

No. 4507

**AUSTRALIA
and
JAPAN**

**Agreement (with schedule and exchange of notes) for air
services. Signed at Tokyo, on 19 January 1956**

Official texts : English and Japanese.

Registered by the International Civil Aviation Organization on 9 September 1958.

**AUSTRALIE
et
JAPON**

**Accord de services aériens (avec tableau et échange de
notes). Signé à Tokyo, le 19 janvier 1956**

Textes officiels anglais et japonais.

Enregistré par l'Organisation de l'aviation civile internationale le 9 septembre 1958.

No. 4507. AGREEMENT¹ BETWEEN THE COMMONWEALTH OF AUSTRALIA AND JAPAN FOR AIR SERVICES. SIGNED AT TOKYO, ON 19 JANUARY 1956

The Government of the Commonwealth of Australia and the Government of Japan,

Desiring to conclude an agreement for the purpose of establishing and operating air services between their respective territories,

Being parties to the Convention on International Civil Aviation signed at Chicago on December 7, 1944² (hereinafter called "the Convention"),

Have accordingly appointed their respective representatives, who have agreed as follows :

Article I

1. For the purpose of the present Agreement, unless the context otherwise requires :

- (a) the term "aeronautical authorities" means, in the case of the Commonwealth of Australia, the Director General of Civil Aviation and any person or body authorized to perform the functions on civil aviation exercised by the said Director General of Civil Aviation or similar functions, and, in the case of Japan, the Ministry of Transportation and any person or body authorized to perform the functions on civil aviation exercised by the said Ministry or similar functions ;
- (b) the term "designated airline" means an airline or airlines which one Contracting Party has designated by written notification to the other Contracting Party for the operation of air services on the route or routes specified in such notification, and to which the appropriate operating permission has been given by that other Contracting Party, in accordance with the provisions of Article III of the present Agreement ;
- (c) the term "territory" in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or trusteeship of that State ;
- (d) the term "air service" means any scheduled air service performed by aircraft for the public transport of passengers, cargo or mail ;
- (e) the term "international air service" means an air service which passes through the air space over the territory of more than one State ;

¹ Came into force on 27 April 1956, the date of exchange of diplomatic notes indicating approval of the Agreement by each Contracting Party, in accordance with article XVIII.

² See footnote 2, p. 28 of this volume.

- (f) the term "airline" means any air transport enterprise offering or operating an international air service ; and
- (g) the term "stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, cargo or mail.

2. The Schedule¹ to the present Agreement forms an integral part of the Agreement, and all references to the "Agreement" shall include reference to the Schedule except where otherwise provided.

Article II

Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement to enable its designated airline to establish and operate international air services on the routes specified in the Schedule (hereinafter called "agreed services" and "specified routes" respectively).

Article III

1. The agreed services on any specified route may be inaugurated immediately or at a later date at the option of the Contracting Party to which the rights are granted under Article II of the present Agreement, but not before,

- (a) the Contracting Party to which the rights have been granted has designated an airline for that route, and
- (b) the Contracting Party granting the rights has given the appropriate operating permission to the airlines concerned ; which it shall, subject to the provisions of paragraph 2 of this Article and of paragraph 1 of Article VI, be bound to grant without delay.

2. Each of the airlines designated by one Contracting Party may be required to satisfy the aeronautical authorities of the other Contracting Party that it is qualified to fulfil the conditions prescribed by the laws and regulations normally applied by those authorities to the operation of international air services.

Article IV

Subject to the provisions of the present Agreement, the designated airline of each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following privileges :

- (a) to fly without landing across the territory of the other Contracting Party ;
- (b) to make stops in the said territory for non-traffic purposes ; and
- (c) to make stops in the said territory at the points specified for that route in the Schedule for the purposes of putting down and of taking on international traffic in passengers, cargo and mail.

¹ See p. 306 of this volume.

Article V

1. 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 under its control shall not be higher than would be paid for the use of such airports and facilities by any national airline of the first Contracting Party engaged in international air services.

2. In respect of customs duties, inspection fees and similar national or local duties or charges on fuel, lubricating oils, spare parts, regular aircraft equipment and aircraft stores introduced into the territory of one Contracting Party or taken on board aircraft in that territory, by or on behalf of the designated airline of the other Contracting Party and intended solely for use by or in the aircraft of that airline in the operation of the agreed services, the designated airline of the second Contracting Party shall be accorded treatment not less favourable than that granted by the first Contracting Party to the airlines of the most favoured nation or to its national airlines engaged in international air services. Neither Contracting Party shall, however, be obliged to grant to the designated airline of the other Contracting Party exemption or remission of customs duties, inspection fees or similar national or local duties or charges, unless such other Contracting Party grants exemption or remission of the duties or charges in question to the designated airline of the first Contracting Party.

