each Party shall be entitled to operate weekly frequencies for combination services on Routes I.A or II.A of Annex I on flights to and from Beijing, Shanghai and Guangzhou (hereinafter “China Zone 1”) or to and from Anhui, Fujian, Guangdong (except Guangzhou), Hebei, Henan, Hubei, Hunan, Jiangsu, Jiangxi, Shandong, Shanxi, Tianjin, and Zhejiang (hereinafter “China Zone 2”) according to the following schedule:

- (a) Effective August 1, 2004: an additional 14 weekly frequencies
- (b) Effective March 25, 2005: an additional 7 weekly frequencies
- (c) Effective March 25, 2006: an additional 7 weekly frequencies
- (d) Effective March 25, 2007: an additional 7 weekly frequencies
- (e) Effective March 25, 2008: an additional 7 weekly frequencies
- (f) Effective March 25, 2009: an additional 7 weekly frequencies
- (g) Effective March 25, 2010: an additional 7 weekly frequencies

Airlines designated by the People's Republic of China may freely convert these frequencies between combination and all-cargo services, and between Route II.A and Route II.B of Annex I. U.S. airlines designated on Route I.A may use these frequencies for combination services only.

(3) In addition to the frequencies available under paragraphs (1) and (2) above, the designated airlines of each Party shall be entitled to operate additional weekly frequencies for all-cargo services on any of the routes provided in Annex I on flights to and from points in China Zone 1 or China Zone 2 according to the following schedule;

- (a) Effective August 1, 2004: an additional 21 weekly frequencies
- (b) Effective March 25, 2005: an additional 18 weekly frequencies
- (c) Effective March 25, 2006: an additional 12 weekly frequencies
- (d) Effective March 25, 2007: an additional 15 weekly frequencies
- (e) Effective March 25, 2008: an additional 15 weekly frequencies
- (f) Effective March 25, 2009: an additional 15 weekly frequencies
- (g) Effective March 25, 2010: an additional 15 weekly frequencies

U.S. airlines designated for Route I.A may not use these frequencies for combination or passenger services. Airlines designated by the People's Republic of China may freely convert these frequencies between combination and all-cargo services, and between Route II.A and Route II.B of Annex I.

(4) In addition to the frequencies made available in paragraphs (1) through (3) above, the designated airlines of each Party shall be entitled to operate additional weekly frequencies for combination services on Routes I.A or II.A of Annex I or for all-cargo services on any of the routes provided in Annex I on flights to and from points in China Zone 2 according to the following schedule:

- (a) Effective March 25, 2007: an additional 7 weekly frequencies
- (b) Effective March 25, 2008: an additional 7 weekly frequencies
- (c) Effective March 25, 2009: an additional 7 weekly frequencies
- (d) Effective March 25, 2010: an additional 7 weekly frequencies

(5) Subject to paragraph 6 of this Annex V, the designated airlines of each Party may not serve more than a total of 39 weekly frequencies in combination services with fifth-freedom traffic rights between Japan and points in China.

Article 3

Special Aviation Area

Annex V of the Agreement shall be further amended by adding a new paragraph (6) as follows:

(6) All U.S. and Chinese airlines may be designated to operate services between the United States and points in China Zone 3 notwithstanding the limitation on the number of designations provided in Article 3 of this Agreement. Such services may be operated without frequency limitations. China Zone 3 consists of the points in the following areas: Chongqing, Gansu, Guangxi, Guizhou, Hainan Island, Heilongjiang, Inner Mongolia, Jilin, Liaoning, Ningxia, Qinghai, Shaanxi, Sichuan, Tibet, Xinjiang, and Yunnan. Notwithstanding any other provisions of the Agreement, each Party may choose 5 points in China Zone 3 that its airlines may serve without limitations on the number of designations and without frequency limitations on: 1) services carrying fifth-freedom traffic between such points and intermediate or beyond points in third countries on the specified routes, and 2) combination services carrying fifth-freedom traffic between such points and Japan. Each Party shall notify the other Party of the five points it has selected, with not less than 30 days' written notice. The points selected may, at the discretion of each Party, be changed with not less than 30 days' written notice

to the other Party. However, service to a point in China Zone 3 via a point in China Zone 1 or Zone 2 shall be subject to the designation, frequency and Japan fifth-freedom traffic rights limitations set forth in Annex V of this Agreement.

