

No. 1314

SWITZERLAND
and
BRAZIL

Agreement relating to regular air transport services between Switzerland and the United States of Brazil (with annex and exchange of notes). Signed at Berne, on 10 August 1948

Official texts of the Agreement: French and Portuguese.

Official text of the exchange of notes: French.

Registered by the International Civil Aviation Organization on 18 July 1951.

SUISSE
et
BRÉSIL

Accord relatif aux transports aériens réguliers entre la Suisse et les États-Unis du Brésil (avec annexe et échange de notes). Signé à Berne, le 10 août 1948

Textes officiels de l'Accord: français et portugais.

Texte officiel de l'échange de notes: français.

Enregistré par l'Organisation de l'aviation civile internationale le 18 juillet 1951.

TRANSLATION — TRADUCTION

No. 1314. AGREEMENT¹ RELATING TO REGULAR AIR
TRANSPORT SERVICES BETWEEN SWITZERLAND AND
THE UNITED STATES OF BRAZIL. SIGNED AT BERNE
ON 10 AUGUST 1948

The Swiss Federal Council and the President of the Republic of the United States of Brazil,

considering:

that the possibilities of commercial aviation as a means of transport have greatly increased;

that this means of transport, because of its essential characteristics, permitting rapid connexions, contributes to bringing nations together;

that it is desirable to organize air communications between the Contracting Parties in a safe and orderly manner and to develop international co-operation in this field as much as possible without prejudice to national and regional interests;

that it is desirable to establish a general multilateral convention dealing with regular international air transport services;

that pending the entry into force of such a convention between the Contracting Parties, it is necessary to conclude a provisional agreement for the operation of air services between Switzerland and the United States of Brazil in conformity with the Convention on International Civil Aviation signed at Chicago on 7 December 1944;²

have appointed plenipotentiaries duly authorized for this purpose, who have agreed as follows :

Article I

(a) The Contracting Parties grant each other the rights specified in this Agreement and its annex, in order that there may be established the international air services described in the said annex and hereinafter referred to as "agreed services."

¹ Came into force on 23 August 1949, the date of the notification to the Swiss Federal Council by the Government of the United States of Brazil of its ratification, in accordance with article XII of the agreement.

² United Nations, *Treaty Series*, Vol. 15, p. 295; Vol. 26, p. 420; Vol. 32, p. 402; Vol. 33, p. 352; Vol. 44, p. 346, and Vol. 51, p. 336.

(b) Each Contracting Party shall designate one or more of its airlines to operate the agreed services and shall appoint the date on which the said services shall be inaugurated.

Article II

(a) Subject to the provisions of paragraph (b) of this article and of article IV below, each Contracting Party shall issue the necessary operating licences to the airlines designated by the other Contracting Party.

(b) Before being authorized to inaugurate the agreed services, however, such airlines may be required to satisfy the aeronautical authorities responsible for issuing the operating licences that they are qualified to fulfil the conditions prescribed under the laws and regulations normally applicable to them.

Article III

In order to prevent discriminatory practices and to respect the principle of equality of treatment :

1. The charges imposed in its territory by either Contracting Party for the use of airports and other facilities by the designated airlines of the other Contracting Party 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.

2. Fuel, lubricating oils and spare parts introduced into or taken on board aircraft in the territory of one Contracting Party by or in behalf of the designated airlines of the other Contracting Party and intended solely for use by the aircraft of such designated airlines, shall enjoy national or most-favoured-nation treatment with respect to Customs duties and charges, inspection fees and other national duties or charges.

3. Aircraft used on the agreed services by the designated airlines of one Contracting Party, and supplies of fuel, lubricating oils, spare parts, normal equipment and aircraft stores retained on board such aircraft, shall be exempt in the territory of the other Contracting Party from Customs duties and charges, inspection fees or other similar duties or charges, even though such supplies be used or consumed by such aircraft on flights within that territory.

Article IV

Each Contracting Party reserves the right to withhold or withdraw an operating licence from an airline designated by the other Contracting Party

in any case where it is not satisfied that the major part of the ownership and effective control of that airline are vested in nationals of the other Contracting Party, or in case of failure by that airline to comply with the laws and regulations referred to in article 13 of the Convention on International Civil Aviation or to perform its obligations under the present Agreement and its annex, or when air crews employed by that airline are not nationals of the other Contracting Party, except in cases where air crews are being trained.

Article V

The aeronautical authorities of the Contracting Parties shall from time to time consult together in a spirit of close collaboration to ensure the observance and satisfactory application of the principles defined in this Agreement and its annex.

Article VI

If one of the Contracting Parties desires to modify any provision or provisions of the annex to this Agreement, or to exercise the right specified in article IV, it may request consultation between the aeronautical authorities of the Contracting Parties, such consultation to begin within a period of sixty days from the date of the request. Modifications of the annex agreed upon between the aeronautical authorities shall come into effect when they have been confirmed through the diplomatic channel.

Article VII

Any dispute between the Contracting Parties relating to the interpretation or application of this Agreement and its annex which is not covered by the provisions of chapter XVIII of the Convention on International Civil Aviation and which cannot be settled through direct consultation, shall be submitted for arbitration to a court or to some other agreed person or body.

Article VIII

Notice to terminate this Agreement may be given at any time. A Contracting Party exercising this right shall simultaneously inform the other Contracting Party and the International Civil Aviation Organization. The Agreement shall terminate six months after the date of receipt of the notice to terminate by the other Contracting Party, unless the notice is withdrawn by agreement between the Contracting Parties before the expiry of this period. If the Contracting Party to which such notice is addressed does not acknowledge the receipt thereof, notice shall be deemed to have been received fourteen days after its receipt by the International Civil Aviation Organization.

Article IX

With the entry into force between the Contracting Parties of a multilateral convention dealing with international air transport, this Agreement and its annex shall be brought into conformity with the said convention.

Article X

This Agreement and all contracts connected therewith shall be registered with the International Civil Aviation Organization.

Article XI

For the purposes of this Agreement and its annex :

1. The term " aeronautical authorities " shall mean, in the case of the United States of Brazil, the Ministry for Air, and, in the case of Switzerland, the Federal Department of Posts and Railways (Air Office), or, in both cases, any person or agency authorized to perform the functions at present exercised by them.

2. The term " designated airline " shall mean any airline which has been selected by one of the Contracting Parties to operate the agreed services, and in respect of which notification has been sent to the aeronautical authorities of the other Contracting Party in accordance with article I (b) of this Agreement.

3. The term " regular international air service " shall mean any service between or across the territories of the Contracting Parties operated on a regular schedule by a designated airline in accordance with time-tables and routes approved by the Contracting Parties.

Article XII

This Agreement shall be applied as from the day of its signature by the competent authorities of the Contracting Parties acting within the limits of their administrative powers. It shall enter into force as soon as the Government of the United States of Brazil has notified the Swiss Federal Council of its ratification through the diplomatic channel.

IN WITNESS WHEREOF the undersigned plenipotentiaries have concluded the present Agreement and have affixed their seals thereto.

DONE in duplicate, at Berne, this 10th day of August 1948, in the French and Portuguese languages, both texts being equally authentic.

For the Swiss Federal Council :

(Signed) Max PETITPIERRE

For the President of the Republic
of the United States of Brazil :

(Signed) MOREIRA DA SILVA

(Signed) DA CUNHA MACHADO

A N N E X

I

For the purpose of operating the agreed services, the airline or airlines designated by each of the Contracting Parties under the conditions provided in the Agreement and the present Annex shall enjoy, in the territory of the other Contracting Party, on each of the routes described in the attached schedules, rights of transit and of non-traffic stop at airports open to international traffic, as well as the right to pick up and set down international traffic in passengers, mail and cargo at the points enumerated in the said schedules, in accordance with the provisions of section II below.

II

(a) The air transport capacity provided by the designated airlines of both Contracting Parties shall bear a close relationship to traffic requirements.

(b) There shall be fair and equal opportunity for the designated airlines to operate the agreed services.

(c) Where the designated airlines operate on the same route, they shall take into account their reciprocal interests so as not to affect unduly their respective services.

(d) The agreed services shall have as their primary objective the provision of capacity adequate to traffic demands between the country to which the airline belongs and the countries of ultimate destination of the traffic.

(e) The right to pick up and set down in the territory of a Contracting Party at the points specified in the attached schedules international traffic proceeding to or coming from third countries shall be applied in accordance with the general principles of the orderly development of air transport to which the Contracting Parties subscribe and under conditions such that capacity shall be related :

1. to traffic requirements between the country of origin and the countries of destination;
2. to the requirements of the economic operation of the agreed services;
3. to the traffic requirements of the area through which the airline passes, after taking account of local and regional services.

III

The consultations referred to in article V of the Agreement may in particular take place at the request of one of the Contracting Parties to determine the circumstances in which the principles set forth in section II above are being complied with, and in particular to prevent an unfair proportion of traffic being diverted from any designated airline.

IV

(a) Rates shall be fixed at reasonable levels, regard being paid in particular to economy of operation, reasonable profit, the rates charged by other airlines and the characteristics of each service, such as speed and comfort.

(b) The rates to be charged by the designated airlines shall be submitted for approval to the aeronautical authorities of the Contracting Parties not less than thirty days before they come into force, though this time limit may be shorter in special cases if the said authorities so agree.

(c) The designated airlines shall agree on the passenger and goods rates to be applied on the common sections of their routes, after consultation, where necessary, with the airlines of third countries operating all or part of the same routes; and they shall inform the aeronautical authorities of the Contracting Parties of these arrangements.

(d) In fixing these rates, the designated airlines shall take the recommendations of the International Air Transport Association (IATA) into account.

(e) Should the designated airlines fail to reach agreement, the aeronautical authorities shall endeavour to reach a solution. In the last resort the matter shall be referred to arbitration as provided in article VII of the Agreement.

V

Changes in points on the air routes described in the attached schedules, except changes in points within the territories of the Contracting Parties, shall not be considered as modifications of the annex. The aeronautical authority of either Contracting Party may therefore proceed unilaterally to make such changes, provided that notice of any change is given without delay to the aeronautical authority of the other Contracting Party. If such aeronautical authority of the other Contracting Party should consider, in the light of the principles set forth in section II of the present annex, that the interests of the airlines designated by it are prejudiced by the carriage of traffic between its territory and the new points in the territory of a third country, it shall consult with the aeronautical authority introducing the changes with a view to arriving at a satisfactory agreement.

VI

As from the entry into force of the Agreement, the aeronautical authorities of the Contracting Parties shall exchange information as promptly as possible concerning the licences granted to the airlines designated by them to operate all or part of the agreed services. Such exchange of information shall include copies of the authorizations granted, any modifications thereof and all annexed documents.

SCHEDULE I

ROUTES WHICH MAY BE OPERATED BY THE SWISS AIRLINES

A. *Routes to Brazil:*

1. Geneva (or Zürich or Basle)—Casablanca (or Lisbon)—Dakar (or Ilha do Sal)—Natal (or Recife)—Rio de Janeiro and/or São Paulo, in either direction, or alternatively,
2. Geneva (or Zürich or Basle)—Rome—Tunis (or Algiers or Casablanca)—Dakar (or Ilha do Sal)—Natal (or Recife)—Rio de Janeiro and/or São Paulo, in either direction, or, alternatively,
3. Geneva (or Zürich or Basle)—Lisbon (or Madrid)—Tangier—Dakar (or Ilha do Sal)—Natal (or Recife)—Rio de Janeiro and/or São Paulo, in either direction.

B. *Routes serving and traversing Brazilian territory:*

1. Geneva (or Zürich or Basle)—Casablanca (or Lisbon)—Dakar (or Ilha do Sal)—Natal (or Recife)—Rio de Janeiro and/or São Paulo—Montevideo—Buenos Aires and/or Santiago de Chile and beyond in either direction, or, alternatively,
2. Geneva (or Zürich or Basle)—Rome—Tunis (or Algiers or Casablanca)—Dakar (or Ilha do Sal)—Natal (or Recife)—Rio de Janeiro and/or São Paulo—Montevideo—Buenos Aires and/or Santiago de Chile and beyond, in either direction, or, alternatively,
3. Geneva (or Zürich or Basle)—Lisbon (or Madrid)—Tangier—Dakar (or Ilha do Sal)—Natal (or Recife)—Rio de Janeiro and/or São Paulo—Montevideo—Buenos Aires and/or Santiago de Chile and beyond, in either direction.

SCHEDULE II

ROUTES WHICH MAY BE OPERATED BY THE BRAZILIAN AIRLINES

A. *Routes to Switzerland:*

1. Rio de Janeiro—Recife (or Natal)—Dakar (or Ilha do Sal)—Lisbon—Madrid—Rome—Geneva (or Zurich or Basle), in either direction, or, alternatively,
2. Rio de Janeiro—Recife (or Natal)—Dakar (or Ilha do Sal)—Casablanca (or Algiers or Tunis)—Rome—Geneva (or Zurich or Basle), in either direction.

B. *Routes serving and traversing Swiss territory:*

1. Rio de Janeiro—Recife (or Natal)—Dakar (or Ilha do Sal)—Lisbon—Madrid—Rome—Geneva (or Zurich or Basle)—Vienna (or Prague) and beyond, Frankfurt-on-Main (or Berlin)—Copenhagen and/or Stockholm and beyond in either direction, or, alternatively,
2. Rio de Janeiro—Recife (or Natal)—Dakar (or Ilha do Sal)—Casablanca (or Algiers or Tunis)—Rome—Geneva (or Zurich or Basle)—Vienna (or Prague) and beyond, Frankfurt-on-Main (or Berlin)—Copenhagen and/or Oslo and/or Stockholm and beyond, in either direction.

EXCHANGE OF NOTES

I

FEDERAL POLITICAL DEPARTMENT

Berne, 10 August 1948

v.C.16.12.Brés.1.—AV

To the Legation of the United States of Brazil
Berne

With reference to the negotiations resulting in the signature this day of an Agreement relating to regular air transport services between Switzerland and the United States of Brazil, the Federal Political Department has the honour to communicate the following to the Legation of the United States of Brazil for the purpose of giving written expression to points touched upon orally in the course of the negotiations :

1. Before the Agreement enters into force, the grant of the privileges referred to in article III shall remain subject to effective reciprocity.

2. The Brazilian authorities propose to interpret liberally the notion of "air crew of foreign nationality under training" referred to in article IV of the Agreement. The Federal Political Department takes note of this.

3. The Swiss Federal authorities agree that, though it does not for the time being seem capable of practical application within the scope of the Agreement, the clause proposed by the Brazilian authorities with reference to transshipment on long-distance services, should be recorded for purposes of reference. The clause is worded as follows :

- "(a) For the purposes of the present section, the term 'transshipment' shall mean the transportation by the same airline of traffic beyond a certain point on an agreed route but by different aircraft.
- "(b) Transshipment when justified by economy of operation shall be permitted at all points mentioned in the attached schedules in the territory of the two Contracting Parties.
- "(c) However, transshipments shall not be allowed in the territory of the Contracting Parties if they would alter the long-range characteristics of the operation or be inconsistent with the standards set forth in this Agreement and its annex and particularly section II of the annex.
- "(d) No onward flight after transshipment shall be effected except in connexion with the arrival of the aircraft employed up to the point of transshipment. The capacity of the aircraft employed after transshipment shall be determined in relation to the charge-paying load (passengers, goods and mail) to be transhipped.

“(e) If any capacity is available in the aircraft employed after a transshipment operation effected in accordance with the provisions of paragraph (d) above, such capacity may be allotted, in either direction, to international traffic from or to the territory in which transshipment was effected.”

The Department has the honour, etc.

(Signed) PETITPIERRE

II

LEGATION OF THE UNITED STATES OF BRAZIL

Berne, 10 August 1948

No. 40

To the Federal Political Department
Berne

By letter of to-day's date addressed to the Legation of the United States of Brazil, the Federal Political Department has given written expression to the following points raised during the negotiations that have just resulted in the conclusion of an Agreement relating to regular air transport services between the United States of Brazil and Switzerland :

[See note I]

The Legation thanks the Department for this communication and has the honour to acknowledge its receipt.

It has the honour, etc.
