

**Free Trade Agreement
Republic of Guatemala – Republic of China**

AIDE MEMOIRE

**Bilateral Agreement on Air Services
Guatemala City, July 27, 2005**

Delegates of Guatemala : Mr. Cesar Zamora, Mr. Luis Montufar, Mr. Hernan Herrera
Mr. Alejandro Fajardo, Mr. Alejandro Vasquez.

Delegates of the ROC : Mr. Hsin-hua Wu, Ms. Shu-hua Chou, Mr. Peter, H.J. Jeng.

Venue: Meeting Room Xelaju III, Marriott Hotel, Guatemala City.

Both Parties reviewed the draft of the Bilateral Agreement on Air Services and the entire text was agreed by both Parties as modified.
It was accorded that the last paragraph of Article 20 shall be evaluated by the legal revision Group.

In witness whereof, the undersigned have signed this Aide Memoir in duplicate in English on July 27th, 2005.

For the Republic of Guatemala

Cesar Zamora
Chief Negotiator
Ministry of Economy

For the Republic of China

Hsin-hua Wu
Deputy Director General
Bureau of Foreign Trade

**AIR SERVICES AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF CHINA
AND
THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA**

The Government of the Republic of China and the Government of the Republic of Guatemala (hereinafter, "the Parties");

Being willing to abide by the Convention on International Civil Aviation opened for signature at Chicago on the Seventh day of December 1944;

Desiring to promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation;

Desiring to facilitate the expansion of international air services opportunities;

Recognizing the efficient and competitive international air services enhance trade, the welfare of consumers, and economic growth;

Desiring to ensure the highest degree of safety and security in international air services and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air services, and undermine public confidence in the safety of civil aviation; and

Desiring to conclude an Agreement, for the purpose of establishing and operating schedule air services between and beyond their respective territories.

Have agreed as follows:

1 

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Article 1 Definitions

For the purposes of this Agreement, unless otherwise stated, the term:

- a) "air transportation" means the public carriage by aircraft of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;
- b) "aeronautical authorities" means, in the case of the Government of the Republic of China, the Ministry of Transportation and Communications, or any person or body authorized to perform the functions exercised by the Ministry of Transportation and Communications or similar functions; in the case of the Government of the Republic of Guatemala, la Dirección General de Aeronáutica Civil del Ministerio de Comunicaciones, Infraestructura y Vivienda; or in both cases any authority or person empowered to perform the functions exercised by the said authorities;

c) "Agreement" means this Agreement, its Annex, and any amendments thereto;

d) "capacity" is the amount(s) of services provided under the agreement;

e) "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944, and includes any Annex adopted under Article 90 of the Convention, and any amendment of the Annexes or Convention under Articles 90 and 94, insofar as such Annexes and amendments have become effective for both Parties;

f) "designated airline" means an airline which has been designated and authorized in accordance with Article 3 of this Agreement;

g) "international air transportation" is air transportation in which the passengers, baggage, cargo and mail which are taken on board in the territory of one State are destined to another State;

h) "tariff" means any fare, rate or charge for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation (including any other mode of transportation in connection therewith) charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;

i) "territory" in relation to a State means the land areas and territorial waters adjacent thereto and the airspace above them under the sovereignty of the State in conformity with the political constitution of each Party;

j) "user charges" means a charge made to airlines by the competent authorities, or permitted by them to be made, for the provision of airport property or facilities or of air navigation facilities, or aviation security facilities or services, including

2

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related services and facilities, for aircraft, their crews, passengers and cargo; and

(k) "air service", "international air service", "airline", and "stop for non-traffic purposes", have the meanings assigned to them in Article 96 of the Convention.

Article 2

Grant of Rights

1. Each Party grants to the other Party the rights specified in this Agreement for the purpose of operating international air services on the routes specified in the Annex to this Agreement.

2. Subject to the provisions of this Agreement, the airline(s) designated by each Party shall enjoy the following rights:

a) the right to fly without landing across the territory of the other Party;

b) the right to make stops in the territory of the other Party for non-traffic purposes;

c) the right to make stops at the point(s) on the route(s) specified in the Annex to this Agreement, for the purposes of taking on board and discharging international traffic in passengers, cargo or mail separately or in combination.


3. The airlines of each Party, other than those designated under Article 3 of this Agreement, shall also enjoy the rights specified in Paragraph 2 a) and b) of this Article.