Article 4

Route Rights for Combination and All-Cargo Carriers

1. The route description for the People's Republic of China in Annex I Section II.A of the Agreement shall be replaced by the following:

From any point or points in the People's Republic of China, via Tokyo or another point in Japan, to any point or points in the United States open to scheduled international services.

2. Note 4 to Annex I of the Agreement shall be amended by adding the following language at the end of that Note:

Effective March 25, 2005 through March 25, 2010, the People's Republic of China may annually as of March 25th add one additional intermediate or beyond point, of its choosing, with full traffic rights, to its Route A. The Government of the People's Republic of China shall notify the Government of the United States of the points it has selected, with not less than 30 days' notice. The points selected may, at the discretion of the Government of the People's Republic of China, be changed with not less than 30 days' written notice to the Government of the United States.

3. The route description for the United States in Annex I Section I.A of the Agreement shall be replaced with the following:

From any point or points in the United States, via Tokyo or another point in Japan, to any point or points in the People's Republic of China open to scheduled international services.

4. Annex I of the Agreement shall be amended by adding a new Note 7 to read:

Effective March 25, 2009, the United States may add one intermediate point of its choosing, with full traffic rights, to its Route A. The Government of the United States shall notify the Government of the People's Republic of China of the point it has selected, with not less than 30 days' notice. The point selected may, at the discretion of the Government of the United States, be changed with not less than 30 days' written notice to the Government of the People's Republic of China.

5. Annex I of the Agreement shall be amended by adding a new Note 8 with respect to both Route I.A for the United States and Route II.A for the People's Republic of China to read:

When operating all-cargo services, airlines designated on Routes I.A and II.A shall be entitled to exercise the same routing flexibility as is permitted on Routes I.B and II.B.

6. Section I of Annex III of the Agreement shall be deleted and Sections II through VI of Annex III of the Agreement shall be renumbered as Sections I through V. New Section I of Annex III shall be amended to read:

I. Airports for Scheduled and Charter Air Transportation

Aircraft of the airlines of each Party engaged in the operation of scheduled air services, or in the operation of charter air transportation approved by the aeronautical authorities of the other Party, may utilize airports appropriately identified in the Aeronautical Information Publication of that other Party as available for international flights, and such other airports as may be approved by such aeronautical authorities.

Article 5

Code Sharing

1. Subparagraphs 1 and 2 of paragraph 5 of Article 11 of the Agreement shall be replaced by the following:

(1) In operating or holding out the authorized services, a designated airline of one Party shall have the right to enter into cooperative marketing arrangements, including wet-leasing, blocked-space and code-sharing arrangements with a designated or non-designated airline or airlines of either Party, and an airline or airlines of a third country, subject to the following:

- (a) A Chinese airline or airlines may code share with any U.S. airline or airlines without limitation. Subject to the mutual agreement of the participating Chinese and U.S. airlines, such code share arrangements may also involve airlines of third countries. U.S. and Chinese airlines may hold out code-share services pursuant to this subparagraph on routes that include points in the territories of the Parties and also may include any behind, intermediate and beyond points in third countries;
- (b) Airlines of each Party may code share with airlines of the same Party, on the specified routes, without an airline of the other Party, according to the following:
 - (i) Each Party shall be permitted one such code share arrangement as of January 1, 2006; and
 - (ii) Each Party shall be permitted one additional such code share arrangement as of January 1, 2008; and

- (iii) One of the two arrangements under this subparagraph (b) may include two airlines and the other may include up to three airlines.
- (c) If a code share arrangement permitted under subparagraph (b) above is expanded to include an airline of the other Party, such code share arrangement shall be governed by subparagraph (a) above and therefore shall no longer count against the limit of two such arrangements permitted in subparagraph (b).
- (d) In order to act as the operating airline in a code share arrangement under this subparagraph (1), a U.S. or Chinese airline must be designated under this Agreement.

(2) All airlines operating or holding out the above-described services must (A) hold the appropriate authority and (B) meet the requirements normally applied to such arrangements. However, notwithstanding the requirement that all airlines in code share arrangements hold underlying route rights, U.S. and Chinese airlines may offer code share services authorized in subparagraph 1 above without holding such rights. Approvals will not be granted for arrangements involving the carriage of cabotage traffic, pooling, or revenue-sharing arrangements.

