

National Interest Analysis [2010] ATNIA 55

with attachment on consultation

**Air Services Agreement between
the Government of the Federative Republic of Brazil and the Government of Australia,
done at Brasilia on 21 April 2010**

[2010] ATNIF 38

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

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Nature and timing of treaty action

1. The proposed treaty action is to bring into force the *Air Services Agreement between the Government of the Federative Republic of Brazil and the Government of Australia* (the Agreement).
2. The Agreement was signed on 21 April 2010.
3. Pursuant to Article 24, the Agreement will enter into force when 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 treaty action, the Australian Government will provide its notification to the Government of the Federative Republic of Brazil (Brazil) 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 Brazil. It will allow the airlines of Australia and Brazil 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 Memoranda of Understanding (MOUs) signed in 2006 and 2008. In accordance with established Australian and international practice these MOUs 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 Brazil. 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 treaty action

7. The Agreement grants access for Australian airlines to the Brazilian aviation market and allows for the establishment of air services between the two countries. The Agreement will enable Australian and Brazilian carriers to provide services between any point in Australia and any point in Brazil, 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 Brazil are both Parties to the *Convention on International Civil Aviation* ([1957] ATS 5) (the Chicago Convention). The Agreement was made in accordance with and pursuant to the Chicago Convention opened for signature at Chicago on 7 December 1944.

10. The Agreement obliges Australia and Brazil 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 each Party and to sell fares to the public.

11. Under Article 2 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 2 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.

12. Article 3 of the Agreement allows each Party to designate any number of airlines to operate the agreed services. On receipt of the designation, the authorising Party must grant the authorisation provided that, amongst other things the Party designating the airline complies with the conditions for ownership and the safety and security provisions of the Agreement. If the Party designating the airline fails to comply with the conditions specified in Article 3, Article 4 provides that the other Party has the right to withhold the authorisation and to revoke, suspend or impose conditions on such authorisations.

13. Article 5 of the Agreement confirms that each Party's domestic laws and regulations 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 5 also applies each Party's laws and regulations relating to, for example, aviation security, immigration and customs to the passengers, crew, baggage, cargo and mail carried by the aircraft while they are within that Party's territory. Passengers, baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes. In applying their laws, the Parties are prevented from giving preference to their own or any other airline.

14. Under Article 6, 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 Aviation Organization (ICAO). This requirement does not apply to the Party's own nationals or to its registered aircraft by the other Party.

15. Under Article 7, 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. If access for the purpose of conducting an aircraft inspection is denied to one Party, that Party may infer serious concerns and shall be free to conclude that the Party does not meet minimum safety ICAO standards.

16. Under Article 8, 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 in the other Party's territory. Such assessments are to be conducted in accordance with arrangements agreed between the aeronautical authorities without delay. All assessments should be covered by a special confidential agreement.

17. Article 9 lists the equipment and stores used in the operation of the agreed services that the Parties are required, in accordance with international practice, to exempt from customs duties, excise taxes, inspection fees and other related charges.

18. Under Article 10, 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 an MOU signed in February 2006, when the Agreement was negotiated. These capacity arrangements are intended to continue once the Agreement enters into force.

19. Article 11 allows the designated airlines of a Party to set their own fares after having due regard to the relevant factors outlined in the Article. The Article also provides a framework for the aeronautical authorities to regulate air fares and other charges. The decision to regulate airfares is a policy consideration for the aeronautical authorities of each Party, in accordance with domestic legislation.

20. Under Article 12, the aeronautical authorities of one Party may request consultation with the other Party if the Party considers that a designated airline of the other Party is engaged in unfair competitive practices, such as those listed in Article 12. When undertaking such consultation, both Parties are required to coordinate their actions with the relevant

21. Article 13 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 and use the services and personnel of any organisation, company or airline operating in the territory of the other Party to conduct its business.
22. Article 14 outlines the conditions under which airlines can convert and move currencies. The provisions in the Article do not exempt the airlines of both Parties from duties, taxes and other contributions to which they may be subjected.
23. Article 15 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.
24. Article 16 provides that a Party may request statistics from the other Party's designated airlines.
25. Under Article 17, the designated airlines of each Party must submit their planned flight schedules to the aeronautical authority of the other Party for approval. If a designated airline wishes to depart from the planned flight schedules to meet special travel peaks, the airline must request prior permission from the aeronautical authority of the other Party.
26. Article 18 provides that each Party may at any time request consultations on the implementation, interpretation and compliance with the provisions of the Agreement.
27. Article 21 provides for dispute resolution, with the exception of disputes concerning safety and air fares, between the aeronautical authorities of the Parties. If the aeronautical authorities of the Parties fail to resolve any dispute by negotiation, it is to be settled by the Parties through diplomatic channels.
28. The Annex contains a route schedule which specifies the routes that may be operated by designated airlines.

Implementation

29. 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

30. 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

31. 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

32. Article 19 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 amendments. Article 20 provides that the Agreement will be deemed to be amended so far as is necessary to comply with any multilateral air services agreement concerning air services that may come into force for both Parties.

33. Any amendment to the Agreement will be subject to Australia's domestic treaty-making process, including tabling in Parliament and consideration by JSCOT.

Withdrawal or denunciation

34. Article 22 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 by the other Party, unless the notice is withdrawn by agreement before the end of the termination period.

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

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

36. It is the practice ahead of negotiations of an air services 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.

37. 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 Brazil and invited to comment on issues of importance to them:

Commonwealth Government Agencies

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

State Government Agencies

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

- Victorian Government Department of Primary Industries
- Tourism New South Wales
- Tourism South Australia
- Tourism Queensland
- Tourism Tasmania
- Tourism Victoria
- Tourism Northern Territory
- Tourism Western Australia

Industry

- Adelaide Airport Limited
- Alice Springs Airport
- Australian Airports Association
- Australian and International Pilots Association
- Australian Aviation Council
- Australian Federation of Travel Agents
- Australian Federation of International Forwarders
- Australian Local Government Association
- Australian Tourism Export Council
- Australia's North West Tourism
- Avalon Airport Australia Pty Ltd & Essendon Airport Pty Ltd
- Aviation Australia
- Board of Airline Representatives of Australia
- Brisbane Airport Corporation Ltd
- Broome International Airport Holdings
- Burnie Airport Corporation Pty Ltd/Wynyard Aerodrome
- Cairns Airport
- Canberra International Airport
- Chamber of Commerce Northern Territory
- Essendon Airport
- Flinders Ports South Australia
- Global Aviation Services
- Gold Coast Airport Ltd
- Hobart International Airport
- Launceston Airport
- Melbourne Airport
- Mildura City Council
- Moorabbin Airport
- National Food Industry Strategy Ltd
- National Jet Systems Pty Ltd
- National Tourism Alliance
- Newcastle Airport Ltd
- Northern Territory Airports Pty Ltd
- Northern Territory Transport
- Perth Airport
- Qantas Airways Ltd
- Queensland Airports Ltd
- Queensland Tourism Industry Corporation
- Regional Aviation Association of Australia

- Sky Air World
- Sydney Airport Corporation Ltd
- Tasmanian Freight Logistics Council
- Tourism and Transport Forum (TTF) Australia
- Tourism Top End
- Townsville Airport
- Tropical Tourism North Queensland
- Virgin Blue
- Westralia Airports Corporation Pty Ltd

38. Comments were received from: Qantas, Virgin Blue, Sydney Airport, the Aviation Steering Committee of the Queensland Government, Tourism New South Wales, Tourism Victoria and the Australian Government Department of Resources, Energy and Tourism.

39. Stakeholders who provided comment supported the negotiation of a new air services agreement with Brazil to open market access for airlines in both countries.

40. Comments provided by Sydney Airport, the Australian Government Department of Resources, Energy and Tourism and Tourism Victoria were all confidential.

41. Qantas supported negotiations of arrangements including liberal cooperative marketing provisions and route rights. Virgin Blue supported the negotiations.

42. The Aviation Steering Committee of the Queensland Government and Tourism New South Wales indicated that they would welcome the Agreement which would provide flexibility to Australian and foreign carriers to serve these states.

43. Comments on the Agreement were received from the Attorney-General's Department, the Department of Foreign Affairs and Trade, the Treasury, Customs, the Civil Aviation Safety Authority, the Australian Competition and Consumer Commission and the Department of Immigration and Citizenship. These agencies cleared the text of the Agreement prior to its approval by the Federal Executive Council.

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

45. The Agreement was approved for signature by the Federal Executive Council on 14 November 2008.