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Order 98-2-34

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UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation  
on the 27<sup>th</sup> day of February, 1998

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Agreement adopted by the Tariff :  
Coordinating Conferences of the : **Docket** OST-97-3108  
International Air Transport Association : R-1 through R-20  
relating to TC123 passenger fares :  
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**ORDER**

Various members of the International Air Transport Association (IATA) have filed an agreement with the Department under section 41309 of Title 49 of the United States Code, and Part 303 of the Department's regulations. The agreement was adopted at the TC123 Passenger Tariff Coordinating Conference held in Geneva during October 6-9, 1997, for effectiveness on March 1, 1998.<sup>1/</sup>

The agreement proposes a new fare structure for travel between the Western Hemisphere (including the United States, Puerto Rico and the U.S. Virgin Islands) and Asia via North Atlantic routings through February 1999.

Insofar as U.S. points are concerned, structural changes include specification of fares to/from Ashkhabad, Turkmenistan, at levels and conditions applicable to/from Ekaterinberg, Russia; despecification of fares from India to U.S. West Coast points with fares to these points to be constructed using existing add-on amounts; introduction of weekend differentials of \$60 and \$40, respectively, for peak and basic season special (discount) fare travel from the South Asian Subcontinent (except Pakistan); cancellation of specified round trip normal (first, intermediate [business] and economy) class fares (which were less than twice the one-way fare) from Pakistan, resulting in approximate ten-eleven percent increases in round trip normal fare travel from that country; and increasing the level of children's fares to 75 percent of the applicable adult fare except for normal fare travel to/from Japan and from Pakistan where the fare will be 67 percent of the adult fare.

In addition, the agreement increases eastbound normal and discount fares by five percent, except for discount fares to South East Asia which remain unchanged. Westbound fares also generally increase by five percent, except from Pakistan where only first and business class fares to the U.S. West Coast increase five

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<sup>1/</sup> IATA memorandum PTC123 0028, filed with the Department November 10, 1997.

percent and one-way APEX fares increase three percent.<sup>2/</sup> Fares from Japan, Malaysia, Sri Lanka and Thailand do not increase at this time. However, effective July 1, 1988, the agreement will increase fares from Malaysia and Thailand by three percent and fares from Sri Lanka by ten percent.

Finally, the agreement proposes a variety of changes in promotional fare rules, including revised seasonality definitions, minimum stay requirements, minimum tour prices, charges for stopovers, cancellation penalties, refund, transfer, rebooking and rerouting procedures, to reflect carrier needs and market conditions.

We have decided to approve the agreement. Based on our review of the information submitted and other relevant material, we conclude that the agreement will not result in fares that are unlawful or injurious to competition in the markets at issue.

In particular, our approval of the proposed premium and promotional fares is consistent with Department policy as stated in Order 85-3-8, March 4, 1985. We allow carriers wide latitude in pricing these types of fares, which are generally sensitive to market demand and other competitive pressures that obviate the need for regulatory intervention in most circumstances.

We continue our regulatory supervision over direct-service normal economy fares.<sup>3/</sup> The agreement proposes normal economy fare levels in direct-service markets that exceed the Department's regulatory ceilings as formed by the Standard Foreign Fare Level (SFFL) plus upward fare flexibility.<sup>4/</sup> The carriers have not furnished any economic justification in support of the proposed levels. Under these circumstances, we will condition our approval of the agreement to require that such direct-service normal economy fares shall be no higher than the Department's applicable regulatory ceilings, and that each carrier, when filing tariffs implementing the agreement, must provide a comparison of its proposed direct-service normal economy fares against the Department's SFFL levels.

Acting under Title 49 of the United States code, and particularly sections 40101, 40103, 41300 and 41309:

1. We do not find that the following resolutions, which are incorporated in the agreement in Docket OST-97-3108 and which have either direct or indirect application in foreign air transportation as defined by the Code, are adverse to the public interest or in violation of the Code, subject, where applicable, to conditions we have previously imposed, and provided further that (a) normal economy fares for direct-service markets filed by each IATA carrier in tariffs with the Department pursuant to these resolutions shall not exceed the applicable regulatory ceilings in effect at the time of filing, and (b) each IATA carrier must submit, at the time of filing and for comparative purposes, its SFFL base fares, proposed direct-service normal economy fares, and the percentages by which its proposed direct-service normal economy fares exceed

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<sup>2/</sup> A seven percent increase in fares from Korea, originally proposed in this agreement, was replaced by a fifteen percent currency-related increase in Docket OST-98-3405.