2. Subparagraph 3 of paragraph 5 of Article 11 of the Agreement shall be deleted.

Article 6

Charter Air Transportation

1. Annex II of the Agreement shall be amended by replacing paragraph (1) with the following:

(1) (a) Each Party shall approve applications by the airlines of the other Party for 75 one-way charter flights annually, from August 1 of each year, between points in China Zone 1 and U.S. points on city pairs served by Chinese carriers' scheduled services of the same type (combination or all-cargo) as the proposed charter flight.

(b) Each Party shall approve applications by the airlines of the other Party for 75 one-way charter flights annually, from August 1 of each year, between points in China Zone 2 and U.S. points on city pairs served by Chinese carriers' scheduled services of the same type (combination or all-cargo) as the proposed charter flight.

(c) Each Party shall approve applications by the airlines of the other Party for charter flights between points in China Zone 3 and any U.S. points.

(d) Each Party shall approve applications by the airlines of the other Party for charter flights between China Zone 1 or China Zone 2 and any U.S. points on U.S.-China city pairs not served by Chinese carriers' scheduled service of the same type (combination or all-cargo) as the proposed charter flight.

(e) Each Party shall consider, on the basis of comity and reciprocity, applications by the airlines of the other Party to carry traffic not covered by this Annex, including charters involving carriage of fifth-freedom traffic between points in third countries and points in its territory, and charters on U.S.-China city pairs served by Chinese carriers' scheduled services that exceed the limits specified in subparagraphs (a) and (b) of this paragraph.

(f) Charter flights operated by each airline under this Annex shall comply with such laws, regulations and rules of the Party in whose territory the flight originates, whether on a one-way or round-trip basis, as that Party now or hereafter specifies shall be applicable to such transportation.

(g) Each Party may provide to the other by diplomatic note a list of airlines qualified under the laws of the first Party to provide charter air transportation.

2. Annex II of the Agreement shall be further amended by replacing paragraph (2) with the following:

(2) The application for charter flight(s) shall be filed with the aeronautical authorities of the other Party at least fifteen (15) days before the anticipated flight(s). The flight(s) can be operated only after permission has been obtained. Permission shall be granted expeditiously and without undue delay in the spirit of equality of opportunity for the airlines of both Parties to operate international charter air transportation, mutual benefit and friendly cooperation.

Article 7

Change of Gauge

Effective March 25, 2005, Note 3 to Annex I of the Agreement shall be replaced by the following:

(1) Subject to the provisions of Annex V, the designated airline(s) of each Party operating combination service may make a change of gauge in the territory of the other Party or at an intermediate point or points on the specified route(s) provided that:

(a) Operation beyond the point of change of gauge shall be performed by an aircraft having capacity less, for outbound services, or more, for inbound services, than that of the incoming aircraft;

- (b) Aircraft for such operation shall be scheduled in coincidence with the outbound or inbound aircraft, as the case may be, and may have the same flight number; and
- (c) If a flight is delayed by operational or mechanical problems, the onward flight may operate without regard to the conditions in subparagraph (b) of this paragraph.

(2) With respect to change of gauge at an intermediate point on the specified routes, designated airlines of each Party operating all-cargo service may make one such change of gauge per operation in accordance with the following:

- (a) From January 1, 2006, no more than two flights with aircraft of any size or type may operate beyond the point of change of gauge to a point or points in the territory of the other Party for each incoming aircraft;
- (b) In the outbound direction, the transportation beyond the point of change of gauge 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 the point of change of gauge. In particular, aircraft of such operations shall be scheduled in coincidence with the outbound or inbound aircraft, as the case may be, and may have the same flight number;
- (c) If a flight is delayed by operational or mechanical problems, the onward flight may operate without regard to the conditions in subparagraph (b) of this paragraph;
- (d) In normal circumstances, operation beyond the point of change of gauge shall be performed, for outbound services, by aircraft of equal or smaller size than the incoming aircraft, and for inbound services, by aircraft of equal or larger size than the incoming aircraft. However, where larger aircraft are used beyond such point of change of gauge for outbound services, or where smaller aircraft are used beyond such point of change of gauge for inbound services, filing of such change shall be made with no approval required; and
- (e) Each flight beyond the point of change of gauge operating to a point in the territory of the other Party shall be counted against the frequency limitations as provided in Annex V and Article 11 bis, paragraph 2(f).

