

AVIATION

Transport Services

Agreement Between the
UNITED STATES OF AMERICA
and the PHILIPPINES

Effected by Exchange of Notes
Signed at Washington September 16, 1982

with

Memorandum of Consultation
Signed at Washington July 9, 1982

and

Air Transport Agreement,
with Exchanges of Letters
Signed October 3, 1980



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89-497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

“ . . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

PHILIPPINES

Aviation: Transport Services

Agreement effected by exchange of notes

Signed at Washington September 16, 1982;

With memorandum of consultation

Signed at Washington July 9, 1982.

And air transport agreement,

With exchanges of letters

Signed October 3, 1980;

Entered into force September 16, 1982.

The Secretary of State to the Philippine Minister of Foreign Affairs

DEPARTMENT OF STATE
WASHINGTON

September 16, 1982

Excellency:

I have the honor to refer to the United States-Philippine Air Transport Agreement initialed ad referendum on October 3, 1980, and the Memorandum of Understanding signed on October 3, 1980, in Washington, D.C., and the Memorandum of Provisional Implementation signed on November 3, 1980,^[1] in Manila, by the duly authorized representatives of our two governments.

I further refer to the attached Memorandum of Consultation signed by our said authorized representatives on July 9, 1982, in Washington, D.C.

Pursuant to the above Memorandum of Consultation dated July 9, 1982, I have the honor to propose that this note with the attached Air Transport Agreement and your note in reply shall constitute an agreement bringing the Air Transport Agreement, as modified and/or supplemented by the Memorandum of Consultation dated July 9, 1982, into force as of the date of your note in reply.

Accept, Excellency, the renewed assurances of my highest consideration.

 ^[2]

Enclosures:

As stated.

His Excellency
Carlos P. Romulo,
Minister of Foreign Affairs
of the Philippines.

¹ Not printed.

² George P. Shultz.

The Philippine Minister of Foreign Affairs to the Secretary of State

REPUBLIKA NG PILIPINAS
MINISTRI NG UGNAYANG PANLABAS
MAYNILA ^[1]

16 September 1982

Excellency:

I have the honor to refer to your Excellency's Note dated 16 September 1982, which reads as follows:

"Excellency:

" I have the honor to refer to the United States-Philippine Air Transport Agreement initialed ad referendum on October 3, 1980, and the Memorandum of Understanding signed on October 3, 1980, in Washington, D.C., and the Memorandum of Provisional Implementation signed on November 3, 1980, in Manila, by the duly authorized representatives of our two governments.

" I further refer to the attached Memorandum of Consultation signed by our said authorized representatives on July 9, 1982, in Washington, D.C.

" Pursuant to the above Memorandum of Consultation dated July 9, 1982, I have the honor to propose that this note with the attached Air Transport Agreement and your note in reply shall constitute an agreement bringing the Air Transport Agreement, as modified and/or supplemented by the Memorandum of Consultation dated July 9, 1982, into force as of the date of your note in reply.

" Accept, Excellency, the renewed assurances of my highest consideration."

In reply thereto, I confirm that the proposal set forth in the above-quoted Note is acceptable to my Government and that Your Excellency's Note and its Enclosures, together with this reply, shall constitute an agreement bringing into force as of this date the Air Transport Agreement, as modified and/or supplemented by the Memorandum of Consultations dated July 9, 1982.

Accept, Excellency, the renewed assurances of my highest consideration.

The Honorable

George P. Shultz,

Secretary of State.

 ^[2]
Minister of Foreign Affairs

¹ In Translation reads: "Republic of Philippines, Ministry of Foreign Affairs, Manila".

² Carlos P. Romulo.

MEMORANDUM OF CONSULTATION

(July 9, 1982)

Delegations representing the Governments of the United States of America and the Republic of the Philippines met July 6-9, 1982, in Washington, D.C., to discuss formal implementation of the Air Transport Agreement initialed in October 1980. Delegation lists are attached.^[1] The delegations agreed that their governments would proceed to exchange diplomatic notes to bring the Air Transport Agreement, annexed to this Memorandum, into full force and effect on September 1, 1982. The delegations agreed also that certain reservations to the Air Transport Agreement, listed below, will be observed for a period of two years from the date the Agreement enters into force. During the two year period the reservations are in effect, the delegations agreed that the Parties will meet periodically to review operations under the Agreement in order to determine whether there is a need for any mutually agreed adjustments to the Agreement.

1. Implementation of the Agreement

The following reservations will apply until August 31, 1984 at which time the full Agreement and its Annexes will go into effect, unless otherwise mutually agreed by the Parties:

Operations on Routes One and Two

Notwithstanding paragraph (3) of Article 11 of the Agreement, each Party shall have the right to operate:

¹ Not printed.

(A) On Route 1, until August 31, 1984, only narrow-body aircraft;

(B) On Route 2, until August 31, 1984, eighteen combination roundtrip frequencies per week.

