No. 1649

UNITED STATES OF AMERICA
and
CANADA

Air Transport Agreement (with annex). Signed at Ottawa, on 4 June 1949

Official text: English.

Registered by the United States of America on 5 March 1952.

ÉTATS-UNIS D'AMÉRIQUE
et
CANADA

Accord relatif au transport aérien (avec annexe). Signé à Ottawa, le 4 juin 1949

Texte officiel anglais.

Enregistré par les États-Unis d'Amérique le 5 mars 1952.

No. 1649. AIR TRANSPORT AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA. SIGNED AT OTTAWA, ON 4 JUNE 1949

The Government of the United States of America and the Government of Canada, hereinafter called the Contracting Parties, having ratified the Convention on International Civil Aviation signed at Chicago on December 7, 1944,[2] and desiring to conclude an agreement to further promote commercial air services in a manner best suited to foster world-wide international air transport, have accordingly appointed authorized representatives for this purpose, who have agreed as follows:

Article 1

For the purpose of the present Agreement, and its Annex, except where the text provides otherwise:

(A) The term "aeronautical authorities" shall mean in the case of the United States of America, the Civil Aeronautics Board and any person or agency authorized to perform the functions exercised at the present time by the Civil Aeronautics Board and, in the case of Canada, the Minister of Transport and the Air Transport Board or any person or agency authorized to perform the functions exercised at present by the said Minister and said Board.

(B) The term "territory" shall have the meaning given to it by Article 2 of the Convention on International Civil Aviation, signed at Chicago on December 7, 1944.

(C) The definitions contained in Article 96 of the Convention on International Civil Aviation signed at Chicago on December 7, 1944 shall be applied to the present Agreement.

Article 2

Each contracting party grants to the other contracting party the rights specified in this Agreement and the Annex thereto for the purpose of establishing the international air services therein described, whether such services be placed in operation immediately or at a later date at the option of the contracting party to whom the rights are granted.

[1] Came into force on 4 June 1949, as from the date of signature, in accordance with article 15.
[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.

Article 3

Any air service described in the Annex hereto may be placed in operation as soon as the contracting party to whom the rights have been granted has designated an airline or airlines to operate such service, and has so notified the other contracting party. Each contracting party reserves the right to withdraw at any time the designation of an airline and substitute the designation of another. The contracting party granting the rights shall, subject to Article 7 hereof, be bound to give, with a minimum of procedural delay, the appropriate operating permission to the airline or airlines concerned; provided that the airline or airlines so designated may be required to qualify before the competent aeronautical authorities of the contracting party granting the rights under the laws and regulations normally applied by those authorities before being permitted to engage in the operations contemplated by this Agreement; and provided that in areas of hostilities or of military occupation, or in areas affected thereby, such operation shall be subject to the approval of the competent military authorities.

Article 4

In order to prevent discriminatory practices and to assure equality of treatment, both contracting parties agree that:

(*a*) Each of the contracting parties may impose or permit to be imposed just and reasonable charges for the use of public airports and other facilities under its control. Each of the contracting parties agrees, however, that these charges 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*) Fuel, lubricating oils and spare parts introduced into the territory of one contracting party by the other contracting party or its nationals, and intended solely for use by aircraft of the airlines of such contracting party shall, with respect to the imposition of customs duties, inspection fees or other national duties or charges by the contracting party whose territory is entered, be accorded the same treatment as that applying to national airlines engaged in international services and to airlines of the most-favored-nation.

(*c*) The fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board civil aircraft of the airlines of one contracting party authorized to operate the services described in the Annex shall, upon arriving in or leaving the territory of the other contracting party, be exempt from cus-

toms, inspection fees or similar duties or charges, even though such supplies be used or consumed by such aircraft on flights in that territory.

(*d*) Each of the contracting parties agrees not to give a preference to its own airlines against the airlines of the other state in the application of its customs, immigration, quarantine and similar regulations or in the use of airports, airways of other facilities.

Article 5

Certificates of airworthiness, certificates of competency and licenses for aircraft and personnel to be used in operating the services described in this Agreement and its Annex issued or rendered valid by one contracting party and still in force shall be recognized as valid by the other contracting party. 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 another state.

Article 6

(*a*) The laws and regulations of one contracting party relating to the admission to 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 be applied to the aircraft of the airlines designated by the other contracting party, and shall be complied with by such aircraft upon entering or departing from or while within the territory of the first party.

(*b*) The laws and regulations of one contracting party as to the admission to or 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 complied with by or on behalf of such passengers, crew or cargo of the other contracting party upon entrance into or departure from, or while within the territory of the first party.

Article 7

Notwithstanding the provisions of Article 10 of this Agreement, each contracting party reserves the right to withhold or revoke permission to exercise the rights specified in this Agreement and the Annex thereto by an airline designated by the other contracting party in the event that it is not satisfied that substantial ownership and effective control of such airline are vested in nationals of the other contracting party, or in case of failure by such airline or

the government designating such airline to comply with the laws and regulations referred to in Article 6 hereof, or otherwise to perform its obligations hereunder or to fulfill the conditions under which the rights are granted in accordance with this Agreement and its Annex.

Article 8

This Agreement shall be registered with the International Civil Aviation Organization.

Article 9

Existing rights and privileges relating to air transport services which may have been granted previously by either of the contracting parties to an airline of the other contracting party shall continue in force in accordance with the terms under which such rights and privileges were granted.

Article 10

Either of the contracting parties may at any time notify the other of its intention to terminate the present Agreement. Such a notice shall be sent simultaneously to the International Civil Aviation Organization. In the event such communication is made, this Agreement shall terminate one year after the date of receipt of the notice to terminate, unless by agreement between the contracting parties the communication under reference is withdrawn before the expiration of that time. If the other contracting party fails to acknowledge receipt, notice shall be deemed as having been received 14 days after its receipt by the International Civil Aviation Organization.

Article 11

If either of the contracting parties considers it desirable to modify any provision of this Agreement or the Annex thereto, it may request consultation between the aeronautical authorities of both contracting parties, such consultation to begin within a period of sixty days from the date of the request. When these authorities mutually agree on new or revised conditions affecting the Agreement or the Annex thereto, their recommendations on the matter will come into effect after they have been confirmed by an exchange of notes between the contracting parties.

Article 12

If a general multilateral air transport Convention accepted by both contracting parties enters into force, the present Agreement shall be amended so as to conform with the provisions of such Convention.

Article 13

Except as otherwise provided in this Agreement or its Annex, any dispute between the contracting parties relative to the interpretation or application of this Agreement or its Annex, which cannot be settled through consultation, shall be submitted for an advisory report to a tribunal of three arbitrators, one to be named by each contracting party, and the third to be agreed upon by the two arbitrators so chosen, provided that such third arbitrator shall not be a national of either contracting party. Each of the contracting parties shall designate an arbitrator within two months of the date of delivery by either party to the other party of a note requesting arbitration of a dispute; and the third arbitrator shall be agreed upon within one month after such period of two months. If the third arbitrator is not agreed upon, within the time limitation indicated, the vacancy thereby created shall be filled by the appointment of a person, designated by the President of the Council of ICAO, from a panel of arbitral personnel maintained in accordance with the practice of ICAO. The executive authorities of the contracting parties will use their best efforts under the powers available to them to put into effect the opinion expressed in any such advisory report. The expenses of the arbitral tribunal shall be borne in equal parts by the parties.

Article 14

This Agreement supersedes that relating to civil air transport effected by an Exchange of Notes of February 17, 1945,[1] amended by an Exchange of Notes of April 10 and 12, 1947,[2] provided that in any case in which an air service authorized under the former Agreement is also provided for in the Annex to this Agreement, an airline duly authorized by both parties to operate the said service shall be deemed to have been duly authorized to operate the said service under this Agreement, and in accordance therewith.

Article 15

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

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

DONE in duplicate at Ottawa, this 4th day of June, 1949.

For the Government of the United States of America:
Russell B. ADAMS

For the Government of Canada:
John R. BALDWIN

[1] See p. 261 of this volume.
[2] See p. 229 of this volume.

ANNEX

Section I

The Government of Canada grants to the Government of the United States of America the right to conduct, by one or more airlines of United States nationality designated by the latter country, the international air services specified in Schedule One hereof.

Section II

The Government of the United States of America grants to the Government of Canada the right to conduct, by one or more airlines of Canadian nationality designated by the latter country, the international air services specified in Schedule Two hereof.

Section III

One or more airlines designated by each of the contracting parties under the conditions provided in this Agreement will enjoy, in the territory of the other contracting party, rights of transit and of stops for non-traffic purposes, as well as the right to pick up and discharge international traffic in passengers, cargo and mail at the points enumerated in the Schedules hereof.

Section IV

The air transport facilities available to the traveling public under this Agreement and Annex shall bear a close relationship to the requirements of the public for such transport.

Section V

There shall be a fair and equal opportunity for the airlines of the contracting parties to operate between their respective territories (as defined in the Agreement) the international air services covered by this Agreement and Annex.

Section VI

In the operation by the airlines of either contracting party of the services described in the present Annex, the interest of the airlines of the other contracting party shall be taken into consideration so as not to affect unduly the services which the latter provide on all or part of the same routes.

Section VII

It is the understanding of both contracting parties that services provided by a designated airline under this Agreement and Annex shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such airline is a national 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 routes specified in this Annex

shall be applied in accordance with the general principles of orderly development to which both contracting parties 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 VIII

It is the intention of both contracting parties that there should be regular and frequent consultation between their respective aeronautical authorities (as defined in the Agreement) and that there should thereby be close collaboration in the observance of the principles and the implementation of the provisions outlined in the present Agreement and Annex.

Section IX

(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 airlines, as well as the characteristics of each service.

(B) The rates to be charged by the airlines of either contracting party between points in the territory of the United States and points in Canadian territory referred to in the attached Schedules 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 Annex, within the limits of their legal powers.

(C) Any rate proposed by the airline or airlines of either contracting party shall be filed with the aeronautical authorities of both contracting parties at least thirty (30) days before the proposed date of introduction; provided that this period of thirty (30) days may be reduced in particular cases if so agreed by the aeronautical authorities of both contracting parties.

(D) 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 ending in February 1950, any rate agreements concluded through this machinery during this period and involving United States airlines will be subject to approval of the Board. Rate agreements concluded through this machinery may also be required to be subject to the approval of the aeronautical authorities of Canada pursuant to the principles enunciated in paragraph (B) above.

(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 Section.

(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, and corresponding powers are available to the aeronautical authorities of Canada, each of the contracting parties shall thereafter exercise its authority in such manner as to prevent any rate or rates proposed by one of its airlines 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 airline or airlines is or are proposing such rate, that rate is unfair or uneconomic. If one of the contracting parties on receipt of the notification referred to in paragraph (C) above is dissatisfied with the rate proposed by the airline or airlines of the other contracting party, it shall so notify the other contracting party prior to the expiry of the first fifteen (15) of the thirty (30) 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 authority to put such rate into effect as regards its airline or airlines.

If agreement has not been reached at the end of the thirty (30) day period referred to in paragraph (C) 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) Until such power is available to the aeronautical authorities of both the United States and Canada, if one of the contracting parties is dissatisfied with any rate proposed by the airline or airlines 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 (15) of the thirty (30) day period referred to in paragraph (C) 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 unto effect by its airline or airlines.

It is recognized that if no such agreement can be reached prior to the expiry of such thirty (30) days, the contracting party raising the objection to the rate may take such steps as it may consider necessary to prevent the application of the offending rate with respect to its territory.

(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 airline or airlines of the other contracting party, the terms of Article 13 of this Agreement shall apply.

Section X

Additional traffic stops may be made in the territory of the contracting party which designates an airline at the election of that party provided that such stops be between the specified terminals and in reasonable proximity to the direct route connecting them. Points on any of the specified routes may at the option of the designated airline be omitted on any and all flights.

SCHEDULE 1

An airline or airlines designates by the Government of the United States shall be entitled to operate air services on each of the air routes specified via intermediate points, in both directions, and to make landings in Canada at the points specified in this paragraph :

Seattle	—	Whitehorse
Seattle	—	Vancouver
Fairbanks	—	Whitehorse
Great Falls	—	Lethbridge
Great Falls	—	Edmonton
Fargo	—	Winnipeg
Washington	—	Montreal
Washington	—	Ottawa
New York	—	Toronto
New York	—	Montreal
New York	—	Ottawa
Either New York or Boston	—	Quebec
Boston	—	Montreal
Boston	—	Moncton
United States	—	Edmonton-Alaska and beyond
United States	—	Gander-Europe (including Azores) and beyond

In addition to the points enumerated above, an airline or airlines of the United States will be authorized to stop in Windsor or any domestic service for which they are now or in the future may be authorized by the United States Government to serve Detroit.

In consideration of the special circumstances existing on the routes from New York and Washington to Montreal and Ottawa the Government of Canada agrees that the designated airline or airlines of the United States may serve both Canadian points on the same flights, provided that the carrier or carriers shall exercise no cabotage rights in Canada. Similarly in consideration of the special circumstances existing on the routes from Great Falls to Lethbridge and Edmonton the Government of Canada agrees that the designated airline or airlines of the United States may serve both Canadian points on the same flights, provided that the carrier or carriers shall exercise no cabotage rights in Canada.

SCHEDULE 2

An airline or airlines designated by the Government of Canada shall be entitled to operate air services on each of the air routes specified via intermediate points, in both directions, and to make landings in the United States at the points specified in this paragraph :

Victoria	—	Seattle
Whitehorse	—	Fairbanks
Winnipeg	—	Sault Ste. Marie, Michigan-Toronto
Toronto	—	Chicago
Toronto	—	Cleveland
Toronto	—	New York
Montreal	—	New York
Halifax	—	Boston
Canada	—	Honolulu-Australasia and beyond
Canada	—	Tampa/St. Petersburg-Bahamas and/or points in the Caribbean and beyond

In addition to the points enumerated above, an airline or airlines of Canada will be authorized to stop in Detroit on any domestic service for which they are now or in the future may be authorized by the Canadian Government to serve Windsor.