4. Nothing in Paragraph 2 of this Article shall be deemed to grant to the designated airline(s) of one Party the privilege of taking on board, in the territory of the other Party, passengers, cargo and mail for remuneration and destined for another point within the territory of that Party.

Article 3 Designation and Authorization

1. Each Party shall have the right to designate in writing to the other Party, one or many airlines as it wishes to operate the agreed services and to withdraw or alter such designation.

2. On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization, each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:

3 

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a) the designated airline has its principal place of business and permanent residence in the territory of the designating Party;

b) the airline is under the effective regulatory control of the designating State;

c) the Party designating the airline is in compliance with the provisions set forth in Article 7 and Article 8 of this Agreement; and

d) the designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.

3. On receipt of the operating authorization of Paragraph 2 of this Article, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement and the requirements prescribed under the laws and regulations normally applied to the operation of international air transportation services of each Party."

1. The aeronautical authorities of each Party shall have the right to withhold the authorizations referred to in Article 3 of this Agreement with respect to an airline designated by the other Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently:

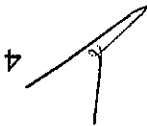
a) in the event that they are not satisfied that the designated airline has its principal place of business and permanent residence in the territory of the designating Party;

b) in the event that they are not satisfied that the Party designating the airline has and maintains effective regulatory control of the airline;

c) in the event of failure of the Party designating the airline to comply with the provisions set forth in Article 7 and Article 8; and

d) in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.

2. Unless immediate action is essential to prevent infringement of the laws and regulations referred to above or unless safety or security requires action in accordance with the provisions of Articles 7 or 8 of this Agreement, the rights



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enumerated in paragraph 1 of this Article shall be exercised only after consultations between the aeronautical authorities in conformity with Article 15 of this Agreement.

Article 5 Application of Laws and Regulations

1. The laws and regulations of one Party governing entry into and departure from its territory of aircraft engaged in international air services, or the operation and navigation of such aircraft while within its territory, shall be applied to aircraft of the designated airline of the other Party.

2. The laws and regulations of one Party relating to the entry into, stay in and departure from its territory of passengers, crew and cargo including mail, such as those regarding immigration, customs, currency and health and quarantine shall apply to passengers, crew, cargo and mail carried by the aircraft of the designated airline of the other Party while they are within the said territory.

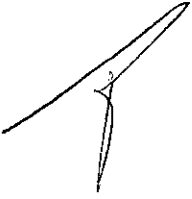
3. Neither Party shall give preference to its own or any other airline over a designated airline of the other Party engaged in similar international air transportation in the application of its immigration, customs, quarantine and similar regulations.

4. Passengers, baggage, cargo and mail in direct transit shall be subject to no more than a simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

Article 6 Recognition of Certificates

1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Party and still in force shall be recognized as valid by the other Party for the purpose of operating the agreed services provided that the requirements under which such certificates and licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention.

2. Each Party reserves the right, however, to refuse to recognize for the purpose of flights above or landing within its own territory, certificates of competency and licenses granted to its own nationals by the other Party.



Operational Safety Article 7

1. Each Party may request consultations at any time concerning the safety standards maintained by the other Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of aircraft. Such consultations shall take place within thirty days of that request to the authority of aviation.

2. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards in the areas referred to in paragraph 1 that meet the Standards established at that time pursuant to the Convention (Doc 7300), the other Party shall be informed of such findings and of the steps considered necessary to conform with the ICAO Standards. The other Party shall then take appropriate corrective action within an agreed time period.

3. Pursuant to Article 16 of the Convention, it is further agreed that, any aircraft operated by, or on behalf of an airline of one Party, on service to or from the territory of another Party, may, while within the territory of the other Party, be the subject of a search by the authorized representatives of the other Party, provided this does not cause unreasonable delay in the operation of the aircraft. Notwithstanding the obligations mentioned in Article 33 of the Convention, the purpose of this search is to verify the validity of the relevant aircraft documentation, the licensing of its crew, and that the aircraft equipment and the condition of the aircraft conform to the Standards established at that time pursuant to the Convention.

4. When urgent action is essential to ensure the safety of an airline operation, each Party reserves the right to immediately suspend or vary the operating authorization of an airline of the other Party.

5. Any action by one Party in accordance with Paragraph 5 of this Article shall be discontinued once the basis for the taking of the action ceases to exist.

Aviation Security Article 8

1. Consistent with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil

6

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Aviation, signed at Montreal on 23 September 1971, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988.

