

VN Cargo Agreement
10/7/2008

MEMORANDUM OF CONSULTATIONS

Delegations representing the Government of the Socialist Republic of Vietnam and the Government of the United States of America met in Hanoi on October 6-7, 2008, to discuss expanding and modernizing their civil aviation relationship. Negotiations proceeded in a productive atmosphere, consistent with the aviation relationship between the two countries. Delegation lists appear as Appendix 1.

The delegations reached agreement *ad referendum* on, and initialed the text of, an agreement ("Agreement") to amend the 2003 Air Transport Agreement. The draft Agreement is attached as Appendix 2. The delegations intend to submit the Agreement to their respective governments for official signature, with the goal of its entry into force in the near future.

The Vietnamese delegation indicated their desire to further develop Chu Lai airport in Quang Ngai Province as part of their policy of encouraging foreign direct investment in central Vietnam. The Vietnamese delegation also encouraged U.S. cargo carriers to establish hubs at Chu Lai.

The delegations agreed that they will meet before October 2010 to work toward a liberalized agreement based on the U.S. model text, including the elimination of restrictions on fifth freedom rights for passenger services and third-country surface transportation under Article 8, paragraph 8.

The delegations also noted the intentions of their governments' aeronautical authorities to permit, on the basis of comity and reciprocity, operations consistent with the Agreement pending its entry into force.

**For the delegation of the
Government of the United States
of America**



Terri L. Robl

Hanoi, Vietnam
October 7, 2008

**For the delegation of the
Government of the Socialist
Republic of Vietnam**



Lai Xuan Thanh

The Vietnamese Delegation*Government*

1. Mr. Lai Xuan Thanh Head of Delegation
Deputy Director General
Civil Aviation Administration of Viet Nam (CAAV)
Ministry of Transport (MOT)
2. Mr. Vo Huy Cuong Director
Air Transport Department, CAAV, MOT
3. Mr. Luu Van Doan Deputy Director
International Affairs, CAAV, MOT
4. Mr. Ngo Thanh Phuong Manager
International Affairs, CAAV, MOT
5. Mr. Vu Hong Quang Official
Air Transport Department, CAAV, MOT
6. Ms. Khuat Duy Le Minh Ministry of Foreign Affairs
7. Ms. Tran Thanh Thuy Ministry of Transport

Industry

8. Mr. Trinh Ngoc Thanh Director, Marketing Planning Department
Vietnam Airlines Corp.
9. Mr. Ta Huu Thanh Deputy Director, Northern Region
Jetstar Pacific Airlines



The U.S. Delegation***Government***

1. Ms. Terri Robl Head of Delegation
Director, Office of Aviation Negotiations
U.S. Department of State
2. Ms. Viki Limaye-Davis Office of Aviation Negotiations
U.S. Department of State
3. Mr. Keith Glatz Office of International Aviation
U.S. Department of Transportation
4. Mr. Michael Honnold Economic Counselor
U.S. Embassy Hanoi
5. Mr. Jeff Bowan Economic Officer
U.S. Embassy Hanoi
6. Mr. Donald Nay Commercial Officer
U.S. Embassy Hanoi
7. Ms. Nguyen Bich Ha Economic Specialist
U.S. Embassy Hanoi

Industry

8. Ms. Cecilia Bethke Air Transport Association
9. Mr. Joe LePochat American Airlines
10. Mr. Dan Weiss Continental & Continental Micronesia Airlines
11. Mr. Bailey Leopard FedEx Express
12. Mr. Alexandre Northwest Airlines
Van der Bellen
13. Ms. Janet Tarver United Airlines
14. Mr. Steven Okun United Parcel Service *✓*

AGREEMENT TO AMEND THE AIR TRANSPORT AGREEMENT BETWEEN THE
GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT
OF THE SOCIALIST REPUBLIC OF VIETNAM

The Government of the United States of America and the Government of the Socialist Republic of Vietnam (hereinafter, "the Parties"),

Have agreed to amend the Air Transport Agreement between the Government of the United States of America and the Government of the Socialist Republic of Vietnam, done at Washington December 4, 2003 (hereinafter "the Agreement") as follows:

Article 1

Article 17 (Entry into Force) of the Agreement shall be amended to read as follows:

"This Agreement shall remain in force until March 31, 2012, inclusive, and may be extended by written agreement of the Parties."

Article 2

Annex I (Scheduled Air Transportation) to the Agreement shall be deleted in its entirety and replaced with the following:

"ANNEX I

"Scheduled Air Transportation

"Section 1

"Routes

"Airlines of each Party designated under this Annex shall, in accordance with the terms of their designation, be entitled to perform scheduled international air transportation between points on the following routes:

A. Routes for the airline or airlines designated by the Government of the United States:

1. From points behind the United States via the United States and intermediate points to a point or points in Vietnam and beyond.
2. For all-cargo service or services, between Vietnam and any point or points.

B. Routes for the airline or airlines designated by the Government of Vietnam:



1. From points behind Vietnam via Vietnam and intermediate points to a point or points in the United States and beyond.
2. For all-cargo service or services, between the United States and any point or points.