Designations

Notwithstanding paragraph (1) of Article 3 of the Agreement, until August 31, 1984, each Party shall designate no more than three airlines to operate on Route 2 and one airline on Route 3.

Advancement of Rights

Notwithstanding these provisions, if a designated airline of the Republic of the Philippines operates four or more scheduled air services to or from the United States via Japan, prior to August 31, 1984, the foregoing reservations to the Agreement shall terminate and all provisions of the Air Transport Agreement and its Annexes become effective immediately.

2. Pricing

The delegations agreed that paragraphs three and four of Article 12 of the Air Transport Agreement, attached hereto, should be amended. All other portions of Article 12 remain as initialed in October 1980. The following are the new texts for paragraphs three and four of Article 12:

"(3)(a) If either Party is dissatisfied with any

price proposed or charged by an airline of the other Party for international air transportation between the territories of the Parties, it shall notify the other Party of the reasons for its dissatisfaction. In the case of a proposed price, such notice of dissatisfaction shall be given to the other Party within 30 days of receiving the notification or filing of the price. If the Party presenting a notice of dissatisfaction does not request consultations, the price shall go into effect as filed unless a Party disapproves such price pursuant to its rights under paragraph 6(b) of this Article. If the notifying Party requests consultations, such consultations shall be held as soon as possible, and in no event later than 30 days after receipt of the request. If the notified Party fails to agree to consult within the prescribed time frame, the dissatisfied party has the right to defer the implementation of the proposed price.

"(b) If a Party is dissatisfied with any price proposed or charged by an airline of the other Party for international air transportation between the territory of the first Party and a third country, it shall notify the other Party of the reasons for its dissatisfaction within 30 days of receiving notification or filing of the price. In this particular case, the notifying Party may unilaterally disapprove the price

proposed or charged by the airline of the other Party. However, with respect to matters arising pursuant to the provisions of paragraph 5(b) of this Article, either Party may request consultations which shall be held as soon as possible, and in no event later than 30 days after receipt of the request.

"(c) If either Party is dissatisfied with any price proposed or charged by an airline of a third country for international air transportation between the territories of the Parties, it shall notify the other Party of the reasons for the dissatisfaction within 30 days of receiving notification or filing of the price. In the case of proposed price leadership by a third party airline, the notifying Party may unilaterally disapprove the price proposed or charged by the third country airline.

"(4) The consultations referred to in this Article may be formal or informal, and may be effected through a telephonic exchange of views between the two Parties (later confirmed in a written communication) or by a written exchange of views transmitted by letter, cable, telegram, diplomatic note or other written means. If the Parties reach agreement with respect to a price for which a notice of dissatisfaction has been

given, each Party shall promptly carry out the terms of that agreement. If the Parties fail to reach such agreement, the price shall go into effect unless a Party disapproves such price pursuant to its rights under paragraph 6(b) of this Article."

3. Third Country Price Filings

The United States delegation stated that its authorities will make every effort not to approve short notice tariff filings by third country carriers proposing to exercise price leadership in the establishment of fares between the United States and the Philippines.

4. Ground Handling Services

The United States delegation expressed its concern that each United States airline be permitted to exercise its rights under Article 8 of the Agreement to perform ground handling services for itself and for any other United States airlines in the Philippines. The Philippine delegation gave assurances that United States airlines will be permitted to continue exercising these rights. It stated that it will investigate U.S. carrier concerns, inform appropriate Philippine officials of U.S. airlines' rights under the Agreement, and confirm its assurances in writing to the U.S. delegation chairman.

5. Continental/Air Micronesia Operations

The U.S. delegation expressed concern that Continental/Air Micronesia would have administrative diffi-

culties if it were not permitted to operate on Route 1 under this name. The Philippine delegation agreed that its authorities would issue a permit in the name of Continental/Air Micronesia. The delegations reaffirmed that each Party is permitted to designate only one airline to operate on Route 1. It was understood also that the issuance of an operating permit in the name of Continental/Air Micronesia does not give any operating authority to Continental Air Lines.

6. Section 126 of the Philippine Corporation Code

The two delegations discussed Section 126 of the Philippine Corporation Code which requires certain foreign firms doing business in the Philippines to deposit securities with the Philippine Securities and Exchange Commission. The Chairman of the Philippine delegation stated that he had discussed this matter with the Chairman of the Philippine Securities and Exchange Commission and that further discussions between the airlines and the SEC will be held to determine whether this requirement is applicable to foreign airlines operating in the Philippines.

7. Standard Ticketing Plan

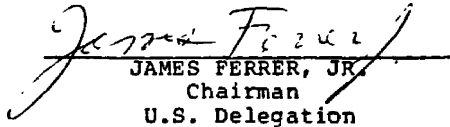
The Philippine Chairman stated that the Philippine Government is considering implementing a Standard Ticketing Plan. When asked for its views, the United States delegation could not concur a priori in a plan for which it did not have full information. The United States Chairman

stated that a principal concern of the United States is that its airlines have the ability to market freely their services in accordance with the terms of the Air Transport Agreement.

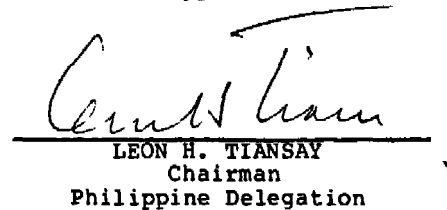
8. Future Consultations

The delegations agreed that representatives of their governments should be prepared to meet semi-annually to discuss aviation developments.

For the Delegation of the
Government of the United
States of America


JAMES FERRER, JR.
Chairman
U.S. Delegation

For the Delegation of the
Government of the Republic
of the Philippines


LEON H. TIANSAY
Chairman
Philippine Delegation

July 9, 1982
Washington, D.C.

AIR TRANSPORT AGREEMENT
BETWEEN THE GOVERNMENT OF THE
UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE
REPUBLIC OF THE PHILIPPINES

The Government of the United States of America and the
Government of the Republic of the Philippines;

Desiring to promote an international air transport
system based on fair, equitable and constructive competition
among their airlines in the marketplace, consistent with the
provisions of this Agreement;

Desiring to facilitate the expansion of international
air transport opportunities;

Desiring to make it possible for airlines to offer the
traveling and shipping public a variety of service options
at the lowest prices that are not predatory or uneconomic or
discriminatory and do not represent an abuse of a dominant
position and wishing to encourage individual airlines to
develop and implement innovative and competitive prices;

Desiring to ensure the highest degree of safety and
security in international air transport and reaffirming
their grave concern about acts or threats against the
security of the aircraft which jeopardize the safety of

persons or property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation;

Being Parties to the Convention of International Civil Aviation opened for signature at Chicago on December 7, 1944,^[1] and

Desiring to conclude a new agreement covering scheduled air transportation,

Have agreed as follows:

¹ TIAS 1591, 6605, 6681; 61 Stat. 1180; 19 UST 7693; 20 UST 718.

ARTICLE 1
Definitions

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

(a) "Aeronautical authorities" means, in the case of the United States, the Civil Aeronautics Board or the Department of Transportation, whichever has jurisdiction, or their successor agencies, and in the case of the Republic of the Philippines, the Civil Aeronautics Board or any person or body authorized to perform the functions exercised at present by the said Board;

(b) "Agreement" means this Agreement, its Annexes, and any amendments thereto;

(c) "Air transportation" means any operation performed by aircraft for the public carriage of traffic in passengers (and their baggage), cargo and mail, separately or in combination, for remuneration or hire;

(d) "Beyond" means any point in a third country which a flight from the homeland of an airline of one Party serves between stops in the territory of the second Party. Thus, if a U.S. airline operates a route United States-Philippines-Korea-Philippines-United States, Korea is considered a "beyond" point;

(e) "Combination service" means any scheduled service that offers public carriage of passengers and cargo for remuneration or hire;

(f) "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944, and includes:

- (i) any amendment which has entered into force under Article 94(a) of the Convention and has been ratified by both Parties, and
- (ii) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for both Parties;

(g) "Designated airline" means an airline designated and authorized in accordance with Article 3 of this Agreement;

(h) "Intermediate" means a point served on a flight between the homeland of an airline of one Party and a point in the territory of the other Party. Thus, on a route United States-Tokyo-Taipei-Philippines-Taipei-Tokyo-United States, Tokyo and Taipei are intermediate points;

(i) "Price" means:

- (i) any fare, rate or price to be charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or price;

- (ii) the charges and conditions of service including but not limited to seating configurations and arrangements, inflight services, and other similar amenities ancillary to carriage of traffic; and
- (iii) amounts charged by airlines to air transportation intermediaries

for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in air transportation;

(j) "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers (and their baggage), cargo and mail in air transportation;

(k) "Stopover" means a deliberate and intentional interruption of a journey by the passenger, scheduled to exceed twenty-four hours, at a point between the place of origin and the place of destination;

(l) "Territory" means the land areas under the sovereignty, jurisdiction, protection, or trusteeship of a Party, and the territorial waters adjacent thereto;

(m) "Traffic rights" means the right to carry passengers (and their baggage), cargo and mail in air transportation between the points authorized in this Agreement; and

(n) "User charge" means a fee charged to airlines for the provision of airport, air navigation or aviation security property or facilities.

ARTICLE 2

Grant of Rights

(1) Each Party grants to the other Party the following rights for the conduct of international air transportation by the airlines of the other Party:

- (a) the right to fly across its territory without landing; and
- (b) the right to make stops in its territory for non-traffic purposes.

(2) Nothing in paragraph (1) of this Article shall be deemed to grant the right for one Party's airlines to participate in air transportation between points in the territory of the other Party.

ARTICLE 3
Designation and Authorization

(1) Consistent with its domestic laws and policies, each Party shall have the right: (a) to designate up to five airlines to perform scheduled combination or all-cargo services on Routes 2 and/or 3 of Annex I; (b) to designate one airline to perform combination or all-cargo services on Route I of Annex I; and (c) to withdraw^{1/} or alter^{1/} such designations. Such designations shall be transmitted to the other Party in writing through diplomatic channels, and shall identify the category of air transportation and the route the airline has been designated to operate.

If a designated airline operates combination as well as all-cargo services, that airline shall require two designations to conduct such separate operations.

(2) On receipt of such a designation and of applications in the form and manner prescribed from the designated airline for operating authorizations and technical permissions, the other Party shall grant appropriate authorizations and permissions within sixty days, provided:

^{1/} If the U.S. designates a Pacific regional airline to operate on Route 1 of Annex I, any successor airline to be designated for such route shall, similarly, be a Pacific regional airline.

[Footnote in the original.]

- (a) substantial ownership and effective control of that airline are vested in the Party designating the airline, nationals of that Party, or both;
- (b) the designated airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Party considering the application or applications; and
- (c) the Party designating the airline is maintaining and administering the standards set forth in Article 6 (Safety).

ARTICLE 4
Revocation of Authorization

(1) Each Party may revoke, suspend or limit the operating authorizations or technical permissions of an airline designated by the other Party where:

- (a) substantial ownership and effective control of that airline are not vested in the other Party or the other Party's nationals;
- (b) that airline has failed to comply with the laws and regulations referred to in Article 5 of this Agreement; or
- (c) the other Party is not maintaining and administering the standards as set forth in Article 6 (Safety).

(2) Unless immediate action is essential to prevent further non-compliance with subparagraphs (1)(b) or (1)(c) of this Article, the rights established by this Article shall be exercised only after consultation with the other Party.

ARTICLE 5
Application of Laws

(1) While entering, within or leaving the territory of one Party, its laws and regulations relating to the operation and navigation of aircraft shall be complied with by the other Party's airlines.

(2) While entering, within or leaving the territory of one Party, its laws and regulations relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with, by or on behalf of such passengers, crew or cargo of the other Party's airlines.

ARTICLE 6
Safety

(1) Each Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Party and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards which may be established pursuant to the Convention. Each Party may, however, refuse to recognize as valid for the purpose of flight above its own territory, certificates of competency and licenses granted to or validated for its own nationals by the other Party.

(2) Each Party may request consultations concerning the safety and security standards maintained by the other Party relating to aeronautical facilities, aircrew, aircraft, and operation of the designated airlines. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety and security standards and requirements in these areas of aircrew, aircraft and operation of the designated airlines that at least equal the minimum standards which may be established pursuant to the Convention, the other Party shall be notified of such findings and the steps considered

threat; and, when incidents or threats of hijacking or sabotage against aircraft, airports or air navigation facilities occur, assist the other Party by facilitating communications intended to terminate such incidents rapidly and safely.

ARTICLE 8
Commercial Opportunities

(1) The airline or airlines of one Party may, subject to the nondiscriminatory requirements of domestic laws and regulations of the other Party, establish offices in the territory of the other Party for the promotion and sale of air transportation.

(2) The designated airline or airlines of one Party may, in accordance with the laws and regulations of the other Party relating to entry, residence and employment, bring in and maintain in the territory of the other Party managerial, sales, technical, operational and other specialist staff required for the provision of air transportation.

(3) Each designated airline may perform its own ground handling in the territory of the other Party ("self-handling"). If the designated airline does not self-handle it may, subject to domestic laws and regulations of the other Party, select among competing agents for such services. Ground handling includes: the functions of checking in passengers and baggage; maintenance (engineering, cabin cleaning, services and repairs); ramp (apron) services for cargo; flight planning; operations and dispatch; provision of fuel; freight receipt and delivery; cargo buildup and breakdown; storage; customs clearances; passenger and cargo

document preparation and food services. Subject only to physical constraints resulting from considerations of airport safety:

- (a) Consistent with the domestic laws of the other Party, designated airlines shall be permitted to own, or rent from an authorized lessor, the space required for the conduct of ground handling; and
- (b)
 - (i) Designated airlines of the United States shall be permitted to perform ground handling service for any United States flag airline; and
 - (ii) Designated airlines of the Philippines shall be permitted to perform ground handling services for any Philippine flag airline and for three non-United States flag airlines; and
- (c) Designated airlines shall be permitted to provide their own equipment or may lease equipment to, or from, other airlines or competing agents for ramp (apron) service for cargo carried on any service.

Ground handling services shall be available on an equal and non-discriminatory basis to all airlines.

(4) Each designated airline of one Party has the right to sell air transportation in the territory of the other Party directly and, at the airline's discretion, through its agent. Each designated airline may sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or, subject to domestic laws and regulations, in freely convertible currencies.

(5) Each designated airline of one Party may convert and remit to its country, on demand, local revenues in excess of sums locally disbursed. Each conversion and remittance shall be permitted promptly, in accordance with the applicable domestic laws and administrative currency regulations, at the rate of exchange for current transactions and remittance.

ARTICLE 9
Customs Duties and Taxes

(1) On arriving in the territory of one Party, aircraft operated in international air transportation by the designated airlines of the other Party, their regular aircraft equipment, fuel, lubricants, consumable technical supplies, spare parts, including engines, aircraft stores (including but not limited to such items as food, beverages and liquor, tobacco and other products destined for sale to or use by passengers in limited quantities during the flight), and other items intended for or used solely by the designated airlines in connection with the operation or servicing of aircraft engaged in international air transportation shall be exempt, on the basis of reciprocity, from all import restrictions, property taxes and capital levies, customs duties, excise taxes, import taxes and similar fees and charges imposed by the national authorities, and not based on the cost of services provided, provided such equipment and supplies remain on board the aircraft.

(2) There shall also be exempt, on the basis of reciprocity, from the taxes, duties, fees and charges referred to in paragraph (1) of this Article, with the exception of charges based on the cost of the services provided, as follows:

(a) aircraft stores introduced into or supplied in the territory of a Party and taken on board, within reasonable limits, for use on outbound aircraft of a designated airline of the other Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Party in which they are taken on board;

(b) ground equipment and spare parts including engines introduced into the territory of a Party for the servicing, maintenance or repair of aircraft of a designated airline of the other Party used in international air transportation; and

(c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Party for use in an aircraft of a designated airline of the other Party engaged in international air transportation, even when these supplies are to be used on a part of the journey performed over the territory of the Party in which they are taken on board.

(3) Equipment and supplies referred to in paragraphs (1) and (2) of this Article may be required to be kept under the supervision or control of the appropriate authorities.

(4) The exemptions provided for by this Article shall also be available where the designated airlines of one Party have contracted with another airline, which similarly enjoys such exemptions from the other Party, for the loan or transfer in the territory of the other Party of the items specified in paragraphs (1) and (2) of this Article.

(5) Each Party shall use its best efforts to secure for the designated airlines of the other Party, on the basis of reciprocity and comity, an exemption from taxes, duties, charges and fees imposed by State, regional and local authorities on the items specified in paragraphs (1) and (2) of this Article, as well as from fuel through-put charges, in the circumstances described in this Article, except to the extent that the charges are based on the cost of providing the services.

ARTICLE 10
User Charges

(1) User charges imposed by the competent charging authorities on the airlines of the other Party shall be just, reasonable, and non-discriminatory.

(2) Facilities and services shall be provided with due regard to efficiency and economy. Reasonable notice shall be given prior to changes in user charges. Each Party shall encourage consultations between the competent charging authorities in its territory and airlines of the other Party using the services and facilities, and shall encourage the competent charging authorities and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges.

ARTICLE 11
Fair Competition

(1) Each Party shall allow a fair and equal opportunity for the designated airlines of both Parties to compete in the international air transportation covered by this Agreement.

(2) Each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the airlines of the other Party.

(3) Neither Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the designated airline or airlines of the other Party, except as may be required for customs, technical, operational or environmental reasons under uniform conditions consistent with Article 15 of the Convention.

ARTICLE 12
Pricing

(1) Subject to the provisions of this Article, each Party shall allow prices for air transportation to be established by each designated airline based upon commercial considerations in the marketplace. Neither Party shall take unilateral action to prevent the inauguration or continuation of any price proposed or charged by the airlines of either Party for international air transportation between the territories of the Parties unless such action is in accordance with the provisions of this Article. Intervention by the Parties shall be limited to:

(a) protection of consumers from discriminatory prices or practices or prices that are unreasonably high or restrictive due to the abuse of a dominant position; and

(b) protection of airlines from predatory prices that are artificially low or uneconomic.

(2) Each Party may require prior notification to or filing with its aeronautical authorities of prices proposed to be charged by airlines of the other Party to or from its territory. Notification or filing by the airlines of both Parties may be required no more than 60 days before the proposed date of effectiveness. In individual cases, notification or filings may be permitted on shorter notice than normally required.

(3) (a) If either Party is dissatisfied with any price proposed or charged by an airline of the other Party for international air transportation between the territories of the Parties, it shall notify the other Party of the reasons for its dissatisfaction as soon as possible. In the case of a proposed price, such notice of dissatisfaction shall be given to the other Party within 30 days of receiving the notification or filing of the price. Either Party may then request consultations which shall be held as soon as possible, and in no event later than 30 days after receipt of the request.

(b) If a Party is dissatisfied with any price proposed or charged by an airline of the other Party for international air transportation between the territory of the first Party and a third country, it shall notify the other Party of the reasons for its dissatisfaction within 30 days of receiving notification or filing of the price. However, with respect to matters arising pursuant to the provisions of paragraph 5(b) of this Article, either Party may request consultations which shall be held as soon as possible, and in no event later than 30 days after receipt of the request.

(c) If either Party is dissatisfied with any price proposed or charged by an airline of a third country for international air transportation between the territories of the Parties, it shall notify the other Party of the reasons for the dissatisfaction within 30 days of receiving notification or filing of the price.

(4) If the Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Party shall promptly carry out the terms of that agreement. If the Parties fail to reach such agreement, the price shall go into effect unless a Party disapproves such price pursuant to its rights under paragraph 6(b) of this Article.

(5) Each Party shall allow:

(a) any airline of either Party to meet a more competitive price proposed or charged in the marketplace for international air transportation between the territories of the Parties;

(b) any airline of one Party to meet a lower or more competitive price proposed or charged in the marketplace for international air transportation between the territory of the other Party and a third country; and

(c) any airline of a third country to meet a lower or more competitive price proposed or charged in the marketplace for international air transportation between the territories of the Parties provided that the third country has granted reciprocal rights to the airlines of both Parties.

As used in this Article, the term "meet" means the right to establish on a timely basis, using such expedited procedures as may be necessary, an identical or similar price on a direct, interline or intra-line basis, notwithstanding differences relating to distance, routing, roundtrip requirements, connections, type or conditions of service including aircraft configuration or type, or such price through a combination of prices.

(6) With respect to unilateral action by a Party to prevent the inauguration or continuation of any passenger price proposed or charged by the airlines of either Party for international air transportation between the territories of the Parties:

(a) Neither Party may take such action if the price is equal to or greater than 80 percent of the appropriate index fare level as defined in Annex II;

(b) Either Party may take such action provided that the price is less than 80 percent of the appropriate index fare level, but only with respect to traffic for which the first point on the itinerary (as evidenced by the document authorizing transportation by air) is in its own territory.

(7) Neither Party may take unilateral action to prevent the inauguration or continuation of a cargo price proposed or charged by an airline of either Party for transportation between the territories of the Parties.

ARTICLE 13
Consultations

Either Party may, at any time, request consultations relating to this Agreement. Such consultations shall begin at the earliest possible date, but not later than 60 days from the date the other Party receives the request unless otherwise agreed. Both Parties recognize the desirability of preparing and presenting during such consultations any relevant evidence in support of their positions in order to facilitate informed, rational and economic decisions. If there are any revisions of this Agreement or its Annexes as a result of such consultations, they shall be confirmed by an exchange of Diplomatic Notes.

ARTICLE 14
Settlement of Disputes

(1) Any dispute arising under this Agreement, except those which may arise under Article 12 (Pricing) and Annex II, which is not resolved by a first round of formal consultations, may be referred by agreement of the Parties for decision to some person or body. If the Parties do not so agree, at the request of either Party the dispute shall be submitted to arbitration in accordance with the procedures set forth below.

(2) Arbitration shall be by a tribunal of three arbitrators to be constituted as follows:

(a) Within 30 days after the receipt of a request for arbitration, each Party shall name one arbitrator; within 60 days after these two arbitrators have been named, they shall by agreement appoint a third arbitrator, who shall act as President of the arbitral tribunal;

(b) If either Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph (a) of this paragraph, either Party may request the President of the International Court of Justice to appoint the necessary arbitrator or arbitrators within 30 days. If the President is of the same nationality as one of

the Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.

(3) Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedure. At the direction of the tribunal or at the request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held no later than 15 days after the tribunal is fully constituted.

(4) Except as otherwise agreed, each Party shall submit a memorandum within 45 days of the time the tribunal is fully constituted. Replies shall be due 60 days after the submission of the memorandum. The tribunal shall hold a hearing at the request of either Party or at its discretion within 15 days after replies are due.

(5) The tribunal shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date both replies are submitted, whichever is sooner. The decision of the majority of the tribunal shall prevail.

(6) The Parties may submit requests for clarification of the decision within 15 days after it is rendered and any

clarification given shall be issued within 15 days of such request.

(7) Each Party shall, consistent with its national law, give full effect to any decision or award of the arbitral tribunal.

(8) The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Parties. Any expenses incurred by the President of the International Court of Justice in connection with the procedures of paragraph (2)(b) of this Article shall be considered to be part of the expenses of the arbitral tribunal.

ARTICLE 15 Termination

Should either Party decide to terminate this agreement at any time, it shall give the other Party written notice of its decision through diplomatic channels. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate at midnight (at the place of receipt of notice to the other Party) immediately before the first anniversary of the date of receipt of the notice by the other Party, unless the notice is withdrawn by agreement before the end of this period.

ARTICLE 16
Multilateral Agreement

If a multilateral agreement, accepted by both Parties, concerning any matter covered by this Agreement enters into force, this Agreement shall be amended so as to conform with the provisions of the multilateral agreement.

ARTICLE 17
Registration with ICAO

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

ARTICLE 18
Entry into Force

This Agreement shall enter into force on the date of signature and shall supersede the Interim Air Transport Services Agreement of August 10, 1974.^[1]

¹ TIAS 7919; 25 UST 2407.

ANNEX I
Scheduled Air Service

Section 1

Airlines designated under this Annex shall be entitled to perform international air transportation (1) between points on the following routes, and (2) between points on such routes and points in third countries through points in the territory of the Party which has designated the airline.

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

1. From Palau, Saipan, and Guam to the Philippines and return.^{1/}
2. From the United States^{2/} via intermediate points to the Philippines and beyond.^{3/}
3. From the United States^{2/} via intermediate points to the Philippines and beyond.^{4/}

[Footnotes in the original.]

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

1. From the Philippines to Palau, Saipan and Guam and return.^{5/}
2. From the Philippines via intermediate points to Guam, Honolulu, San Francisco, Los Angeles and five points^{6/} in the United States to be selected by the Republic of the Philippines and beyond to three countries to be selected^{7/} by the Republic of the Philippines.
3. From the Philippines via intermediate points to Guam, Honolulu, San Francisco, Los Angeles and five points^{6/} in the United States to be selected by the Republic of the Philippines and beyond.^{8/}

[Footnotes in the original.]

Section 2

Each designated airline may, on any or all flights and at its option, operate flights in either or both directions and without directional or geographic limitation, serve points on the routes in any order, and omit stops at any point or points outside the territory of the Party which has designated that airline, without loss of any right to carry traffic permitted under the Agreement.

F O O T N O T E S

- 1/ All flights operated on this route must originate in Palau, Saipan or Guam.
- 2/ The United States includes the fifty States and all Territories and possessions and other territories in which the United States exercises jurisdiction over international aviation.
- 3/ Operations between the Philippines, on the one hand, and Singapore, Abu Dhabi, Dubai, Bahrain, Kuwait, Karachi, Saudi Arabia, Iraq, Arab Republic of Egypt, Italy, Greece, France, West Germany, Switzerland and England, on the other, are without the right to pick up or put down any local revenue or stopover traffic. Operations between the Philippines and Australia are without the right to pick up or put down local revenue traffic, but with the right to pick up or put down stopover traffic.
- 4/ Route for all-cargo operations only.
- 5/ All flights operated on this route must originate in the Philippines. Stopover rights permitted at Palau, Saipan and Guam.
- 6/ With the option to change the selected points by giving sixty days prior notice. Stopover rights permitted at Guam, Honolulu, San Francisco, Los Angeles and the five points in the United States to be selected by the Republic of the Philippines.
- 7/ With the option to change the selected countries by giving 180 days prior notice.
- 8/ Route for all-cargo operations only.

[Footnotes in the original.]

ANNEX II
Fare Level Index

The Parties agree that the base for the index fare level of Article 12 shall be the Standard Foreign Fare Level in effect on October 1, 1980, as determined by the United States Civil Aeronautics Board for each United States-Philippine city-pair market. The index fare level shall be adjusted not less than four times per year to reflect changes in airline costs. Such cost changes shall be those published by the United States Civil Aeronautics Board on the basis of its Standard Foreign Fare Level (SFFL) Investigation for passenger fares in the Pacific entity.

[EXCHANGES OF LETTERS]

October 3, 1980

Mr. James Ferrer, Jr.
Chairman
United States Delegation

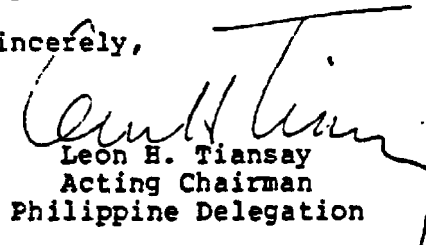
Dear Mr. Ferrer:

It is the understanding of the Government of the Philippines that the Government of the United States of America will designate Air Micronesia or another Pacific regional airline (which does not operate scheduled air services between Saipan, Palau or Guam, on the one hand, and Hawaii and/or the U.S. mainland, on the other) to operate on Route 1 as specified in the Memorandum of Understanding and in Annex 1 to the Air Transport Agreement which we have initialed today.

In the event that the Government of the United States of America is unable to designate Air Micronesia or another Pacific regional airline (as referred to above) to operate on Route 1, then it is understood and agreed that the said route for the airlines of our two countries will be deleted from the Memorandum of Understanding and from Annex 1 to the Air Transport Agreement.

I would be grateful for your confirmation of the above understanding.

Sincerely,



Leon H. Tiansay
Acting Chairman
Philippine Delegation

October 3, 1980

Mr. Leon H. Tiansay
Vice Chairman
Philippine Delegation

Dear Mr. Tiansay:

This is in reference to your letter of October 3, 1980
the text of which reads as follows:

"Dear Mr. Ferrer:

It is the understanding of the Government of the Philippines that the Government of the United States of America will designate Air Micronesia or another Pacific regional airline (which does not operate scheduled air services between Saipan, Palau or Guam, on the one hand, and Hawaii and/or the U.S. mainland, on the other) to operate on Route 1 as specified in the Memorandum of Understanding and in Annex 1 to the Air Transport Agreement which we have initialed today.

