

**National Interest Analysis [2011] ATNIA 22  
with attachment on consultation**

**Exchange of Notes constituting an Amendment to the  
Agreement between the Government of Australia and the  
Government of the Socialist Republic of Vietnam relating to Air Services  
(done at Canberra on 31 July 1995)**

**Hanoi, TBA 2011**

**[2011] ATNIF 16**

## 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 an amendment (“the proposed Amendment”) to the *Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services*, signed on 31 July 1995 ([1995] ATS 26, hereinafter “the Agreement”).
2. The proposed Amendment introduces a new Route Annex that will replace the existing Route Annex to the Agreement.
3. Article 18 of the Agreement stipulates that amendments will enter into force on the date that the Parties, by exchange of diplomatic notes, specify for entry into force. The Government of the Socialist Republic of Vietnam sent its note on 29 June 2011. The Government proposes to despatch Australia’s note in reply as soon as practicable after the Joint Standing Committee on Treaties issues its report on the proposed Amendment. The proposed Amendment will enter into force on the date of Australia’s note in reply.
4. In accordance with established international and Australian practice, the new Route Annex has been given interim effect through a memorandum of understanding signed in October 2003, pending entry into force of the proposed Amendment.

#### **Overview and national interest summary**

5. The Route Annex to the Agreement determines the origin and destination points in each country that each Contracting Party’s airlines are permitted to fly from and to, in addition to their intermediate (en-route) stops and destinations beyond the other country. The proposed Amendment provides for a more liberal Route Annex that allows airlines to serve any points in the other country and any intermediate and beyond points.
6. Provision of services by airlines remains subject to capacity and traffic rights restrictions as settled between aeronautical authorities from time to time, generally in the form of memoranda of understanding.

## **Reasons for Australia to take the proposed treaty action**

7. The proposed Amendment provides for increased commercial opportunities for Australian airlines, subject to any traffic rights decided between the aeronautical authorities. Whereas the current Route Annex allows for two points in the other country, one intermediate point, and one beyond point, the proposed Amendment would allow designated airlines to serve any points in the other country and any intermediate and beyond points.

## **Obligations**

8. Australia and Vietnam are both parties to the *Convention on International Civil Aviation*, done at Chicago on 7 December 1944 ([1957] ATS 5), commonly referred to as “the Chicago Convention”. The Agreement was made in accordance with and pursuant to the Chicago Convention.

9. The Agreement obliges Australia and Vietnam to allow the designated airlines of each country to operate scheduled air services carrying passengers and cargo between the two countries on the 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 Contracting Party and to sell fares to the public.

10. The Route Annex, which is part of the Agreement, contains a route schedule which specifies the routes that may be operated by designated airlines. Contracting Parties may operate services on these routes in accordance with traffic rights and capacity entitlements settled in associated memoranda of understanding. As noted in paragraph 5 above, the proposed Amendment would allow the designated airlines of each Contracting Party to serve any points in the other country and any intermediate and beyond points.

## **Implementation**

11. The Agreement is 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 are required for the implementation of the proposed Amendment.

## **Costs**

12. No direct financial costs to the Australian Government are anticipated in the implementation of the Agreement or the proposed Amendment. There are no financial implications for State or Territory Governments and the proposed Amendment reduces the regulatory burden on business and industry.

## **Regulation Impact Statement**

13. The Office of Best Practice Regulation has been consulted and confirms that a Regulation Impact Statement is not required.

## **Future treaty action**

14. Article 18 of the Agreement provides for amendment or revision by agreement between the Contracting Parties. Any further amendments to the Agreement, including the Route Annex, would enter into force on the date the Contracting Parties, by exchange of diplomatic notes, specify for their entry into force.

15. Article 18 further provides that if a multilateral convention concerning air transport comes into force in respect of both Contracting Parties, the Agreement shall be deemed to be amended so far as is necessary to conform with the provisions of that convention.

16. Any future amendments to the Agreement are likely to involve further deregulation of air services arrangements between the Contracting Parties and would be subject to Australia's domestic treaty processes.

## **Withdrawal or denunciation**

17. Article 20 of the Agreement allows either Contracting Party to give notice in writing at any time through the diplomatic channel to the other Contracting Party of its decision to terminate the Agreement. Notice of termination must also be lodged with the International Civil Aviation Organization (ICAO). The Agreement will terminate one year after the date of receipt of the notice by the other Contracting Party. In default of acknowledgment of a receipt of a notice of termination by the other Contracting Party, the notice shall be deemed to have been received 14 days after the date on which ICAO acknowledged receipt thereof.

18. Any withdrawal from the Agreement by Australia would be subject to Australia's domestic treaty processes.

## **Contact details**

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

## **ATTACHMENT ON CONSULTATION**

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### **CONSULTATION**

19. Aviation and tourism industry stakeholders, including Australian airports, relevant Australian and State and Territory Government agencies, the Australian Tourism Commission, Qantas Airways Ltd and the Virgin Blue Group were advised in 2002 of a request by the Vietnamese aeronautical authorities to negotiate expanded air services arrangements with Australia and were given the opportunity to comment on issues of importance to them. Consultation with stakeholders occurred prior to the air services negotiations between Australia and Vietnam, which were conducted by correspondence and finalised in October 2003, at which time the text of the amended Route Annex was settled. Information on the consultations was also provided to the States and Territories through the Commonwealth-State-Territory Standing Committee on Treaties.

20. It is the practice ahead of negotiations for the Department of Infrastructure and Transport to consult government and non-government bodies that may have an interest in the outcome and to take into account their views in developing a negotiating position for the Minister's approval. In situations where a new or revised air services agreement is being negotiated, the Department, wherever possible, uses the Australian Air Services Agreement model text that has been developed in consultation with other government agencies. This model text is maintained and kept up to date through a process of ongoing consultation with relevant agencies. The proposed Amendment is consistent with Australia's model text.

21. Comments relating to route matters are outlined below. (The names of relevant departments and companies as at the time of the consultation are used in this document.)

22. Qantas Airways Ltd supported the proposed Amendment because of the greater operational flexibility it offers to carriers of both countries.

23. The Department of Industry, Science and Resources supported the proposed Amendment in order to allow operations by Vietnamese airlines to regional international airports in Australia.

24. The Department of the Treasury supported increased rights for carriers to operate via intermediate points and to points beyond each country. The proposed Amendment facilitates the granting of such rights.

25. In relation to routes, the South Australian Government sought rights for airlines of Vietnam to operate beyond regional gateways to New Zealand and for Australian carriers to operate beyond the primary Vietnamese gateways. The proposed Amendment allows such operations (in accordance with traffic rights settled by the aeronautical authorities from time to time).

26. The Western Australian Government sought route arrangements that would permit operations between Perth and two points in Vietnam. The proposed Amendment permits operations between Perth and any points in Vietnam (subject to negotiated capacity entitlements for Australian carriers).

27. Stakeholder comments were taken into account in developing an Australian negotiating position for air services consultations with Vietnam on the proposed Amendment.