“Section 2

“Operational Flexibility

“Each designated airline may, on any or all flights and at its option:

1. operate flights in either or both directions;
2. combine different flight numbers within one aircraft operation;
3. serve behind, intermediate, and beyond points and points in the territories of the Parties on the routes in any combination and in any order;
4. omit stops at any point or points;
5. transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes; and
6. serve points behind any point in its territory with or without change of aircraft or flight number and may hold out and advertise such services to the public as through services;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement; provided that, with the exception of all-cargo services, the service serves a point in the territory of the Party designating the airline.

“Section 3

“Change of Gauge

“On any segment or segments of the routes above, any designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that, with the exception of all-cargo services, in the outbound direction, the transportation beyond such point 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.”

Article 3

Annex II (Charter Air Transportation) to the Agreement shall be deleted in its entirety and replaced with the following:

“ANNEX II

“Charter Air Transportation

“Section 1

“A. Airlines of each Party designated under this Annex shall, in accordance with the terms of their designation, have the right to carry international charter traffic of passengers (and their accompanying baggage) and/or cargo (including, but not limited to, freight forwarder, split, and combination (passenger/cargo) charters):

1. Between any point or points in the territory of the Party that has designated the airline and any point or points in the territory of the other Party; and
2. Between any point or points in the territory of the other Party and any point or points in a third country or countries, provided that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to the homeland for the purpose of carrying local traffic between the homeland and the territory of the other Party.

“B. In the performance of services covered by this Annex, airlines of each Party designated under this Annex shall also have the right: (1) to make stopovers at any points whether within or outside of the territory of either Party; (2) to carry transit traffic through the other Party's territory; (3) to combine on the same aircraft traffic originating in one Party's territory, traffic originating in the other Party's territory, and traffic originating in third countries; and (4) to perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that, except with respect to cargo charters, in the outbound direction, the transportation beyond such point 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.

“C. Each Party shall extend favorable consideration to applications by airlines of the other Party to carry traffic not covered by this Annex on the basis of comity and reciprocity.

“Section 2

“A. Any airline designated by either Party performing international charter air transportation originating in the territory of either Party, whether on a one-way or round-trip basis, shall have the option of complying with the charter laws, regulations, and rules either of its homeland or of the other Party. If a Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines of different countries, each designated airline shall be subject to the least restrictive of such criteria.

“B. However, nothing contained in the above paragraph shall limit the rights of either Party to require airlines designated under this Annex by either Party to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights.

“Section 3

“Except with respect to the consumer protection rules referred to in the preceding paragraph, neither Party shall require an airline designated under this Annex by the other Party, in respect of the carriage of traffic from the territory of that other Party or of a third country on a one-way or round-trip basis, to submit more than a declaration of conformity with the applicable laws, regulations and rules referred to under section 2 of this Annex or of a waiver of these laws, regulations, or rules granted by the applicable aeronautical authorities.”

Article 4

Annex III to the Agreement (relating to CRS) shall be deleted in its entirety.

Article 5

Annex IV (Special Provisions) to the Agreement shall be deleted in its entirety and replaced with the following:

“ANNEX III

“Special Provisions

“Notwithstanding any other provision of this Agreement, the following shall apply:

“A. Designations, Frequencies, and Routes for Scheduled, Combination Services

Scheduled, combination services, except for air transportation provided solely pursuant to cooperative arrangements under Article 8, section 7 (code-sharing), shall be limited as follows:

- (1) Two airlines may be designated by each Party for such services through March 1, 2006, and a third thereafter.
- (2) Airlines designated in accordance with paragraph A(1) may each operate as many as seven round-trip weekly frequencies in scheduled, combination service.
- (3) Airlines designated by the United States in accordance with paragraph A(1) may not serve points in France or the Republic of Korea as either intermediate or beyond points, and may not carry local (“fifth-freedom”) traffic (1) between Vietnam and Hong Kong until October 15, 2005 or (2) between Vietnam and Taiwan or Japan.
- (4) Airlines designated by Vietnam in accordance with paragraph A(1) may not carry local (“fifth-freedom”) traffic between the United States and Japan.

- (5) When engaged in such services, airlines designated by each Party may serve:
- (a) intermediate points in no more than three countries;
 - (b) no more than five points in the territory of the other Party; and
 - (c) beyond points in no more than three countries.

Beyond points may not be served as intermediate points, nor may intermediate points be served as beyond points. Each Party may select the points and countries to be served by airlines that it designates, and may change these selections with 30 days' notice to the other Party.

"B. Combination Charters

Airlines designated by each Party may operate a total of 52 (fifty two) round-trip combination charters per year.

"C. Codesharing

Pursuant to Article 8, paragraph 7, airlines designated by Vietnam may serve 25 points in the United States on a code-share basis only. Any of the points may be changed by the aeronautical authorities of Vietnam following 30 days' notice to the Government of the United States."

Article 6

Entry into Force

This Agreement shall be provisionally applied from the date of signature and shall enter into force upon the completion of an exchange of notes through diplomatic channels between the Parties confirming that each Party has completed the necessary internal procedures for entry into force of this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at _____, this _____ day of _____, 200__, in duplicate, in the English and Vietnamese languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
SOCIALIST REPUBLIC OF VIETNAM:

