

National Interest Analysis [2010] ATNIA 16

with attachment on consultation

**Agreement between the Government of Australia and the Swiss Federal Council relating
to Air Services
Canberra, 28 November 2008**

[2008] ATNIF 22

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

**Agreement between the Government of Australia and the Swiss Federal Council relating to Air Services,
done at Canberra on 28 November 2008
[2008] ATNIF 22**

Nature and timing of proposed treaty action

1. The treaty action proposed is the entry into force of the *Agreement between the Government of Australia and the Swiss Federal Council relating to Air Services* (the Agreement).
2. The Agreement was signed on 28 November 2008.
3. Article 20 specifies that the Agreement will enter into force when the Parties have notified each other in writing that their respective internal procedures for its entry into force have been satisfied. Subject to the Joint Standing Committee on Treaties (JSCOT) issuing a report on the proposed treaty action, the Australian Government will provide its notification to the Swiss Federal Council under Article 20 as soon as practicable after the Agreement has been tabled in both Houses of Parliament for 15 sitting days.
4. Upon entry into force, the Agreement will supersede the *Agreement between the Government of Australia and the Government of the Swiss Federal Council relating to Civil Air Transport* ([1993] ATS 9). Aviation arrangements of less than treaty status, in the form of a Memorandum of Understanding (MOU) signed in June 2003, have preceded the Agreement. In accordance with customary international law and established Australian practice these arrangements have included applying the provisions of the Agreement, pending the completion of domestic requirements, before the Agreement is brought into force.

Overview and national interest summary

5. The purpose of the Agreement is to allow air services to operate between Australia and Switzerland, which will facilitate trade and tourism between the two countries through freight and passenger transportation and provide greater air travel options for consumers.

Reasons for Australia to take the proposed treaty action

6. The Agreement provides an updated framework for the operation of scheduled air services between Australia and Switzerland by the designated airlines of both countries.

7. This framework improves access for Australian airlines to the Australia-Switzerland aviation market and provides for the development of air services between the two countries based on capacity levels decided from time to time between the aeronautical authorities of the Parties. The Agreement removes restrictions on the number of Australian and Swiss airlines that can enter the market and allows airlines to serve any international airport in Australia. The Agreement increases opportunities for Australian business interests, in particular the tourism and export industries, to develop and market products.

Obligations

8. Australia and Switzerland are both parties to the *Convention on International Civil Aviation* ([1957] ATS 5) (the Chicago Convention).

9. The Agreement obliges the Parties 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.

10. Article 2 of the Agreement allows each Party to designate as many airlines as they wish to operate the agreed services and obliges each Party to grant the necessary operating authorisations without delay. Either Party may revoke, suspend or limit authorisation of an airline's operations if the airline does not comply with conditions. Authorisations may also be revoked or limited if either Party is not satisfied that a designated airline of the other Party is incorporated and has its principle place of business in the territory of the other Party, or if airline operations are not in accordance with the Agreement.

11. Under Article 3 of the Agreement, each Party grants to the designated airlines of the other Party the rights to overfly its territory, to make stops in its territory for non-traffic purposes and to embark and disembark passengers, baggage, cargo and mail in its territory. It also allows the designated airlines of one party to fly to third countries from the territory of the other party, as provided for in the route schedules in the Annex. Article 3 obliges the parties to use their best efforts to facilitate continued operation of air services if conflict or other disruptions prevent the other Party's airlines from operating the agreed services.

12. Article 4 of the Agreement provides 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 provides that each Party's laws, regulations and rules shall be complied with as they relate to the operation and navigation of aircraft as well as the admission to or departure from its territory of passengers, crew, cargo and aircraft shall be complied with. In applying their laws, the Parties are prevented from giving preference to their own or any other airline.

13. Under Article 5, each Party is required to recognise the validity of 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 Aviation Organization (ICAO). Each Party may request consultations at any time concerning safety standards maintained by the other Party. 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.

14. 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. Each Party may require that the designated airlines of the other Party observe its aviation security provisions for entry into, departure from or sojourn in the territory of that Party and take adequate measures to protect the aircraft and to inspect passengers, crew and carry-on items, as well as baggage, cargo and aircraft stores prior to and during boarding or loading. Article 6 also provides that each Party shall have the right to request immediate consultations with the aeronautical authorities of the other Party and, in case of emergency, to withhold, suspend, revoke or limit authorisations of other Party's airlines if there are grounds to believe that provisions of Article 6 are not being complied with by the other Party.

15. Article 7 provides that the designated airlines of both Parties may lease aircraft (or aircraft and crew) from any company, providing the leased aircraft and crew comply with the aviation safety and security provisions of this Agreement and an airline does not exercise any traffic rights to which it is not entitled.

16. Article 8 requires that the charges imposed on designated airlines by the charging authorities for the use of aviation facilities be just, reasonable and non-discriminatory in relation to the nationality of the aircraft concerned.

17. Article 9 provides that the aeronautical authorities of each Party may require a designated airline of the other Party to provide statements of statistics related to the traffic carried on the agreed services.

18. Article 10 provides that both Parties are required to exempt aircraft operated by designated airlines in international air transportation, as well as component parts and equipment for the repair, maintenance and services of aircraft, from import restrictions, customs and excise duties and similar fees and charges. Aircraft stores, fuel, lubricants and consumable technical supplies and spare parts, including engines, are similarly exempt when they are for use on aircraft in connection with the establishment or maintenance of an international air service by a designated airline. Article 10 also provides that passengers, baggage and cargo in direct transit through the territory of either Party will not undergo any examination except for reasons of aviation security, narcotics control or other special circumstances.

