

AIR TRANSPORT SERVICES

*Agreement signed at Washington December 3, 1946, with annex
Entered into force December 3, 1946
Amended by agreement of August 12, 1957¹*

61 Stat. 2464; Treaties and Other
International Acts Series 1574

AIR TRANSPORT AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA

The Government of the United States of America and the Government of the Commonwealth of Australia,

Desiring to conclude an Agreement for the purpose of promoting direct air services as rapidly as possible between their respective territories,

Have accordingly appointed authorized representatives for this purpose, who have agreed as follows:

ARTICLE I

For the purpose of this Agreement and its Annex unless the context otherwise requires:

(A) The term "territory" shall have the meaning assigned to it by Article 2 of the Convention on International Civil Aviation signed at Chicago on December 7, 1944.²

(B) The term "aeronautical authorities" shall mean in the case of Australia the Director-General of Civil Aviation, and in the case of the United States the Civil Aeronautics Board, and in both cases any person or body authorized by the respective Contracting Parties to perform the functions presently exercised by the above-mentioned authorities.

(C) The term "designated airline" shall mean the air transport enterprise or enterprises which the aeronautical authorities of one of the Contracting Parties have notified in writing to the aeronautical authorities of the other Contracting Party as the airline designated by the first Contracting Party in

¹ 8 UST 1334; TIAS 3880.

² TIAS 1591, *ante*, vol. 3, p. 945.

accordance with Article III of this Agreement for the route specified in such notification.

(D) The terms “airline” and “route” shall be deemed to include “airlines” and “routes” respectively.

(E) The definitions contained in paragraphs (a), (b), and (d) of Article 96 of the Convention on International Civil Aviation signed at Chicago on December 7, 1944 shall apply.

(F) The term “National of Australia” shall mean

- (i) The Government of Australia or a British subject who is ordinarily resident in Australia or
- (ii) A partnership comprised entirely of a number of such subjects or of one or more of such subjects and the Government of Australia or
- (iii) A corporation or association created or organized under the laws of Australia or of any State or Territory thereof and which is substantially owned and effectively controlled by the Government of Australia or by such subjects or by both such Government and one or more of such subjects.

(G) The term “National of New Zealand” shall mean

- (i) The Government of New Zealand or a British subject who is ordinarily resident in New Zealand or
- (ii) A partnership comprised entirely of a number of such subjects or of one or more of such subjects and the Government of New Zealand or
- (iii) A corporation or association created or organized under the laws of New Zealand or of any Territory thereof and which is substantially owned and effectively controlled by the Government of New Zealand or by such subjects or by both such Government and one or more of such subjects.

(H) The term “National of the United States” shall mean a citizen of the United States within the meaning of the Civil Aeronautics Act of 1938,³ as amended.

ARTICLE II⁴

Each Contracting Party grants to the other Contracting Party rights to the extent described in the Annex to this Agreement for the purpose of the establishment of the international air services set forth in that Annex, or as amended in accordance with Article XI of the present Agreement (hereinafter referred to as the “agreed services”).

³ 52 Stat. 973.

⁴ For an amendment of art. II, see agreement of Aug. 12, 1957 (8 UST 1334; TIAS 3880).

ARTICLE III

(A) The agreed services may be inaugurated immediately or at a later date at the option of the Contracting Party to whom the rights are granted, but not before:

(1) The Contracting Party to whom the rights have been granted shall have designated an airline for the specified route;

(2) The Contracting Party which grants the rights shall have given the appropriate operating permission to the airline concerned which (subject to the provisions of paragraph (B) of this Article and of Article VII) it shall do with the least possible delay.

(B) The designated airline may be required to satisfy the aeronautical authorities of the Contracting Party granting the rights that it is qualified to fulfill the conditions prescribed by or under the laws and regulations normally applied by those authorities to the operations of international commercial air services.

ARTICLE IV

(A) The charges which either of the Contracting Parties may impose or permit to be imposed on the designated airline of the other Contracting Party for the use of airports and other facilities shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services.