(3) Subject to the provisions of Annex V and Article 11 bis, paragraph 2(f) and in addition to the change of gauge at an intermediate point permitted in paragraph (2) above, with respect to change of gauge within the territory of the other Party, designated airlines of each Party operating all-cargo service may make one such change of gauge per operation in accordance with the following:

- (a) From March 25, 2005, through March 24, 2007, no more than two flights with aircraft of any size or type may operate beyond a point of change of gauge in the territory of the other Party for each incoming aircraft, and only one flight of those two may operate to another point in that Party's territory from the point of change of gauge;
- (b) From March 25, 2007, through March 24, 2009, no more than two flights with aircraft of any size or type may operate beyond a point of change of gauge in the territory of the other Party for each incoming aircraft, and both flights may operate to another point or points in that Party's territory from the point of change of gauge;
- (c) From March 25, 2009, through March 24, 2011, no more than three flights with aircraft of any size or type may operate beyond a point of change of gauge in the territory of the other Party for each incoming aircraft, and only two flights of those three may operate to another point or points in that Party's territory from the point of change of gauge;
- (d) From March 25, 2011, no more than three flights with aircraft of any size or type may operate beyond a point of change of gauge in the territory of the other Party for each incoming aircraft, and all three flights may operate to another point or points in that Party's territory from the point of change of gauge;
- (e) In the outbound direction, the transportation beyond the point of change of gauge 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. In particular, aircraft of such operations shall be scheduled in coincidence with the outbound or inbound aircraft, as the case may be, and may have the same flight number.
- (f) If a flight is delayed by operational or mechanical problems, the onward flight may operate without regard to the conditions in subparagraph (e) of this paragraph.
- (g) In normal circumstances, operation beyond the point of change of gauge in the territory of the other Party shall be performed, for outbound services, by aircraft of equal or smaller size than the incoming aircraft, and, for inbound services, by aircraft of equal or larger size than the incoming aircraft. However, where larger aircraft are used beyond such point of change of gauge for outbound services, or where smaller aircraft are used beyond the point of change of gauge for inbound services, filing of such change shall be made with no approval required.

Article 8

Pricing

1. Annex IV of the Agreement shall be deleted in its entirety.
2. Article 13 of the Agreement shall be replaced by the following:
 - A. From August 1, 2004 through March 24, 2008, the following provisions shall apply:
 - (1) Prices may be established for scheduled air services at reasonable levels by each airline based upon commercial considerations in the marketplace. A Party shall have the right to approve or disapprove prices for one-way or round-trip carriage on the specified routes which commence in its own territory. Neither Party shall take unilateral action to prevent the inauguration of proposed prices or the continuation of effective prices for one-way or round-trip carriage on the specified routes commencing outside its territory.
 - (2) Each Party may require filing with its aeronautical authorities of prices charged or proposed to be charged to or from its territory by airlines of the other Party. Filing by the airlines of both Parties may be required no more than 30 days before the proposed date of effectiveness. In individual cases, a Party may permit a filing on shorter notice than normally required. If a Party permits an airline to file a price on short notice, the price shall become effective on the proposed date for traffic originating in the territory of that Party.
 - (3) Notwithstanding the provisions of this paragraph A, each Party shall permit any airline of the other Party to file and institute promptly, a price identical to that offered by any other airline of both Parties in accordance with the provisions of this Article for transportation between the same points and subject to comparable terms and conditions.
 - B. Effective March 25, 2008, the following provisions shall apply:
 - (1) Each Party shall allow prices for scheduled air services to be established by each airline 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) Prices for scheduled international air services between the territories of the Parties shall not be required to be filed. Notwithstanding the foregoing, the

airlines of the Parties shall continue to provide immediate access, on request, to information on historical, existing, and proposed prices to the aeronautical authorities of the Parties in a manner and format acceptable to those aeronautical authorities.

(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 scheduled international air services between the territories of the Parties, or (ii) an airline of one Party for scheduled international air services 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 9

Cargo Hubs

The Agreement shall be amended by adding a new Article 11bis to read:

Article 11bis

Cargo Hub

(1) A cargo hub is defined as a point in the territory of the other Party: 1) that a designated airline serves with at least 72 all-cargo aircraft movements per week, with aircraft movement defined as a landing or take off at that hub point; and 2) where such designated airline employs personnel at that hub point to facilitate the movement of cargo; and 3) where such designated airline utilizes airport facilities at that hub point for the movement of cargo; and 4) where such designated airline utilizes a bonded facility under the supervision of customs authorities for the movement of transit traffic at that hub point.

(2) Notwithstanding any other provisions of this Agreement, and effective as of January 1, 2007, once a designated airline has met the definitional requirements in paragraph 1 of this Article, it shall immediately be entitled to exercise the following operational rights at that hub in addition to those granted by this Agreement for all-cargo services:

(a) Each Party shall allow the airline to determine the frequency and capacity of the international air services it offers at the hub based upon commercial considerations in the marketplace. Consistent with this right, neither Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the airline at the hub, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.

(b) The airline may perform international air services without any limitation as to change, at the hub, in size, type or number of aircraft operated, provided that only four flights may operate to another point in that Party's territory from the point of change of gauge for each incoming aircraft.

(c) The airline shall have the right to perform scheduled international all-cargo services between the hub point in the other Party's territory and any point or points in third countries, without serving the territory of the designating Party.

(d) The airline shall have the rights set out in Article 11, paragraph (1)(b) of this Agreement.

(e) The airline may enter into cooperative marketing arrangements such as blocked-space, code-sharing or wet-leasing arrangements, with

- i) an airline or airlines of either Party;
- ii) an airline or airlines of a third country;

provided that all participants in such arrangements (a) hold the appropriate authority and (b) meet the requirements normally applied to such arrangements. However, notwithstanding the requirement that all airlines in code share arrangements hold underlying route rights, U.S. and Chinese airlines may offer code share services authorized in this subparagraph without holding such rights. Approvals will not be granted for arrangements involving the carriage of cabotage traffic, pooling, or revenue-sharing arrangements. Arrangements under this subparagraph (e) shall not count against the limitations on code share arrangements contained in Article 11, paragraph 5, subparagraph 1(a), (b) or (c) of this Agreement.

(f) When the airline coterminizes flights between its cargo hub point and a non-hub point in the territory of the other Party, such flights shall not be counted against the limitations on the number of frequencies applicable to the non-hub point under this Agreement, except as follows:

- i. From January 1, 2007, through December 31, 2008, such flights serving non-hub points in Zone 1 or Zone 2 shall be counted against the limitations on the number of frequencies applicable to the non-hub point under this Agreement; and
- ii. From January 1, 2009, through December 31, 2010, such flights serving non-hub points in Zone 1 shall be counted against the limitations on the number of frequencies applicable to the non-hub point under this Agreement.

(g) Frequencies used by the airline for serving the hub point before it met the definitional requirements in paragraph 1 of this Article, at the option of the designating Party, may be used by that airline for services at non-hub points or reallocated to another airline of that Party.

- (3) A designated airline that meets the requirements in paragraph 1 of this Article for a continuous six-month period, shall retain the rights set out in paragraph 2 of this Article even if it temporarily fails to operate a weekly average of 72 aircraft movements at its hub.
- (4) In the event that the designated airline referenced in paragraph 3 of this Article fails to meet the criteria in paragraph 1 of this Article for a period of nine months, the Parties shall consult, as provided for in Article 16 of this Agreement, to review the circumstances that led to the reduced level of operations and the likelihood that the required level will be restored.

Article 10

Intermodal Rights

Article 11 of the Agreement shall be amended by adding a new paragraph (6) to read:

(6) Notwithstanding any other provision of this Agreement, effective January 1, 2007, airlines and indirect providers of cargo transportation of both Parties shall be permitted, without restriction, to employ in connection with international air services any surface transportation for cargo to or from any points in the territories of the Parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo air services. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

Article 11

Self-Handling

Article 11, paragraph (1) of the Agreement shall be replaced by the following:

(1)(a) From August 1, 2004 through December 31, 2007, matters relating to ground handling pertaining to the operation of the agreed services may be agreed

upon between the airlines of both Parties, subject to the approval of the aeronautical authorities of both Parties.