In the event that the Government of the United States of America is unable to designate Air Micronesia or another Pacific regional airline (as referred to above) to operate on Route 1, then it is understood and agreed that the said route for the airlines of our two countries will be deleted from the Memorandum of Understanding and from Annex 1 to the Air Transport Agreement.

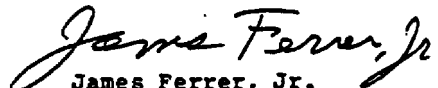
I would be grateful for your confirmation of the above understanding.

Sincerely,

Leon H. Tiansay"

I have the honor to confirm that the above letter correctly sets forth our understanding on this matter.

Sincerely,



James Ferrer, Jr.
Chairman
United States Delegation

October 3, 1980

Mr. James Ferrer, Jr.
Director
Office of Aviation
Department of State
Washington, D.C. 20520

Dear Mr. Ferrer:

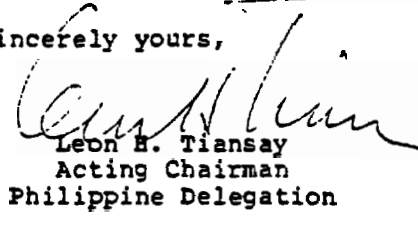
On the basis of our bilateral discussions in Washington from September 29 to October 3, 1980, it is the understanding of the Government of the Philippines that either Party may impose expiry dates on the following passenger prices for travel originating in its own territory:

- (a) For any price in effect on October 26, 1980, which is less than 80 percent of the appropriate index fare level, an expiry date no earlier than April 30, 1981, may be imposed provided that such action is taken on or before November 26, 1980; and
- (b) For any price which, due to adjustment of the index fare level, becomes less than eighty percent of that index, a Party may impose an expiry date of not less than 180 days, provided that, in the case of the United States, such action is taken within thirty days of that index adjustment and, in the case of the Philippines, such action is taken within thirty days of notice from the U.S. Government through diplomatic channels to the Philippine aeronautical authorities of the index adjustment; and
- (c) For any price which comes into effect pursuant to the provisions of paragraph 6(b) of Article 12 of the Agreement, an expiry date of not less than one year from the effective date of such price may be imposed provided that such action is taken within thirty days after the price is filed.

It is our further understanding that nothing in this letter or in Article 12 of the Agreement is intended to prevent airlines from filing any price with a shorter expiry period. Nothing in this letter or in Article 12 of the Agreement is intended to preclude either Party from postponing an expiry date it has imposed, provided it notifies the airlines concerned at least 60 days before the existing expiry date takes effect.

I would be grateful for your confirmation of the above understanding.

Sincerely yours,



Leon H. Tiansay
Acting Chairman
Philippine Delegation

October 3, 1980

Mr. Leon H. Tiansay
Vice Chairman
Philippine Delegation

Dear Mr. Tiansay:

This is in reference to your letter of October 3, 1980
the text of which reads as follows:

"Dear Mr. Ferrer:

On the basis of our bilateral discussions in Washington
from September 29 to October 3, 1980, it is the understanding
of the Government of the Philippines that either Party may
impose expiry dates on the following passenger prices for
travel originating in its own territory:

- (a) For any price in effect on October 26, 1980, which
is less than 80 percent of the appropriate index
fare level, an expiry date no earlier than April
30, 1981, may be imposed provided that such action
is taken on or before November 26, 1980; and
- (b) For any price which, due to adjustment of the index
fare level, becomes less than eighty percent of that
index, a Party may impose an expiry date of not less
than 180 days, provided that, in the case of the
United States, such action is taken within
thirty days of that index adjustment and, in the
case of the Philippines, such action is taken
within thirty days of notice from the U.S. Government
through diplomatic channels to the Philippine
aeronautical authorities of the index adjustment; and
- (c) For any price which comes into effect pursuant to
the provisions of paragraph 6(b) of Article 12 of
the Agreement, an expiry date of not less than one
year from the effective date of such price may be
imposed provided that such action is taken within
thirty days after the price is filed.

It is our further understanding that nothing in this letter or in Article 12 of the Agreement is intended to prevent airlines from filing any price with a shorter expiry period. Nothing in this letter or in Article 12 of the Agreement is intended to preclude either Party from postponing an expiry date it has imposed, provided it notifies the airlines concerned at least 60 days before the existing expiry date takes effect.

I would be grateful for your confirmation of the above understanding.

Sincerely yours,

Leon H. Tiansay"

I have the honor to confirm that the above letter correctly sets forth our understanding on this matter.

Sincerely,

A handwritten signature in cursive script, reading "James Ferrer, Jr.", written in dark ink.

James Ferrer, Jr.
Chairman
United States Delegation