(B) Subject to paragraph (C) of this Article, aircraft of the designated airline of one Contracting Party operating on the agreed services, as well as fuel, lubricating oils, and spare parts introduced into or taken on board aircraft in the territory of the second Contracting Party by or on behalf of the designated airline of the other Contracting Party and intended solely for use by the aircraft of such airline, shall be accorded with respect to customs duties, inspection fees, or other charges imposed in the territory of the second Contracting Party treatment not less favorable than that granted to national airlines engaged in international air transport or the airlines of the most favored nation.

(C) Aircraft of the designated airline of one Contracting Party operating on the agreed services on a flight to, from, or across the territory of the other Contracting Party shall be admitted temporarily free from customs duties, subject otherwise to the customs regulations of such other Contracting Party. Supplies of fuel, lubricating oils, spare parts, regular equipment, and aircraft stores retained on board aircraft of the designated airline of one Contracting Party shall be exempt in the territory of the other Contracting Party from customs duties, inspection fees, or similar duties or charges, even though such supplies be used by such aircraft on flights in that territory.

(D) Each of the designated airlines shall have the right to use all airports,

airways, and other facilities provided by the Contracting Parties for use by international air services on the specified routes.

(E) Each Contracting Party shall grant equal treatment to its own designated airline and that of the other Contracting Party in the administration of its customs, immigration, quarantine, and similar regulations.

ARTICLE V

Certificates of airworthiness, certificates of competency, and licenses issued or rendered valid by one Contracting Party and still in force shall be recognized as valid by the other Contracting Party for the purpose of operation of the agreed services. Each Contracting Party reserves the right, however, to refuse to recognize for the purpose of flight above its own territory certificates of competency and licenses granted to its own nationals by the other Contracting Party or by another State.

ARTICLE VI

(A) The laws and regulations of one Contracting Party relating to entry into or departure from its territory of aircraft engaged in international air navigation or to the operation and navigation of such aircraft while within its territory shall apply to aircraft of the designated airline of the other Contracting Party.

(B) The laws and regulations of one Contracting Party relating to the entry into, sojourn in, and departure from its territory of passengers, crew, or cargo of aircraft (such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine) shall be applicable to the passengers, crew, or cargo of the aircraft of the designated airline of the other Contracting Party while in the territory of the first Contracting Party.

ARTICLE VII

(A) Each Contracting Party reserves the right to itself to withhold or revoke the certificate or permit of an airline designated by the other Contracting Party if it is not satisfied that substantial ownership and effective control of such airline are vested in nationals of the other Contracting Party, or in nationals of Australia and of New Zealand with respect to an airline designated by Australia. Each Contracting Party also reserves the right to itself to withhold or revoke, or impose such appropriate conditions as it may deem necessary with respect to, any certificate or permit in case of failure by the designated airline of the other Contracting Party to comply with the laws and regulations of the first Contracting Party or in case, in the judgment of the first Contracting Party, there is failure to fulfill the conditions under which the rights are granted pursuant to this Agreement. In the event of action by one Contracting Party under this Article the rights of the other Contracting Party under Article I—shall not be prejudiced.

(B) Prior to exercising the right conferred in paragraph (A) of this Article to withhold or revoke, or to impose conditions with respect to, any certificate or permit issued to the designated airline of the other Contracting Party, the Contracting Party desiring to exercise such right shall give notice thereof to the other Contracting Party and simultaneously to the designated airline concerned. Such notice shall state the basis of the proposed action and shall afford opportunity to the other Contracting Party to consult in regard thereto. Any revocation or imposition of conditions shall become effective on the date specified in such notice (which shall not be less than one calendar month after the date on which the notice would in the ordinary course of transmission be received by the Contracting Party to whom it is addressed) unless the notice is withdrawn before such date.

ARTICLE VIII

(A) In a spirit of close collaboration the aeronautical authorities of the two Contracting Parties will consult regularly with a view to assuring the observance of the principles and the implementation of the provisions outlined in this Agreement and its Annex.