2. The Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

3. The Parties shall, in their mutual relations, act in conformity with the aviation security provision established by ICAO and designated as Annexes to the Convention; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions. Each Party shall advise the other Party of any difference between its national regulations and practices and the aviation security standards of the Annexes to the Convention.

4. Each Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3) above required by the other Party for entry into, departure from, or while within, the territory of that other Party. Each Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, and baggage, cargo and aircraft stores prior to and during boarding or loading. Each Party shall also give sympathetic consideration to any request from the other Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

Article 9 User Charges

1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favourable than the most favourable terms available to any other airline at the time the charges are assessed.

2. User charges imposed on the airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of

7

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providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full costs may include a reasonable return on assets, after depreciation.

3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles in Paragraph 1 and 2 of this Article. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

4. Neither Party shall be held, in dispute settlement procedures pursuant to Article 16 of this Agreement, to be in breach of a provision of this Article, unless:

a) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or

b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

Article 10 Customs Duties

1. Each Party shall on the basis of reciprocity exempt a designated airline of the other Party under its national law from customs duties, excise taxes, inspection fees and other national duties and charges not based on the cost of services provided on arrival, on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores and other items intended for use or used solely in connection with the operation or servicing of aircraft of the designated airline of such other Party operating the agreed services.

2. The exemptions granted by this article shall apply to the items referred to in paragraph 1:

- a) introduced into the territory of the Party by or on behalf of the designated airline of the other Party;
- b) retained on board aircraft of the designated airline of one Party upon arrival in or leaving the territory of the other Party; or
- c) taken on board aircraft of the designated airline of one Party in the territory of the other Party and intended for use in operating the agreed services;

8

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whether or not such items are used or consumed wholly within the territory of the Party granting the exemption, provided the ownership of such items is not transferred in the territory of the said Party.

3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of a designated airline of either Party, may be unloaded in the territory of the other Party only with the approval of the customs authorities of that territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

Article 11 Fair Competition

Each Party agrees:

a) that each designated airline shall have a fair and equal opportunity to compete in providing the international air transportation governed by the agreement; and

b) to take action to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of a designated airline of the other Party.

c) Neither of the Parties will limit unilaterally the volume of traffic, the frequency, regularity of services or type or types of aircrafts operated by the airlines designated by the other Party, except when it is necessary for technical, operational or environmental reasons, provided that the above exception is a non discriminatory treatment.

Article 12 Capacity

1. The air transport facilities available to the traveling public should bear a close relationship to the requirements of the public for such transport.

2. The designated airline or airlines of each Party shall have a fair and equal opportunity to operate on any agreed route between the territories of the two Parties.

3. The capacity to be provided, the frequency of services to be operated shall be specified in the Annex to this Agreement. Any increases in the capacity to be provided or frequency of services to be operated by the designated airlines of each Party shall be agreed upon between the aeronautical authorities of both Parties.

Article 13 Tariffs

1. The Parties agree to give particular attention to tariffs which may be objectionable because they appear unreasonably discriminatory, unduly high or restrictive because of the abuse of a dominant position, artificially low because of direct or indirect subsidy or support, or "predatory".
2. Each Party may require notification or filing of tariffs proposed by the designated airline(s) of both Parties for carriage to or from its territory. Such notification or filing may be required before the proposed date of introduction.
3. Neither Party shall take unilateral action to prevent the inauguration of a proposed tariff or the continuation of an effective tariff of a designated airline of either Party for carriage between the territories of the Parties.

Article 14 Commercial Opportunities

1. Each Party shall permit airline(s) of the other Party to convert and transmit abroad to the airline(s) choice of State, on demand, all local revenues from the sale of air transport services and associated activities directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restrictions, discrimination or taxation in respect thereof at the rate of exchange applicable as of the date of the request for conversion and remittance.
2. Each Party shall accord airlines of the other Party the right to sell and market international air services and related products in its territory (directly or through agents or other intermediaries of the airline's choice), including the right to establish offices, both on-line and off-line.
3. Each Party shall permit designated airlines of the other Party to:
 - a) bring in to its territory and maintain non-national employees who perform managerial, commercial, technical, operational and other specialist duties which are required for the provision of air transport services, consistent with the laws and regulations of the receiving State concerning entry, residence and employment; and
 - b) use the services and personnel of any other organization, company or airline operating in its territory and authorized to provide such services.
4. Subject to applicable safety provisions, including ICAO Standards and Recommended Practices (SARPs) contained in Annex 6 to the Convention, the

10

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