

No. 40425. Netherlands and Viet Nam

AGREEMENT BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE SOCIALIST REPUBLIC OF VIETNAM FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES. HANOI, 1 OCTOBER 1993 [*United Nations, Treaty Series, vol. 2270, I-40425.*]

PROTOCOL AMENDING THE AGREEMENT BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE SOCIALIST REPUBLIC OF VIET NAM FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES. THE HAGUE, 28 SEPTEMBER 2011

Entry into force: provisionally on 28 September 2011 by signature and definitively on 8 August 2012 by notification, in accordance with article 11

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ACCORD ENTRE LE ROYAUME DES PAYS-BAS ET LA RÉPUBLIQUE SOCIALISTE DU VIET NAM RELATIF AUX SERVICES AÉRIENS ENTRE LEURS TERRITOIRES RESPECTIFS ET AU-DELÀ. HANOÏ, 1^{ER} OCTOBRE 1993 [*Nations Unies, Recueil des Traités, vol. 2270, I-40425.*]

PROTOCOLE MODIFIANT L'ACCORD ENTRE LE ROYAUME DES PAYS-BAS ET LA RÉPUBLIQUE SOCIALISTE DU VIET NAM RELATIF AUX SERVICES AÉRIENS ENTRE LEURS TERRITOIRES RESPECTIFS ET AU-DELÀ. LA HAYE, 28 SEPTEMBRE 2011

Entrée en vigueur : provisoirement le 28 septembre 2011 par signature et définitivement le 8 août 2012 par notification, conformément à l'article 11

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[ENGLISH TEXT – TEXTE ANGLAIS]

Protocol amending the Agreement between the Kingdom of the Netherlands and the Socialist Republic of Viet Nam for air services between and beyond their respective territories

The Government of the Kingdom of the Netherlands
and

the Government of the Socialist Republic of Vietnam (hereinafter “the Parties”)

Referring to the Agreement between the Kingdom of the Netherlands and the Socialist Republic of Viet Nam for air services between and beyond their respective territories, done at Hanoi on 1 October 1993 (hereinafter “the Agreement”);

Acknowledging the need to modify the Agreement in view of the Agreement between the Government of the People's Republic of Viet Nam and the European Union on certain aspects of air services, signed in Brussels on 4 October 2010;

Have decided to amend the Agreement and its Annex as follows:

Article 1

Article 1, under b, of the Agreement shall be replaced by:

- b. the term "aeronautical authorities" means:
 - for the Socialist Republic of Viet Nam, the Civil Aviation Authority of Viet Nam Ministry of Transport;
 - for the Kingdom of the Netherlands, the Minister of Infrastructure and the Environment;
 - or in either case any person or body authorized to perform any functions at present exercised by the said Minister or organization;

Article 2

In Article 1, under I, of the Agreement, the term "tariffs" shall be replaced by "prices".

Article 3

Article 4, paragraph 1, of the Agreement shall be replaced by:

- 1. Each Contracting Party shall have the right by written notification through Diplomatic Channels to the other Contracting Party to designate two (2) airlines to operate air services on the routes specified in the Annex and to substitute an other airline for an airline previously designated.

Article 4

Article 6 of the Agreement shall be replaced by:

Article 6

Prices

- 1. Each Contracting Party shall allow prices for air transportation to be established by each designated airline individually based upon commercial considerations in the marketplace. Intervention by the Contracting Parties shall be limited to:
 - a) prevention of predatory and/or 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;

c) protection of airlines from prices that are artificially low due to, amongst others, direct or indirect governmental subsidy or support.

2. Each Contracting Party may require notification to its aeronautical authorities of prices to be charged to or from its territory by airlines of the other Contracting Party.

3. Neither Contracting Party shall undertake unilateral action to prevent the inauguration or continuation of a price charged or proposed to be charged by (a) a designated airline of either Contracting Party for international air transportation between the territories of the Contracting Parties, or (b) an airline of one Contracting Party for international air transportation between the territory of the other Contracting Party and any other country.

If either Contracting Party considers any such prices inconsistent with the considerations set forth in paragraph (1) of this Article, it shall request consultations and notify the other Contracting Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than thirty (30) days after receipt of the request of the other Contracting Party, and the Contracting Parties shall co-operate in securing information necessary for reasoned resolution of the issue. If the Contracting Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Contracting Party shall use its best efforts to put that agreement into effect. Without such mutual agreement, the new price shall not take effect and the current price shall continue to be in effect.

4. Notwithstanding the provisions of this Article, in the case of the Kingdom of the Netherlands, the prices to be charged by the designated airlines for carriage wholly within the European Union shall be subject to European Union law.

Article 5

Article 7 of the Agreement shall be replaced by:

Article 7

Commercial activities

1. The designated airline(s) of each Contracting Party shall have the right to establish offices in the territory of the other Contracting Party for promotion and sale of air services and other ancillary or supplemental products and services and facilities required for the provision of air services.

2. Any designated airline of each Contracting Party may engage in the sale of air services and its ancillary products, services and facilities in the territory of the other Contracting Party directly and, at the airline's discretion, through its agents. For this purpose, the designated airline may use its own transportation documents and any person shall be free to purchase such transportation and its ancillary products, services and facilities in the currency of that territory or in freely convertible currencies to the degree permitted by national laws and regulations, provided that they are applied on a non-discriminatory basis.

3. The designated airline(s) of each Contracting Party shall be entitled, in accordance with the laws and regulations of the other Contracting Party relating to entry, residence and employment, to bring in and maintain in the territory of the other Contracting Party managerial, sales, technical, operational and other specialist staff required for the provision of air services and other ancillary products and facilities. Such staff requirements may, at the option of the airline, be satisfied by its own personnel of any nationality or by using the services of any other airline, organization or company operating in the territory of the other Contracting Party and authorized to perform such services in the territory of such other Contracting Party.

Article 6

A new Article 10bis shall be added to the Agreement:

Article 10bis

User charges

1. User charges that may be imposed by the competent charging authorities of each Contracting Party on the designated airline(s) of the other Contracting Party shall be transparent, just, reasonable, non-discriminatory, and equitably apportioned among all categories of users. Such user charges shall be assessed on the designated airline(s) of the other Contracting Party on terms not less favourable than the terms available to any other airline at the time the charges are assessed.

2. User charges imposed on the designated airline(s) of the other Contracting Party may reflect, but shall not exceed, the full cost to the competent charging authorities of providing the appropriate airport, environmental, air navigation and aviation security facilities and services at the airport or within the airport system. Such full cost may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.