(B) In the event of the aeronautical authorities of either Contracting Party failing or ceasing to publish information in relation to the agreed services on lines similar to that included in the Airline Traffic Surveys (Station to Station and Origination and Destination) now published by the Civil Aeronautics Board and failing or ceasing to supply such data of this character as may be required by the Provisional International Civil Aviation Organization or its successor, the aeronautical authorities of such Contracting Party shall supply, on the request of the aeronautical authorities of the other Contracting Party, such information of that nature as may be requested.

ARTICLE IX

Any dispute between the Contracting Parties relating to the interpretation or application of this Agreement or its Annex which cannot be settled through consultation shall be referred for an advisory report to the Interim Council of the Provisional International Civil Aviation Organization (in accordance with the provisions of Article III, Section 6(8) of the Interim Agreement on International Civil Aviation signed at Chicago on December 7, 1944⁵), or its successor, and the executive authorities of each Contracting Party will use their best efforts under the powers available to them to put into effect the opinion expressed in such report.

ARTICLE X

This Agreement and all relative contracts shall be registered by both Contracting Parties with the Provisional International Civil Aviation Organiza-

⁵ EAS 469, *ante*, vol. 3, p. 929.

tion set up by the Interim Agreement on International Civil Aviation signed at Chicago December 7, 1944 or its successor.

ARTICLE XI

(A) If a general multilateral air transport convention enters into force in relation to both Contracting Parties, the present Agreement shall be amended so as to conform with the provisions of such convention.

(B) Either Contracting Party may at any time request consultation with the other with a view to initiating any amendments of this Agreement or its Annex which may be desirable in the light of experience.

(C) If either of the Contracting Parties considers it desirable to modify the terms of the Annex to this Agreement, it may request consultation between the aeronautical authorities of both Contracting Parties, and such consultation shall begin within a period of sixty days from the date of the request. When these authorities agree on modifications to the Annex, these modifications will come into effect when they have been confirmed by the Contracting Parties by an exchange of notes through the diplomatic channel.

ARTICLE XII

It shall be open to either Contracting Party at any time to give notice to the other of its desire to terminate this Agreement. Such notice shall be simultaneously communicated to the Provisional International Civil Aviation Organization or its successor. If such notice is given, this Agreement shall terminate twelve calendar months after the date of receipt of the notice by the other Contracting Party unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgment by the other Contracting Party specifying an earlier date of receipt, notice shall be deemed to have been received fourteen days after the receipt of the notice by the Provisional International Civil Aviation Organization or its successor.

ARTICLE XIII

This Agreement, including the provisions of the Annex thereof, will come into force on the day it is signed.

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

DONE in duplicate at Washington, this third day of December, 1946.

For the Government of the United States of America:

DEAN ACHESON

For the Government of the Commonwealth of Australia:

NORMAN J. O. MAKIN

EDGAR C. JOHNSTON

ANNEX⁶

SECTION I

The airline of the United States of America designated pursuant to the present Agreement is accorded rights of transit and of stop for non-traffic purposes in the territory of Australia, as well as the right to pick up and discharge international traffic in passengers, cargo, and mail at Sydney, on the following route:

The United States via Honolulu, Canton Island, the Fiji Islands, New Caledonia (optional), to Sydney; in both directions.

It is agreed that, if and so long as the airport at Melbourne is used as a terminal of an international air service operated by an airline other than the designated airline of the United States of America, the designated airline of the United States of America may proceed beyond Sydney to Melbourne and may in addition enjoy at Melbourne the rights conveyed herein in respect to Sydney.

SECTION II

The airline of Australia designated pursuant to the present Agreement is accorded rights of transit and of stop for non-traffic purposes in the territory of the United States of America, as well as the right to pick up and discharge international traffic in passengers, cargo, and mail at Honolulu and San Francisco, on the following route:

Australia via New Caledonia (optional), the Fiji Islands, Canton Island, Honolulu, to San Francisco, and (optional) beyond to Vancouver; in both directions.