Article VI

1. Each Contracting Party reserves the right to withhold or revoke the privileges specified in Article IV of the present Agreement in respect of a designated airline of the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise by the airline of those privileges, in any case where it is not satisfied that substantial ownership and effective control of such airline are vested in the Contracting Party designating the airline or in nationals of such Contracting Party.

2. Each Contracting Party reserves the right to suspend the exercise by a designated airline of the other Contracting Party of the privileges referred to in paragraph 1 above, or to impose such conditions as it may deem necessary on the exercise by the airline of those privileges, in any case where such airline fails to comply with the laws and regulations of the Contracting Party granting those privileges or otherwise fails to operate in accordance with the conditions prescribed in the present Agreement; provided that, unless immediate suspension or imposition of conditions is essential to prevent further infringements of such laws and regulations, this right shall be exercised only after consultation with the other Contracting Party.

Article VII

There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on the specified routes between their respective territories.

Article VIII

In the operation by the designated airline of either Contracting Party of the agreed services, the interests of the designated 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 routes.

Article IX

1. The agreed services provided by the designated airlines of the Contracting Parties shall bear a close relationship to the requirements of the public for such services.

2. The agreed services provided by a designated airline shall retain as their primary objective the provision of capacity adequate to current and reasonably anticipated requirements for the carriage of passengers, cargo and mail originating from or destined for the territory of the Contracting Party which has designated the airline. Provision for the carriage of passengers, cargo and mail both taken up and put down at points on the specified routes in the territories of States other than that designating the airline shall be made in accordance with the general principles that capacity shall be related to :

- (a) traffic requirements to and from the territory of the Contracting Party which has designated the airline ;
- (b) the requirements of through airline operation ; and
- (c) traffic requirements of the area through which the airline passes, after taking account of local and regional services.

Article X

1. The tariffs on any agreed service shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, characteristics of service (such as standards of speed and accommodation) and the tariffs of other airlines for any part of the specified route. These tariffs shall be fixed in accordance with the provisions of this Article.

2. Agreement on the tariffs shall, whenever possible, be reached by the designated airlines concerned through the rate-fixing machinery of the International Air Transport Association. When this is not possible, tariffs in respect of each of the specified routes shall be agreed upon between the designated airlines concerned. In any case the tariffs shall be subject to the approval of the aeronautical authorities of both Contracting Parties.

3. If the designated airlines concerned cannot agree on the tariffs, or if the aeronautical authorities of either Contracting Party do not approve the tariffs submitted to them, in accordance with the provisions of paragraph 2 of this Article, the aeronautical authorities of the Contracting Parties shall endeavour to reach agreement on the appropriate tariffs.

4. If the agreement under paragraph 3 of this Article cannot be reached, the dispute shall be settled in accordance with the provisions of Article XIII of the present Agreement.

5. No new or amended tariff shall come into effect if the aeronautical authorities of either Contracting Party do not approve it except under the terms of paragraph 3 of Article XIII of the present Agreement. Pending determination of the tariffs in accordance with the provisions of this Article, the tariffs already in force shall prevail.

Article XI

1. The aeronautical authorities of each Contracting Party shall supply to the aeronautical authorities of the other Contracting Party on request :

- (a) Such traffic statistics as may be appropriate for the purpose of reviewing the frequency and accommodation of the agreed services ;
- (b) Such periodical statements as may reasonably be required relating to the traffic carried on the agreed services by the designated airline of one Contracting Party to and from the territory of the other Contracting Party including information concerning the origin and destination of such traffic ; and
- (c) Such other information as may reasonably be required in respect of the operation of the agreed services.

2. The designated airline of each Contracting Party shall supply to the aeronautical authorities of the other Contracting Party, as long in advance as practicable, copies of time tables and tariff schedules and particulars concerning types of aircraft to be operated on the agreed services.

Article XII

In order to ensure close collaboration in all matters affecting the fulfilment of the present Agreement the aeronautical authorities of the Contracting Parties shall consult on request of either of the authorities.

Article XIII

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of the present Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiation between themselves.

2. If the Contracting Parties fail to reach a settlement by negotiation, the dispute may at the request of either Contracting Party be submitted for decision

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 a period of sixty days from the date of receipt by either Contracting Party from the other Contracting Party of a diplomatic note requesting arbitration of the dispute and the third arbitrator shall be agreed upon within a further period of sixty days. If either of the Contracting Parties fails to designate its own arbitrator within the period of sixty days or if the third arbitrator is not agreed upon within the period indicated, the President of the International Court of Justice may be requested by either Contracting Party to appoint an arbitrator or arbitrators.

