

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

**Exchange of notes amending the Air Transport Agreement between the
Government of Australia and the Government of the United States of America**
(date and place of exchange TBA)

Not yet in force
[2012] ATNIF 24

amends [2008] ATNIF 3

INITIATING NOTE

The Embassy of Australia in Washington presents its compliments to the United States Department of State and has the honour to refer to the Air Transport Agreement between the Government of Australia and the Government of the United States of America, done at Washington on 31 March 2008 ('the Air Transport Agreement').

The Embassy has the honour to propose the following amendments to the text of the Air Transport Agreement:

- the following Settlement of Disputes Article be inserted in the Air Transport Agreement as Article 16:

“Article 16

Settlement of Disputes

1. Any dispute arising under this Agreement, except those that may arise under Article 12 (Pricing), or that concern the application of relevant domestic competition law, that is not resolved by a first round of formal consultations under Article 15, may be referred by agreement of the Parties for decision to some person or body. If the Parties do not so agree, either Party may give written notice to the other Party through diplomatic channels that it is requesting that the dispute be submitted to arbitration.
2. Arbitration shall be by a tribunal of three arbitrators to be constituted as follows:
 - a. Within 30 days after the receipt of a request for arbitration, each Party shall name one arbitrator. Within 60 days after these two arbitrators have been named, they shall by agreement appoint a third arbitrator, who shall act as President of the arbitral tribunal;
 - b. If either Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph (a) of this paragraph, either Party may request the President of the Council of the International Civil Aviation Organization to appoint the necessary arbitrator or arbitrators within 30 days. If the President of the Council is of the same nationality as one of the Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.
3. The arbitral tribunal shall be entitled to decide the extent of its jurisdiction in accordance with this Agreement and, except as otherwise agreed, shall establish its own procedural rules. The tribunal, once formed, may at the request of either Party, recommend interim relief measures pending its final decision. If either Party requests it, or the tribunal deems it appropriate, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 15 days after the tribunal is fully constituted.

4. Except as otherwise agreed or as directed by the tribunal, the statement of claim shall be submitted within 45 days of the time the tribunal is fully constituted and the statement of defense shall be submitted 60 days thereafter. Any reply by the claimant shall be submitted within 30 days of the statement of defense. Any reply by the respondent shall be submitted within 30 days thereafter. If either Party requests it or the tribunal deems it appropriate, the tribunal shall hold a hearing within 45 days after the last pleading is due.

5. The tribunal shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, 30 days after the last pleading is submitted. The decision of the majority of the tribunal shall prevail.

6. The Parties may submit requests for interpretation of the decision within 15 days after it is rendered and any interpretation given shall be issued within 15 days of such request.

7. If the tribunal determines that there has been a violation of this Agreement and the responsible Party does not cure the violation, or does not reach agreement with the other Party on a mutually satisfactory resolution within 40 days after notification of the tribunal's decision, the other Party may suspend the application of comparable benefits arising under this Agreement until such time as the Parties have reached agreement on a resolution of the dispute. Nothing in this paragraph shall be construed as limiting the right of either Party to take countermeasures in accordance with international law.

8. The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Parties. Any expenses incurred by the President of the Council of the International Civil Aviation Organization in connection with the procedures of paragraph 2b of this Article shall be considered to be part of the expenses of the arbitral tribunal.”

- And that Articles 16-19 of the Air Transport Agreement be renumbered 17-20 respectively

If the foregoing proposal is acceptable to the Government of the United States of America, the Australian Embassy has the honour to propose that this Note and the Department of State's confirmatory Note in reply shall constitute an Agreement between the two Governments amending the Air Transport Agreement, which, notwithstanding Article 16 of the Air Transport Agreement, shall enter into force upon the date of entry into force of the Air Transport Agreement.

The Australian Embassy avails itself of this opportunity to renew to the United States Department of State the assurances of its highest consideration.

Washington
[xx] May 2011

DRAFT RESPONSE NOTE

The Department of State acknowledges receipt of [note No. Xxx][if applicable], dated xxxx, from the Embassy of Australia, which reads as follows:

[text of Embassy of Australia note]

The Department of State confirms that the proposal contained in the Embassy's note is acceptable to the Government of the United States of America. Therefore, the Embassy's note and this reply shall constitute an Agreement amending the Air Transport Agreement, which shall enter into force upon the date of entry into force of the Air Transport Agreement.