SECTION III

It is agreed between the Contracting Parties:

(A) That the two Governments desire to foster and encourage the widest possible distribution of the benefits of air travel for the general good of mankind at the cheapest rates consistent with sound economic principles, and desire to stimulate international air travel as a means of promoting friendly understanding and good will among peoples and insuring as well the many indirect benefits of this new form of transportation to the common welfare of both countries.

(B) The designated airlines of the two Contracting Parties operating on the routes described in this Annex shall enjoy fair and equal opportunity for the operation of the agreed services. If the designated airline of one Contracting Party is temporarily unable, as a result of the war or for reasons within

⁶ For amendments to secs. I and II, see agreement of Aug. 12, 1957 (8 UST 1334; TIAS 3880).

the control of the other Contracting Party, to take advantage of such opportunity, the Contracting Parties shall review the situation with the object of assisting the said airline to take full advantage of the fair and equal opportunity to participate in the agreed services.

(C) That in the operation by the designated airline of either Contracting Party of the trunk services described in the present Annex, the interests of any airline of the other Contracting Party shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same route.

(D) That the total air transport services offered by the designated airlines of the two Contracting Parties over the routes specified in this Annex shall bear a close relationship to the requirements of the public for such services.

(E) That the services provided by each designated airline under this Agreement and its Annex shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country which designates such airline and the country of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the route specified in the Annex to this Agreement shall be applied in accordance with the general principles of orderly development to which both Governments subscribe and shall be subject to the general principle that capacity should be related:

- (a) to traffic requirements between the country of origin and the countries of destination;
- (b) to the requirements of through airline operation; and
- (c) to the traffic requirements of the area through which the airline passes after taking account of local and regional services.

SECTION IV

(A) The determination of rates in accordance with the following paragraphs shall be made at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit, and the rates charged by any other airline, as well as the characteristics of each service.

(B) The rates to be charged by the designated airline of either Contracting Party between points in the territory of the United States and points in Australian territory referred to in this Annex, shall, consistent with the provisions of the present Agreement and its Annex, be subject to the approval of the aeronautical authorities of the Contracting Parties, who shall act in accordance with their obligations under the present Agreement and its Annex, within their respective constitutional powers and obligations.

(C) The Civil Aeronautics Board of the United States having approved the traffic conference machinery of the International Air Transport Association (hereinafter called "IATA"), for a period of one year beginning in Feb-

ruary 1946, any rate agreements concluded through this machinery during this period and involving any United States airline will be subject to approval by the Board.

(D) Any new rate proposed by the designated airline of either Contracting Party shall be filed with the aeronautical authorities of both Contracting Parties at least thirty days before the proposed date of introduction; provided that this period of thirty days may be reduced in particular cases if so agreed by the aeronautical authorities of both Contracting Parties.

(E) The Contracting Parties agree that the procedure described in paragraphs (F), (G), and (H) of this section shall apply

(1) if, during the period of the Civil Aeronautics Board's approval of the IATA traffic conference machinery, either any specific rate agreement is not approved within a reasonable time by either Contracting Party or a conference of IATA is unable to agree on a rate, or

(2) at any time no IATA machinery is applicable, or

(3) if either Contracting Party at any time withdraws or fails to renew its approval of that part of the IATA traffic conference machinery relevant to this provision.

(F) In the event that power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services, and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States, each of the Contracting Parties shall thereafter exercise its authority in such manner as to prevent any rate or rates proposed by its designated airline for services from the territory of one Contracting Party to a point or points in the territory of the other Contracting Party from becoming effective, if in the judgment of the aeronautical authorities of the Contracting Party whose designated airline is proposing such rate, that rate is unfair or uneconomic. If one of the Contracting Parties on receipt of the notification referred to in paragraph (D) above is dissatisfied with the new rate proposed by the designated airline of the other Contracting Party, it shall so notify the other Contracting Party prior to the expiry of the first fifteen of the thirty days referred to, and the Contracting Parties shall endeavor to reach agreement on the appropriate rate.

In the event that such agreement is reached, each Contracting Party will exercise its statutory powers to give effect to such agreement.