19. Article 11 provides that each Party shall allow each designated airline to determine its own tariffs for air transportation between the territories of the Parties. These tariffs shall be subject to the competition and consumer laws of both Parties.

20. Under Article 12, the 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 entitlements available to airlines are to be decided between the aeronautical authorities from time to time.

21. Article 13 provides a framework that allows designated airlines of one Party to conduct their business in the territory of the other Party. The framework includes provisions allowing designated airlines to establish offices, bring in, employ and maintain staff, sell tickets to the public, convert and move currency freely and perform ground handling.

22. Under Article 14, each Party may require a designated airline of the other Party to provide the timetables of a planned service to the aeronautical authorities of the requesting Party. The Australian Government requires timetables to be submitted for approval under the framework of the *Air Navigation Act 1920*.

23. Article 15 provides that either Party may at any time request consultations on implementation, interpretation, application or amendment of the Agreement.

24. Dispute resolution is provided for in the Agreement at Article 17. If the Parties fail to resolve any dispute by negotiation there is provision for compulsory settlement through submitting the dispute to arbitration.

25. The Annex, which is part of the Agreement, contains route schedules which specify the routes that may be operated by designated airlines of each Party.

Implementation

26. 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

27. 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 and the Agreement reduces the regulatory burden on business and industry.

Regulation Impact Statement

28. The Department of Infrastructure, Transport, Regional Development and Local Government has self-assessed the Agreement as having no or low impact and the Office of Best Practice Regulation has been consulted.

Future treaty action

29. Article 15 provides that either Party may request consultations on amendment of the Agreement. Article 16 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.

30. Article 16 also provides that if a multilateral convention concerning air transport comes into force in respect of both Parties, the Agreement shall be deemed to be amended so far as is necessary to conform with the provisions of that convention.

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

Withdrawal or Denunciation

32. Article 18 provides for termination of the Agreement. Either Party may give notice in writing at any time through the diplomatic channel to the other Party of its decision to terminate the Agreement and must also lodge a notice of termination with the ICAO. The Agreement shall terminate one year after the date of receipt of the notice of termination.

33. In default of acknowledgment by one Party of a receipt of a notice of termination from the other Party, the notice shall be deemed to have been received 14 days after the date on which the ICAO acknowledged receipt thereof.

34. Any notification of withdrawal from the treaty by Australia will be subject to Australia's domestic treaty processes.

Contact details

Aviation Industry Policy Branch

Aviation and Airports Business Division

Department of Infrastructure, Transport, Regional Development and Local Government

ATTACHMENT ON CONSULTATION

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CONSULTATION

35. It is the practice ahead of negotiations of an Air Service Agreement for the Department of Infrastructure, Transport, Regional Development and Local Government 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.

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

Commonwealth Government Agencies

- Agriculture, Fishery and Forestry Australia
- Airservices Australia
- Attorney-General's Department
- Austrade
- Australian Customs and Border Security Service
- Civil Aviation Safety Authority
- Department of Finance and Deregulation
- Department of Immigration and Citizenship (formally the Department of Immigration and Multicultural Affairs)
- Australian Quarantine and Inspection Service
- Department of Finance and Administration
- Department of Foreign Affairs and Trade
- Department of Prime Minister and Cabinet
- International Air Services Commission
- The Treasury
- Tourism Australia (formally the Australian Tourism Commission)

State Government Agencies

- ACT Government Chief Minister's Department
- NSW Government Ministry of Transport and Department of State and Regional Development
- Queensland Government of Employment, Economic Development and Innovation, Aviation Steering Committee
- South Australian Government Department of Transport and Urban Planning
- Tasmanian Government Department of Infrastructure, Energy and Resources
- Victorian Government Department of Innovation, Industry and Regional Development

- Western Australian Government
- Northern Territory Government
- Tourism NSW
- Tourism Queensland
- Tourism Tasmania
- Tourism Western Australia
- Tourism NT

Industry

- Adelaide Airport Ltd
- Alice Springs Airport
- Australian Federation of International Forwarders Ltd
- Australian Federation of Travel Agents
- Australian Seafood Industry Council
- Australian Tourism Export Council
- Brisbane Airport Corporation Pty Ltd
- Broome International Airport Holdings
- Cairns Port Authority
- Capital Airport Group
- Hobart International Airport
- Launceston Airport
- Melbourne Airport
- NT Airports
- New Castle Airport
- Perth Airport
- Qantas Airways
- Queensland Airports Limited
- Regional Aviation Association of Australia
- Sydney Airport Corporation Limited
- Tourism Taskforce
- Tropical Tourism North Queensland
- Virgin Blue Airlines

37. The Commonwealth-State/Territory Standing Committee on Treaties (SCOT) provided information about the Agreement to the States and Territories. The Agreement was included in the Schedule of Treaties provided to SCOT on 27 July 2006 prior to signature.

38. In response to the Department's request, industry comments were received from Qantas and Virgin Blue. Qantas supported liberalisation of treaty provisions relating to airline designation, air fares, routes and the inclusion of new provisions that would expand its commercial opportunities. Virgin Blue supported liberalising the Agreement to encourage more inbound tourism.

39. Federal Government input was received from the Department of Foreign Affairs and Trade, Treasury, the Department of Immigration and Citizenship and from Australian Customs and Border Security Service. All comments were taken into account in developing Australia's negotiating position and integrated into the draft text.

40. No submissions from State or Territory Governments were received.