<sup>3/</sup> By normal economy fares, we are referring to the lowest one-way fare available for on-demand service in each market. These are frequently called "restricted" economy fares or, in markets where these are unavailable, "unrestricted" economy fares.

<sup>4/</sup> For example, the agreement proposes a New York-Delhi normal economy fare of \$1705 one-way, whereas the current regulatory ceiling is \$1388.

the SFFL base levels for each market for which it files revised direct-service normal economy fares:

<u>Docket</u> <u>OST-97-3108</u>	<u>IATA</u> <u>No</u>	<u>Title</u>	<u>Application</u>
R-1	001a	TC123 North Atlantic Special Applicability Resolution	1/2/3
R-2	001i	TC123 North Atlantic General Escape Resolution (As per Resolution 002 below)	1/2/3
R-3	002	TC123 Standard Revalidating/Amending Resolution	1/2/3
R-4	047m	TC123 North Atlantic Intermediate Class Fares	1/2/3
R-5	057m	TC123 North Atlantic First Class Fares	1/2/3
R-6	067m	TC123 North Atlantic Economy Class Fares	1/2/3
R-7	071cc	TC123 North Atlantic Excursion Fares from South Asian Subcontinent to Canada, Mexico, USA	1/2/3
R-8	071f	TC123 North Atlantic Excursion Fares between Canada, USA and Pakistan	1/2/3
R-9	071nn	TC123 North Atlantic Excursion Fares from Canada, Mexico, USA to South Asian Subcontinent	1/2/3
R-10	071p	TC123 North Atlantic Excursion Fares between Canada, Mexico, USA and South East Asia	1/2/3
R-11	072n	TC123 North Atlantic Excursion Fares from India, Pakistan to Canada, USA	1/2/3

<u>Docket</u> <u>OST-97-3108</u>	<u>IATA</u> <u>No</u>	<u>Title</u>	<u>Application</u>
R-12	072w	TC123 North Atlantic Excursion Fares between Canada, Mexico, USA and Kazakhstan, Russia, Turkmenistan, Uzbekistan	1/2/3
R-13	073aa	TC123 North Atlantic One Way Advance Purchase Excursion (APEX) Fares from Pakistan to Canada, USA	1/2/3
R-14	073bb	TC123 North Atlantic Advance Purchase Excursion (APEX) Fares from Canada, Mexico, USA to India	1/2/3

R-15	073f	TC123 North Atlantic One Way Advance Purchase Excursion (APEX) Fares between Canada and South East Asia	1/2/3
R-16	073vv	TC123 North Atlantic Advance Purchase Excursion (APEX) Fares between Canada, USA and South East Asia	1/2/3
R-17	074mm	TC123 North Atlantic Special Excursion Excursion (PEX) Fares from Mexico to Pakistan	1/2/3
R-18	078t	TC123 North Atlantic Special Excursion Excursion (PEX) Fares from Canada, Mexico, USA to India	1/2/3
R-19	115v	TC123 North Atlantic Meeting Competition, Canada/USA-Indonesia/Malaysia/Singapore/Thailand/South Asian Subcontinent (As per Resolution 002 above)	1/2/3
R-20	311n	TC123 North Atlantic Excess Baggage Charges to/from Canada (As per Resolution 002 above)	1/2/3

2. This agreement is a product of the IATA tariff conference machinery, which the Department found to be anticompetitive but nevertheless approved on foreign policy and comity grounds by Order 85-5-32, May 6, 1985. The Department found that important transportation needs were not obtainable by reasonably available alternative means having materially less anticompetitive effects. Antitrust immunity was automatically conferred upon these conferences because, where an anticompetitive agreement is approved in order to attain other objectives, the conferral of antitrust immunity is mandatory under Title 49 of the United States Code.

Order 85-5-32 contemplates that the products of fare and rate conferences will be subject to individual scrutiny and will be approved, provided they are of a kind specifically sanctioned by Order 85-5-32 and are not adverse to the public interest or in violation of the Code. As with the underlying IATA conference machinery, upon approval of a conference agreement, immunity for that agreement must be conferred under the Code. Consequently, we will grant antitrust immunity to the agreement in Docket OST-97-3108 as set forth in finding paragraph 1 above, subject, where applicable, to the conditions imposed therein.

**ACCORDINGLY,**

We approve and grant antitrust immunity to the agreement contained in Docket OST-97-3108, as set forth in finding paragraph one above, subject, where applicable, to conditions imposed therein.

**By:**

CHARLES A. HUNNICUTT  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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