If agreement has not been reached at the end of the thirty-day period referred to in paragraph (D) above, the proposed rate may, unless the aeronautical authorities of the country of the airline concerned see fit to suspend its application, go into effect provisionally pending the settlement of any dispute in accordance with the procedure outlined in paragraph (H) below.

(G) Prior to the time when such power may be conferred by law upon the aeronautical authorities of the United States, if one of the Contracting Parties is dissatisfied with any new rate proposed by the designated airline of either Contracting Party for services from the territory of one Contracting Party to a point or points in the territory of the other Contracting Party, it shall so notify the other prior to the expiry of the first fifteen of the thirty-day period referred to in paragraph (D) above, and the Contracting Parties shall endeavor to reach agreement on the appropriate rate.

In the event that such agreement is reached, each Contracting Party will use its best efforts to cause such agreed rate to be put into effect by its designated airline.

It is recognized that if no such agreement can be reached prior to the expiry of such thirty days, the Contracting Party raising the objection to the rate may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.

(H) When in any case under paragraphs (F) and (G) above the aeronautical authorities of the two Contracting Parties cannot agree within a reasonable time upon the appropriate rate after consultation initiated by the complaint of one Contracting Party concerning the proposed rate or an existing rate of the designated airline of the other Contracting Party, upon the request of either, both Contracting Parties shall submit the question to the Provisional International Civil Aviation Organization or its successor for an advisory report, and the executive authorities of each Contracting Party will use their best efforts under the powers available to them to put into effect the opinion expressed in such report.

(I) The Executive Branch of the Government of the United States agrees to use its best efforts to secure legislation empowering the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services, and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States.

(J) In this Annex references to rates between a point in the territory of one Contracting Party and a point in the territory of the other Contracting Party shall be deemed to include round-trip rates for a journey from the territory of the first mentioned Contracting Party to the territory of the second mentioned Contracting Party and back to the territory of the first mentioned Contracting Party.

SECTION V

It is recognized that the determination of rates to be charged by an airline of one Contracting Party over a segment of the specified route, which segment lies between the territories of the other Contracting Party and a third country, is a complex question the overall solution of which cannot be sought through

consultation between only the two Contracting Parties. Pending the acceptance by both Contracting Parties of any multilateral agreement or recommendations with respect to such rates, the rates to be charged by the designated airlines of the two Contracting Parties over the route segment involved shall be set in the first instance by agreement between such airlines operating over such route segment, subject to the approval of the aeronautical authorities of the two Contracting Parties. In case such designated airlines can not reach agreement or in case the aeronautical authorities of both Contracting Parties do not approve any rates set by such airlines, the question shall become the subject of consultation between the aeronautical authorities of the two Contracting Parties. In considering such rates the aeronautical authorities shall have regard particularly to subparagraph (C) of Section III of this Annex and to the desire of both Contracting Parties to foster and encourage the development of efficient and economically sound trunk air services by the designated airlines over the specified routes and the development of efficient and economically sound regional air services along and in areas adjacent to the specified routes. If the aeronautical authorities can not reach agreement the matter shall be referred for an advisory report to the Interim Council of the Provisional International Civil Aviation Organization or its successor, and the executive authorities of each Contracting Party shall use their best efforts under the powers available to them to put into effect the opinion expressed in such report. Pending determination of the rates in the manner herein provided, the rates to be charged over the particular route segment or segments involved shall be as fixed by the aeronautical authorities of the Contracting Party whose territory is on the segment or segments involved, provided that no discrimination is made between the rates to be charged by the designated airlines of the two Contracting Parties. After any rate has been agreed to in accordance with the procedure described in this Section, such rate shall remain in effect until changed in accordance with this procedure.

SECTION VI

After the present Agreement comes into force the aeronautical authorities of both Contracting Parties will exchange information as promptly as possible concerning the authorizations extended to their respective designated airline to render service to, through, and from the territory of the other Contracting Party. This will include copies of current certificates and authorizations for service on the routes which are the subject of this Agreement and, for the future, such new certificates and authorizations as may be issued together with amendments, exemption orders, and authorized service patterns.