(b) Effective January 1, 2008, each designated airline shall have the right to perform its own ground-handling in the territory of the other Party ("self-handling") or, at its option, select among competing agents for such services in whole or in part. The rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground services shall be available on an equal basis to all airlines; charges shall be based on the costs of services provided; and such services shall be comparable to the kind and quality of services as if self-handling were possible.

Article 12

Doing Business Issues

1. Article 9 of the Agreement shall be amended by replacing paragraph (1) with the following:

(1)(a) For the operation of the agreed services on the specified routes, the designated airlines of each Party shall have the right to set up representative offices within the territory of the other Party. The staff of the representative offices referred to in this subparagraph shall be subject to the laws and regulations in force in the country where such offices are located.

(b) The non-designated airlines of each Party shall have the right to set up sales offices within the territory of the other Party. The staff of the sales offices referred to in this subparagraph shall be subject to the laws and regulations in force in the country where such offices are located.

2. Article 9 of the Agreement shall be further amended by adding the following sentence to the end of paragraph (2):

In addition, each Party shall to the maximum extent practicable ensure the safety of the sales offices and their staff members of the non-designated airlines of the other Party.

3. Article 9 of the Agreement shall be further amended by replacing paragraph (4) with the following:

(4) The designated and non-designated airlines of each Party shall have the right to convert and remit to its country at any time on demand local revenues in excess of sums locally disbursed. Conversion and remittance shall be effected without restrictions at the prevailing rate of exchange in effect for current transactions and remittance and shall be exempt from taxation on the basis of reciprocity.

Wherever the payments system between the Parties is governed by a special agreement, that special agreement shall apply.

4. Article 9 of the Agreement shall be further amended by adding a new paragraph (5) to read:

(5) Each Party shall permit the designated and non-designated airlines of the other Party to participate in the IATA Bank Settlement Plan in the first Party's territory.

5. Article 10 of the Agreement shall be amended by adding a new paragraph 3 to read:

(3) Notwithstanding the provisions of paragraph 2 of this Article, the designated and non-designated airlines of each Party shall be entitled, in accordance with the laws and regulations of the other Party relating to entry, residence, and employment, to bring in and maintain in the territory of the other Party any managerial, sales, technical, operational, and other specialist staff required for the provision of air services, including third country nationals.

6. Article 11 of the Agreement shall be amended by replacing paragraph (3) with the following:

Notwithstanding paragraph (2) of this Article, the designated and non-designated airlines of each Party, in their representative offices or sales offices in the territory of the other Party, may sell air transportation on the agreed services and/or on all of their other services, directly or through the agent of their own appointment. Any person shall be free to purchase such transportation in the currency of that territory or, in accordance with applicable law, in foreign exchange certificates or freely convertible currencies. In addition, the representative offices may be used for management, informational and operational activities of the designated airlines, and the sales offices may be used for informational activities of the non-designated airlines.

7. The understandings contained in numbered paragraphs 1, 2 and 6 of the exchange of letters of September 8, 1980 relating to the conduct of business in the territory of the other Party shall be expanded so as to apply to non-designated airlines as well as designated airlines.

Article 13

Definitions

Article 1 of the Agreement shall be amended by adding new paragraphs (i) and (j) to read:

- (i) "Outbound flight or service" means a flight or service that has its origin in the territory of the Party designating the airline and is operating to a point or points in the territory of the other Party or a third country.
- (j) "Inbound flight or service" means a flight or service that originates in the territory of the other Party or in a third country and has the territory of the Party designating the airline as its ultimate destination.

Article 14

Future Negotiations

The Parties shall commence negotiations in 2006 with the ultimate objective of fully liberalizing the civil aviation relationship between the People's Republic of China and the United States. To that end, the purpose of such negotiations shall be to 1) conduct a comprehensive review of the implementation of their bilateral civil aviation agreement to date, and 2) establish the next steps the Parties shall take to further liberalize their bilateral civil aviation relationship.

Article 15

Entry into Force

This Protocol shall enter into force upon completion of an exchange of notes through diplomatic channels confirming that each Party has completed its necessary internal procedures.

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

DONE at _____, in two originals, this ___ day of ____, 2004, in the English and Chinese languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF CHINA: