

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

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

Have agreed to amend the Agreement between the Government of the People's Republic of China and the Government of the United States of America 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 25 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) Each designated and non-designated airline 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

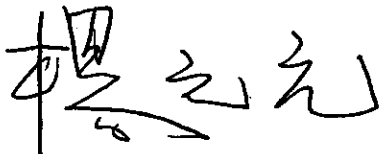
Entry into Force

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 Beijing, in two originals, this 24th day of July, 2004, in the Chinese and English languages, both texts being equally authentic.

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



FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:



关于《中华人民共和国政府和美利坚合众国政府 民用航空运输协定》的议定书

中华人民共和国政府和美利坚合众国政府（以下称为“双方”），

就修改已经修改的一九八〇年九月十七日签订的《中华人民共和国政府和美利坚合众国政府民用航空运输协定》（以下称为“《协定》”）达成协议如下：

第一条 指定

《协定》第三条第一款由以下文字取代：

“一、各方有权通过外交途径向另一方书面指定四（4）家空运企业，在适用的情况下，在附件一所规定的第一条或第二条航线上经营协议航班，并有权撤销或更改所作的指定。指定经营第一条航线的空运企业可以经营客货混合航班或全货运航班，或同时经营这两类航班。指定经营第二条航线的空运企业只能经营全货运航班。

双方还有权根据下列时间表通过外交途径以书面形式通知另一方增加指定的空运企业，并有权撤销或更改所作的指定。

（一）美国可在其第二条航线上增加指定一家空运企业经营协议航班；中国可在其第一条航线或第二条航线上增加指定一家空运企业经营协议航班。根据本项新增的指定空运企业可自二〇

〇四年八月一日起开始经营航班。

(二)美国可在其第一条航线上增加指定一家空运企业经营协议航班;中国可在其第一条航线或第二条航线上增加指定一家空运企业经营协议航班。根据本项新增的指定空运企业可自二〇〇五年三月二十五日起开始经营航班。

(三)美国可在其第一条航线或第二条航线上增加指定一家空运企业经营协议航班;中国可在其第一条航线或第二条航线上增加指定一家空运企业经营协议航班。根据本项新增的指定空运企业可自二〇〇六年三月二十五日起开始经营航班。

(四)美国可在其第一条航线或第二条航线上增加指定一家空运企业经营协议航班;中国可在其第一条航线或第二条航线上增加指定一家空运企业经营协议航班。根据本项新增的指定空运企业可自二〇〇八年三月二十五日起开始经营航班。

(五)美国可在其第一条航线或第二条航线上增加指定一家空运企业经营协议航班;中国可在其第一条航线或第二条航线上增加指定一家空运企业经营协议航班。根据本项新增的指定空运企业可自二〇一〇年三月二十五日起开始经营航班。

第二条 班次

《协定》附件五第三款和第四款改为第七款和第八款,附件五第一款和第二款由以下文字取代:

“一、虽然本协定有其他规定,各方指定空运企业有权在规

定航线每周经营 54 班。中华人民共和国的 54 班可在客货混合和全货运航班之间自由转换使用，并可在附件一中国第一条航线和第二条航线之间自由转换使用。美国的 34 班只能用于客货混合航班，20 班只能用于全货运航班，但这 54 班中总共 18 班可在客货混合和全货运航班之间自由转换使用，并可在附件一美国第一条和第二条航线之间自由转换使用。美国剩余的 36 班不可在其经营的航班类型或航线之间转换使用。关于在其经营的航班类型或航线之间转换使用的 18 班，美利坚合众国政府将至少提前三十天书面通知中华人民共和国政府其转换使用的班次。

二、除上述第一款规定的班次外，各方指定空运企业有权根据下列时间表在附件一美利坚合众国航线的第一条航线或中华人民共和国航线的第一条航线上，经营往返于北京、上海和广州（以下称为“中国一区”）或往返于安徽、福建、广东（除广州外）、河北、河南、湖北、湖南、江苏、江西、山东、山西、天津和浙江（以下称为“中国二区”）的客货混合航班，每周班次如下：

- （一）自二〇〇四年八月一日起，每周增加 14 班；
- （二）自二〇〇五年三月二十五日起，每周增加 7 班；
- （三）自二〇〇六年三月二十五日起，每周增加 7 班；
- （四）自二〇〇七年三月二十五日起，每周增加 7 班；
- （五）自二〇〇八年三月二十五日起，每周增加 7 班；
- （六）自二〇〇九年三月二十五日起，每周增加 7 班；

(七) 自二〇一〇年三月二十五日起, 每周增加 7 班;

中华人民共和国政府指定的中方空运企业可将上述班次在客货混合航班和全货运航班之间、以及附件一中华人民共和国航线的第一条航线和第二条航线之间自由转换使用。指定经营第一条航线的美国空运企业仅可将上述班次用于客货混合航班。

三、除上述第一款和第二款规定的班次外, 各方指定空运企业有权根据下列时间表在附件一的任何航线上, 增加经营往返于中国一区或中国二区的全货运航班, 每周增加的班次如下:

(一) 自二〇〇四年八月一日起, 每周增加 21 班;

(二) 自二〇〇五年三月二十五日起, 每周增加 18 班;

(三) 自二〇〇六年三月二十五日起, 每周增加 12 班;

(四) 自二〇〇七年三月二十五日起, 每周增加 15 班;

(五) 自二〇〇八年三月二十五日起, 每周增加 15 班;

(六) 自二〇〇九年三月二十五日起, 每周增加 15 班;

(七) 自二〇一〇年三月二十五日起, 每周增加 15 班;

指定经营第一条航线的美方空运企业不得将上述班次用于客货混合或客运航班。中华人民共和国政府指定的空运企业可将上述班次在客货混合航班和全货运航班之间、以及附件一中华人民共和国航线的第一条航线和第二条航线之间自由转换使用。

四、除上述第一款至第三款规定的班次外, 各方指定空运企业有权根据下列时间表在附件一美利坚合众国航线的第一条航线或中华人民共和国的航线第一条航线上, 增加经营往返于中国

二区的客货混合航班，或在附件一规定的任何航线上增加经营往返于中国二区的全货运航班，每周增加的班次如下：

（一）自二〇〇七年三月二十五日起，每周增加 7 班；

（二）自二〇〇八年三月二十五日起，每周增加 7 班；

（三）自二〇〇九年三月二十五日起，每周增加 7 班；

（四）自二〇一〇年三月二十五日起，每周增加 7 班；

五、根据本附件五第六款的规定，各方指定空运企业在中国境内地点和日本之间享有第五业务权的客货混合航班，每周不得超过 39 班。

第三条 特别航空区

《协定》附件五经进一步修改，增加第六款，内容如下：

“六、虽然本协定第三条对指定空运企业的数量有限制，所有中美双方空运企业可被指定经营美国和“中国三区”间的航班。此类航班无班次限制。“中国三区”包括以下地区的地点：重庆、甘肃、广西、贵州、海南岛、黑龙江、内蒙古、吉林、辽宁、宁夏、青海、陕西、四川、西藏、新疆和云南。尽管《协定》有其他规定，各方可在“中国三区”内选择 5 个点，并且在经营（1）上述 5 个地点与规定航线上第三国境内中间点或以远点之间享有第五业务权的航班，和（2）上述 5 个地点与日本之间享有第五业务权的客货混合航班时不受指定数量和班次的限制。各方至少应提前 30 天书面通知另一方其所选择的 5 个地点。各方更改

其所选的地点，可至少提前 30 天书面通知另一方。但是，至“中国三区”内一点的航班经过“中国一区”或“中国二区”内一点时，应受本协定附件五有关指定、班次和日本第五业务权规定的限制。

第四条 客货混合空运企业和全货运空运企业的航线权

1、《协定》附件一第二节第（一）项中华人民共和国航线的表述由以下文字取代：

中华人民共和国境内任何一个或数个地点，经过东京或日本境内另一地点，至美国境内对定期国际航班开放的一个或数个地点。

2、《协定》附件一说明（四）经修改，在其结尾增加下列内容：

自二〇〇五年三月二十五日起至二〇一〇年三月二十五日，中华人民共和国可每年自三月二十五日起，在其第一条航线上自选增加 1 个享有充分业务权的中间点或以远点。中华人民共和国政府应至少提前 30 天通知美国政府其选择的地点。中华人民共和国政府至少提前 30 天书面通知美国政府后即可更改其所选的地点。

3、《协定》附件一第一节第（一）项美国航线的表述由以下文字取代：

美国境内一个或数个地点，经过东京或日本境内另一地点，

至中华人民共和国境内对定期国际航班开放的一个或数个地点。

4、《协定》附件一经修改，新增说明（七）如下：

自二〇〇九年三月二十五日起，美国可在其第一条航线上自选增加 1 个享有充分业务权的中间点。美国政府应至少提前 30 天通知中华人民共和国政府其自选的中间点。美国政府至少提前 30 天书面通知中华人民共和国政府后即可更改其所选的地点。

5、《协定》附件一经修改，新增有关美利坚共和国航线第一条航线和中华人民共和国航线第一条航线的说明（八）如下：

指定经营美利坚合众国航线的第一条航线和中华人民共和国航线的第一条航线的空运企业经营全货运航班时，有权行使与美利坚合众国航线的第二条航线和中华人民共和国的航线第二条航线相同的航线灵活性。

6、《协定》附件三第一节予以删除，《协定》附件三第二节至第六节遂改为第一节至第五节。附件三新的第一节修改如下：

一、定期航班和包机运输使用的机场

各方空运企业用于经另一方航空当局批准的定期航班或包机航空运输的飞机，可以使用另一方航行资料汇编中适当列明可供国际飞行使用的机场，并可使用该航空当局可能批准的其他机场。

第五条 代号共享

《协定》第十一条第五款第（一）、（二）项由以下文字取代：

(一) 根据以下规定,为经营或提供经授权的航班,一方指定空运企业有权与双方一家或多家指定或非指定空运企业,以及与第三国一家或多家空运企业签订包括湿租、包座和代号共享安排的合作营销协议:

(1) 中方一家或多家空运企业可与美方任何一家或多家空运企业进行无限制的代号共享。在参与代号共享的中美空运企业一致同意的情况下,此类代号共享安排也可包括第三国空运企业。根据本项规定,美方与中方空运企业可在包括双方境内地点,并可包括第三国境内任何以前点、中间点或以远点的航线上提供代号共享航班。

(2) 各方空运企业可在无另一方空运企业参与的情况下,根据以下规定与本方空运企业在规定航线上进行代号共享:

1) 自二〇〇六年一月一日起,各方应允许一个此类代号共享安排,并且

2) 自二〇〇八年一月一日起,各方应允许增加一个此类代号共享安排,并且

3) 本项第(2)目规定的两个代号共享安排,其中一个代号共享安排可包括两家空运企业,另一个代号共享安排可包含三家空运企业。

(3) 如果上述第(一)项第(2)目允许的代号共享安排扩大及另一方空运企业,则该代号共享安排应受制于上述第(一)项第(1)目的规定,所以该代号共享安排不再受第(一)项第(2)

目所规定的此类两个代号共享安排的限制。

(4) 美方或中方空运企业必须是本协定的指定空运企业，才能成为第(一)项规定的代号共享安排的实际承运人。

(二) 所有经营或提供上述航班的空运企业均须(1)持有适当的许可，并且(2)满足通常适用于此类安排的要求。然而，虽然要求所有参与代号共享的空运企业事先持有航线权；但美方和中方空运企业可根据上述第(一)项的许可提供代号共享航班，而无需拥有此类航线权。涉及国内载运权、联营或收入分享的安排，概不予批准。

2、第十一条第五款第(三)项予以删除。

第六条 包机航空运输

1、《协定》附件二经修改，第一款由以下文字取代：

一、(一) 各方应批准另一方空运企业提交的、每年自八月一日起计算、飞行于中方空运企业已经营相同类型(客货混合或全货运)定期航班的中国一区地点与美国地点的城市对之间的75个单程包机的申请。

(二) 各方应批准另一方空运企业提交的、每年自八月一日起计算、飞行于中方空运企业已经营相同类型(客货混合或全货运)定期航班的中国二区地点与美国地点的城市对之间的75个单程包机的申请。

(三) 各方应批准另一方空运企业在中国三区地点与美国任

何地点之间的包机申请。

(四)各方应批准另一方空运企业在无中方空运企业经营相同类型(客货混合或全货运)的定期航班的中国一区或中国二区与美国任何地点的城市对之间提议经营包机的申请。

(五)各方对另一方空运企业申请经营本附件未涉及的业务的包机,包括在第三国地点与其本国境内地点间承运第五业务权的包机,以及超过本款第(一)、(二)项包机数量限制、在中方空运企业已经经营定期航班的中美城市对之间的包机,应在礼让和对等的基础上予以考虑。

(六)各方根据本附件执行的包机飞行,无论是单程还是来回程包机飞行,均应遵守包机始发方目前及今后适用于此类运输的法律、法规和规章。

(七)各方可以外交照会向另一方提供根据一方法律有资格提供包机运输的空运企业清单。

2、《协定》附件二经进一步修改,第二款由以下文字取代:

二、包机申请至少应在包机预定飞行前十五天向另一方航空当局提出,获得批准后方可飞行。应本着双方空运企业有均等机会经营国际包机运输、互利和友好合作的精神,迅速批准上述申请,并避免不适当的延误。

第七条 更换机型

自二〇〇五年三月二十五日起,《协定》附件一说明(三)

由以下文字取代：

(一) 根据附件五的规定，各方经营客货混合航班的指定空运企业可在对方境内或在规定航线上一个或几个中间点上更换一次机型，条件是：

(1) 更换机型地点以远的飞行，就去程航班而言，应使用运力较到达的飞机为小的飞机；就回程航班而言，应使用运力较到达的飞机为大的飞机；

(2) 作此种飞行的飞机，班期安排应视情与去程的或回程的飞机相一致，并可用同一航班号；并且

(3) 如果某次飞行因运营或机械问题而延误，其续航飞行可不受本款第(2)项的条件限制。

(二) 关于在规定航线上的一个中间点更换机型，经营全货班的各方指定空运企业根据下列规定，其每班航班可进行一次更换机型：

(1) 自二〇〇六年一月一日起，每架到达飞机在更换机型点可换成两班以内任何机型或种类的飞机，飞行至对方境内一点或数点；

(2) 就去程航班而言，至更换机型点以远的运输是指定该空运企业的一方领土内始发的运输的延续，就回程航班而言，至指定该空运企业的一方领土的运输是自更换机型点以远始发的运输的延续。尤其是，作此种飞行的飞机，班期安排应视情与去程的或回程的飞机相一致，并可用同一航班号；

(3) 如果某次飞行因运营或机械问题而延误，其续航飞行可不受本款第(2)项的条件限制；

(4) 在通常情况下，更换机型地点以远的飞行，就去程航班而言，应使用机型与到达的飞机相同或较之小的飞机；就回程航班而言，应使用机型与到达的飞机相同或较之大的飞机。但是，如果在更换机型点以远的去程航班上使用了较大的飞机；或在更换机型点以远的回程航班上使用了较小的飞机，此类更换机型应备案，不需报批；并且

(5) 更换机型点以远至对方境内一个地点的每一航班应计入附件五和第十一条分条第二款第(六)项的班次限制。

(三) 根据附件五、第十一条分条第二款第(六)项的规定，除上述第(二)款允许的在一个中间点更换机型外，有关在对方境内的更换机型，经营全货班的各方指定空运企业根据下列规定，其每班航班可进行一次更换机型：

(1) 自二〇〇五年三月二十五日起至二〇〇七年三月二十四日，每架到达飞机在对方境内更换机型点可换成两班以内任何机型或种类的飞机，并且该两班中只有一班可从更换机型点飞行至对方境内另一点；

(2) 自二〇〇七年三月二十五日起至二〇〇九年三月二十四日，每架到达飞机在对方境内更换机型点可换成两班以内任何机型或种类的飞机，并且该两班均可从更换机型点飞行至对方境内另一点或数点；

(3) 自二〇〇九年三月二十五日起至二〇一一年三月二十四日, 每架到达飞机在对方境内更换机型点可换成三班以内任何机型或种类的飞机, 并且该三班中只有两班可从更换机型点飞行至对方境内另一点或数点;

(4) 自二〇一一年三月二十五日起, 每架到达飞机在对方境内更换机型点可以换成三班以内任何机型和种类的飞机, 并且该三班均可从更换机型点飞行至对方境内另一点或数点;

(5) 就去程航班而言, 至更换机型点以远的运输是指定该空运企业的一方领土内始发的运输的延续, 就回程航班而言, 至指定该空运企业的一方领土的运输是自更换机型点以远始发的运输的延续。尤其是, 作此种飞行的飞机, 班期安排应视情与去程的或回程的飞机相一致, 并可用同一航班号;

(6) 如果某次飞行因运营或机械问题而延误, 其续航飞行可不受本款第(5)项的条件限制。

(7) 在通常情况下, 更换机型地点以远的飞行, 就去程航班而言, 应使用机型与到达的飞机相同或较之小的飞机; 就回程航班而言, 应使用机型与到达的飞机相同或较之大的飞机。但是, 如果在更换机型点以远的去程航班上使用了较大的飞机, 或在更换机型点以远的回程航班上使用了较小的飞机, 此类更换机型应备案, 不需报批。

第八条 运价

1、《协定》附件四全部删除。

2、《协定》十三条由以下文字取代：

一、自二〇〇四年八月一日起至二〇〇八年三月二十四日，应适用下列规定：

(一)各方空运企业可基于市场的商业考虑，在合理的水平制订定期航班的运价。一方有权对规定航线上自其境内始发的单程或来回程运输的运价予以批准或不予批准。任何一方不得采取单方面行动，对规定航线上自其境外始发的单程或来回程运输，阻止实施所建议的运价或继续实施有效的运价。

(二)一方可要求另一方空运企业向前者航空当局申报正在实施或建议实施的进、出其领土的运价；可要求双方空运企业申报运价，不早于运价拟议生效之日三十天前。在个别情况下，一方可允许在短于通常要求期的情况下申报运价。如果一方允许空运企业于运价拟议生效在即时申报运价，则运价应在拟议自其境内始发的运输实施之日起生效。

(三)虽然有本第一款的规定，各方应允许另一方任何空运企业申报并迅速实施与双方任何其他空运企业根据本条规定在相同地点之间运输所提供的相同运价和类似的条件。

二、自二〇〇八年三月二十五日起，适用下列规定：

(一)各方应允许每家空运企业基于市场的商业考虑，制订定期航班的运价。双方的干预应限于：

(1) 制止不合理的歧视性运价或做法；

(2) 保护消费者免受因滥用支配地位造成的不合理高运价或限制性运价之害；以及

(3) 保护空运企业免受直接或间接政府补贴或支持造成的人为压低票价之害。

(二) 双方境内地点间的定期国际航班运价不需申报。尽管有上述规定，双方空运企业一经受到要求，须立即按照双方航空当局所接受的方式和形式继续向其提供历史的、现行的和建议采用的运价资料。

(三) 任何一方不得采取单方面行动，对(1)一方空运企业在双方境内地点之间的定期国际航班，包括不同空运企业的联程运输和本空运企业的联程运输，或(2)一方空运企业在另一方境内和其他国家间的定期国际航班，包括不同空运企业的联程运输和本空运企业的联程运输，阻止实施或继续实施所建议采用或已采用的运价。如果一方认为任何此类运价与本条第一款的内容不符，应尽快要求磋商，并通知另一方其不满意的理由。此磋商应在收到磋商要求后三十天内进行，并且双方应合作提供必要的信息以合理解决问题。如双方就已做出不满意通知的运价达成协议，各方应尽最大努力使该协议生效。如双方未达成协议，则该运价应生效或继续有效。

第九条 货运枢纽

《协定》经修改，新增第十一条分条，内容如下：

第十一条分条 货运枢纽

一、货运枢纽定义为在另一方境内的一个地点：1) 一家指定空运企业在该枢纽地点每周至少运营七十二次全货运飞机的起降，一次飞机起降是指飞机在该枢纽地点的一次飞抵或飞离，并且；2) 该指定空运企业在该枢纽地点雇佣人员以便利货物运送；并且3) 该指定空运企业使用该枢纽地点的机场设施以运送货物；并且4) 该指定空运企业在枢纽地点使用海关当局监管的保税设施以运送过境货物。

二、虽然本协定有其他规定，自二〇〇七年一月一日起，一家指定空运企业一旦满足本条第一款的定义要求，则该指定空运企业除享有本协定所赋予的全货运航班的权利外，还立即有权在该枢纽实施以下运营权利：

(一) 各方应允许该空运企业基于市场的商业考虑，决定其在该枢纽提供的国际航班班次和运力。根据此项权利，除与《公约》第十五条所规定的相同条件相一致的海关、技术、运营或环境原因的要求外，任何一方不得单方面限制该空运企业在枢纽经营的运量、航班班次或规律，或飞机的机型。

(二) 该空运企业在该枢纽经营国际航班时，其更换飞机的机型、种类及数量没有限制，但每架到达飞机在更换机型点只能换成四班飞行至对方境内另一点。

(三) 该空运企业有权在另一方境内的枢纽地点与第三国境内一点或数点之间经营定期国际全货运航班，而不需飞至指定该

空运企业一方的境内地点。

(四) 该空运企业享有本协定第十一条第一款第(二)项所规定的权利。

(五) 该空运企业可与(1)任何一方一家或几家空运企业；
(2) 第三国的一家或几家空运企业签订包括包座、代码共享或湿租安排的合作营销协议，但所有参与此类协议的空运企业必须
(1) 持有适当的许可，并且(2) 满足通常适用于此类安排的要求。然而，虽然要求所有参与代号共享的空运企业事先持有航线权，但美方和中方空运企业可根据本项的许可提供代号共享航班，而无需拥有此类航线权。涉及国内载运权、联营或收入分享的安排，概不予批准。本第(五)项所规定的协议不受本《协定》第十一条第五款第(一)项第(1)、(2)或(3)目所规定的代号共享安排的限制。

(六) 该空运企业在其货运枢纽地点与另一方境内一个非枢纽地点之间组合飞行时，此种航班不受本协定适用于该非枢纽地点的班次数量限制，但下列情况除外：

(1) 自二〇〇七年一月一日起至二〇〇八年十二月三十一日，飞往一区或二区非枢纽地点的此种航班应受本协定适用于该非枢纽地点的班次数量的限制；并且

(2) 自二〇〇九年一月一日起至二〇一〇年十二月三十一日，飞往一区非枢纽地点的此种航班应受本协定适用于该非枢纽地点的班次数量的限制。

(七)该空运企业在满足本条第一款定义要求前所使用的飞往枢纽地点的班次,经指定该空运企业的一方选择,可由该空运企业用于非枢纽地点的航班,或重新分配给该方的其他空运企业使用。

三、一家指定空运企业连续六个月满足本条第一款的要求后,将保持本条第二款规定的权利,即使该空运企业在枢纽地点临时性地不能达到平均每周七十二次飞机起降。

四、如本条第三款涉及的指定空运企业在九个月期间内不能满足本条第一款的要求,双方应根据本协定第十六条的规定进行磋商,审议造成经营水平降低的情况,以及恢复达到所规定的经营水平的可能性。

第十条 多式联运权

《协定》第十一条经修改,新增第六款如下:

六、虽然本协定有其他规定,自二〇〇七年一月一日起,双方空运企业和货物运输间接提供者,应被允许不受限制地为衔接国际航班而使用任何水陆路运输前往或来自双方境内或第三国境内任何地点的货物,包括运输前往或来自所有具有海关设施的机场,并且在可行的情况下包括运输根据适用的法律和规章保税的货物。这种货物,不论是水陆路运输或航空运输,应能进入机场海关的通关处理和设施。空运企业可以选择自己进行水陆路运输,或者通过与其他水陆路承运人达成安排,包括其他空运企业

和货物运输间接提供人经营的水陆路运输，进行水陆路运输。只要托运人不被这种运输的实际情况所误导，这种多式联运货运航班可以单一的、航空和水陆路运输结合的联程运价提供。

第十一条 自办地面业务

《协定》第十一条第一款由以下文字取代：

一、（一）自二〇〇四年八月一日起至二〇〇七年十二月三十一日，有关经营协议航班地面服务事宜可由双方空运企业商定，报经双方民航当局批准。

（二）自二〇〇八年一月一日起，各方指定空运企业有权在对方境内自己办理其地面服务（“自办地面服务”），或根据其选择，在竞争代理人中选择办理全部或部分地面服务。该地面代理权利应仅受基于机场安全考虑而设置的物质条件的限制。如出于机场安全考虑不能进行自办地面服务，所有空运企业应在平等的基础上享受地面服务；地面服务的收费应基于所提供的服务的成本，并且这些地面服务的种类和质量应与自办地面服务可能提供的种类和质量相类似。

第十二条 商务活动

1、《协定》第九条经修改，第一款由以下文字取代：

一、（一）为经营规定航线上的协议航班，一方指定空运企业有权在另一方境内设立代表机构。本项所述的代表机构人员应

受驻在国现行法律和规章的管辖。

(二)一方非指定空运企业有权在另一方境内设立销售办事处。本项所述的销售办事处人员应受驻在国现行法律和规章的管辖。

2、《协定》第九条经进一步修改，第二款结尾增加下列语句：

此外，一方应尽最大可能保障另一方非指定空运企业销售办事处及其工作人员的安全。

3、《协定》第九条经进一步修改，第四款由下列文字取代：

四、一方指定和非指定空运企业一俟提出要求，即有权将在当地的收支积余予以兑换并汇至其本国。汇兑应按交易和汇款时适用的有效汇率进行结算，不得加以限制，并在互惠基础上免征税收。如双方间订有支付办法的专门协定，则适用该协定。

4、《协定》第九条经进一步修改，新增第五款如下：

五、各方应允许另一方指定和非指定空运企业参加前者境内的国际航协开帐与结算计划。

5、《协定》第十条经修改，新增第三款如下：

三、虽然有本条第二款的规定，各方指定和非指定空运企业有权根据另一方关于入境、居住和雇用的法律和规章在另一方境内派遣和保持为提供航班所需的任何管理、销售、技术、运行和其他专业职员，包括第三国籍国民。

6、《协定》第十一条经修改，第三款由以下文字取代：

三、虽然有本条第二款的规定，各方指定和非指定空运企业

可在其驻另一方境内的代表机构或销售办事处直接或通过其指定的代理人销售协议航班和/或本企业所有其他航班的航空运输。任何人可用所在地的货币或根据适用的法律用外汇券或自由兑换货币，自由地购买此种运输。此外，该代表机构可用于进行该指定空运企业的管理、信息资料和运营活动，该销售办事处可用于进行该非指定空运企业的信息资料活动。”

7、一九八〇年九月八日互换信件关于在另一方境内进行商务活动的第一、二和六条共识，扩大适用于非指定空运企业以及指定空运企业。

第十三条 定义

《协定》第一条经修改，新增第（九）款和第（十）款如下：

（九）“去程飞行或航班”，系指在指定该空运企业的一方境内始发、飞往另一方境内或第三国境内一点或数点的飞行或航班。

（十）“回程飞行或航班”，系指在另一方境内或第三国境内始发、最终目的点为指定该空运企业一方境内的飞行或航班。

第十四条 未来的谈判

双方应以中华人民共和国与美利坚合众国之间的航空关系完全自由化为最终目标，于二〇〇六年开始举行谈判。为此，谈判的目的应为：1）全面审议双边民航协定截至其时的执行情况，

并且 2) 建立双方进一步开放双边民航关系的未来实施步骤。

第十五条 生效

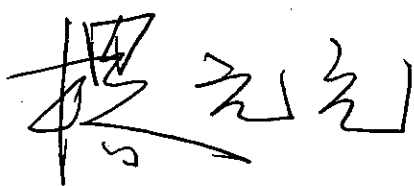
本议定书在外交换文确认双方已完成必要的国内程序后生效。

下列代表，经其政府正式授权，在本议定书上签字，以昭信守。

本议定书于二〇〇四年七月十四日在北京签订，一式两份，每份都用中文和英文写成，两种文本同等作准。

中华人民共和国政府

代 表



美利坚合众国政府

代 表