3. The Contracting Parties undertake to comply with any decision given under paragraph 2 of this Article.

Article XIV

Either Contracting Party may at any time request consultation with the other Contracting Party for the purpose of amending the present Agreement, such consultation to begin within a period of sixty days from the date of request. If the amendment relates only to the Schedule, the consultation shall be between the aeronautical authorities of both Contracting Parties. When these authorities agree on a new or revised Schedule, their recommendations on the matter will come into effect after they have been confirmed by an exchange of diplomatic notes.

Article XV

If a general multilateral convention concerning air transport comes into force in respect of both Contracting Parties, the present Agreement shall be amended so as to conform with the provisions of such convention.

Article XVI

Either of the Contracting Parties may at any time notify the other of its intention to terminate the present Agreement. A copy of the notice shall be sent simultaneously to the International Civil Aviation Organization formed by the Convention. If such notice is given, the present Agreement shall terminate one year after the date of receipt by the other Contracting Party of the notice to terminate, unless by agreement between the Contracting Parties the notice under reference is withdrawn before the expiration of that period. If the other Contracting Party fails to acknowledge receipt, notice shall be deemed to have been received fourteen days after receipt by the International Civil Aviation Organization of its copy.

Article XVII

The present Agreement and the diplomatic notes exchanged in accordance with Article XIV shall be registered with the International Civil Aviation Organization.

Article XVIII

The present Agreement shall be approved by each Contracting Party in accordance with its legal procedures, and the Agreement shall enter into force on the date of exchange of diplomatic notes indicating such approval.

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

DONE in duplicate, in the English and Japanese languages, both equally authentic, at Tokyo, this nineteenth day of January of the year one thousand nine hundred and fifty-six.

For the Commonwealth of Australia :
(Signed) A. B. JAMIESON

For Japan :
(Signed) Mamoru SHIGEMITSU

SCHEDULE

Routes to be operated in both directions by the designated airline of Australia

1. Points in Australia – Biak or a point in Indonesia – a point in British North Borneo – Manila – Hong Kong – Tokyo.
2. Points in Australia – Guam – Tokyo.

The agreed services provided by the designated airline of Australia on these routes shall begin at a point in the territory of Australia, but other points on any of the routes may at the option of the designated airline be omitted on any or all flights.

Routes to be operated in both directions by the designated airline of Japan

1. Points in Japan – Hong Kong – Manila – a point in Indonesia – Darwin – Sydney.
2. Points in Japan – Guam – Sydney.

The agreed services provided by the designated airline of Japan on these routes shall begin at a point in the territory of Japan, but other points on any of the routes may at the option of the designated airline be omitted on any or all flights.

EXCHANGE OF NOTES

I

AUSTRALIAN EMBASSY

TOKYO

No. A.1.

19th January, 1956

Monsieur le Ministre,

With reference to the Agreement between the Commonwealth of Australia and Japan for Air Services signed today,¹ I have the honour to state that it is the understanding of the Government of the Commonwealth of Australia that the Japanese authorities will grant to any Australian civil aircraft which may operate international flights (other than those defined as "agreed services" in the said Agreement which will receive treatment pursuant to the Agreement) into Japan exemption from or remission of all national and local duties and charges (including customs duties and inspection fees) imposed in its territory on supplies of fuel, lubricating oil, spare parts, regular equipment and aircraft stores which are on board such aircraft on arrival in Japan or are taken on board such aircraft in Japan solely for use on the flights in question even though the supplies concerned are consumed on or by such aircraft on flights over Japanese territory provided that such supplies are not unloaded except with the approval of the Japanese Customs authorities, and the Australian authorities will accord the same treatment to any Japanese civil aircraft which may operate such international flights as stated above into Australia.

I have the honour further to request Your Excellency to be good enough to confirm the foregoing on behalf of your Government.

I avail myself of this opportunity to renew to Your Excellency, Monsieur le Ministre, the assurance of my highest consideration.

(Signed) A. B. JAMIESON
Chargé d'Affaires a. i.

His Excellency Mr. Mamoru Shigemitsu
Minister for Foreign Affairs of Japan

¹ See p. 300 of this volume.

[TRANSLATION¹ — TRADUCTION²]

Tokyo, January 19, 1956

Monsieur le Chargé d'Affaires,

I have the honour to acknowledge receipt of your Note of today's date reading as follows :

[*See note I*]

I have the honour to confirm on behalf of my Government that the foregoing is also the understanding of the Government of Japan.

I beg you, Monsieur le Chargé d'Affaires, to accept the renewed assurance of my high consideration.

(Signed) Mamoru SHIGEMITSU

Mr. A. B. Jamieson
Chargé d'Affaires ad interim
of the Commonwealth of Australia
Tokyo

¹ Translation provided by the International Civil Aviation Organization.

² Traduction transmise par l'Organisation de l'aviation civile internationale.