

No. 5922

**FEDERAL REPUBLIC OF GERMANY
and
CANADA**

**Air Transport Agreement (with exchange of notes). Signed
at Ottawa, on 4 September 1959**

Official texts of the Agreement: English and German.

Official text of the notes: English.

Registered by the International Civil Aviation Organization on 25 October 1961.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
CANADA**

**Accord (avec échange de notes) relatif aux services aériens.
Signé à Ottawa, le 4 septembre 1959**

Textes officiels de l'Accord: anglais et allemand.

Texte officiel des notes: anglais.

Enregistré par l'Organisation de l'aviation civile internationale le 25 octobre 1961.

No. 5922. AIR TRANSPORT AGREEMENT¹ BETWEEN THE
FEDERAL REPUBLIC OF GERMANY AND CANADA.
SIGNED AT OTTAWA, ON 4 SEPTEMBER 1959

The Federal Republic of Germany and Canada,

Being parties to the Convention on International Civil Aviation of December 7, 1944,² and

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

Have agreed as follows :

Article I

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

(a) the term "aeronautical authorities" shall mean in the case of Canada, the Minister of Transport, the Air Transport Board ; in the case of the Federal Republic of Germany, the Federal Minister of Transport ; or in both cases any other person or agency authorized to perform the functions exercised by the said authorities ;

(b) the term "designated airline" shall mean an airline that one Contracting State has designated in writing to the other Contracting State in accordance with Article III as being the airline which is to operate the international air service on the routes specified in accordance with paragraph (2) of Article II.

2. The terms "territory", "air service", "international air service" and "stop for non-traffic purposes", for the purpose of this Agreement, shall have the meaning laid down in Articles 2 and 96 of the Convention on International Civil Aviation of December 7, 1944 as amended now or in future.

Article II

1. Each Contracting State grants to the other Contracting State for the purpose of operating international air services by designated airlines over the routes specified in accordance with paragraph (2) of this Article :

the right to fly across its territory without landing ;

¹ Came into force on 19 July 1961, thirty days after the exchange of the instruments of ratification which took place at Bonn on 19 June 1961, in accordance with article XVI.

² See footnote 2, p. 27 of this volume.

the right to land in its territory for non-traffic purposes,

and the right to land in its territory at the points named on the routes specified in order to take on or discharge passengers, mail and/or cargo on a commercial basis, including the carriage of in-transit traffic on the same flight.

2. The routes over which the designated airlines of the two Contracting States will be authorized to operate international air services shall be specified in a Route Schedule to be agreed upon in an exchange of notes.¹

Article III

1. The international air services on the routes specified in accordance with paragraph (2) of Article II may be inaugurated at any time, provided

- (a) the Contracting State to whom the rights specified in paragraph (1) of Article II are granted, has designated in writing an airline or airlines, and
- (b) the Contracting State granting these rights has authorized the designated airline or airlines to inaugurate the air services.

2. The Contracting State granting these rights shall, subject to the provisions of paragraphs (3) and (4) of this Article and subject to the provisions of Article IX grant without delay the said authorization to operate the international air service.

3. Each Contracting State may require an airline designated by the other Contracting State to satisfy it that it is qualified to meet the requirements prescribed under the laws and regulations of the first Contracting State governing the operation of international air traffic.

4. Each Contracting State may withhold the exercise of the rights provided for in Article II from any airline designated by the other Contracting State if such airline is not able to prove upon request that substantial ownership and effective control of such airline are vested in nationals or corporations of the other Contracting State or in that State itself.

Article IV

1. Each Contracting State may revoke, or limit by the imposition of conditions, the authorization granted in accordance with paragraph (2) of Article III in the event of failure by a designated airline to comply with the laws and regulations of the Contracting State granting the rights, or to comply with the provisions of this Agreement, or to fulfil the obligations arising therefrom. This shall also apply if the proof referred to in paragraph (4) of Article III is not furnished. Each Contracting State will exercise this right only after consultation as provided for in Article XIII, unless an immediate suspension of operations or imposition of conditions is necessary to avoid further infringements of laws or regulations.

¹ See p. 276 of this volume.

2. Each Contracting State shall have the right by written communication to the other Contracting State to replace a designated airline by another airline. The newly designated airline shall have the same privileges and be subject to the same obligations as the designated airline which it replaces.

Article V

The charges imposed by either Contracting State for the use of airports and other aviation facilities by the aircraft of a designated airline of the other Contracting State shall not be higher than those paid by its national aircraft engaged in similar international air services.

Article VI

Each Contracting State shall grant relief from taxes, duties and other charges for aircraft of a designated airline of the other Contracting State exclusively engaged in international air service as follows :

1. The aircraft operated by any designated airline of one Contracting State and entering into, departing from or flying across the territory of the other Contracting State, as well as the regular equipment and spare parts on board such aircraft shall be exempt from customs duties and other charges levied on the occasion of importation, exportation or transit of goods.

2. Spare parts and articles of equipment which are

- (a) removed from or taken off the aircraft referred to in item 1 above and stored within the territory of the other Contracting State under customs supervision, or
- (b) imported for such aircraft into, and stored in, the territory of the other Contracting State under customs supervision,

shall be exempt from the duties and other charges mentioned in item 1 above, if they either are installed in or otherwise taken aboard the said aircraft under customs supervision, or are otherwise exported again from the territory of the other Contracting State.

The same exemption from such duties and other charges shall be granted for spare parts and articles of equipment taken from appropriate stores of other airlines and installed in or otherwise taken aboard the said aircraft under customs supervision.

3. Fuel and lubricants on board the aircraft referred to in item 1 above and introduced into the territory of the other Contracting State shall be free of customs duties and other charges levied on the occasion of importation, exportation and transit of goods, if they are used on board the aircraft, and this applies also on that part of any flight which takes place between points in the territory of that Contracting State.

Fuel and lubricants taken on by aircraft belonging to a designated airline under customs supervision in the territory of the other Contracting State and used in international air service shall be exempt from, or shall be subject to remission or refund of, the afore-mentioned duties and other charges.

4. Aircraft stores introduced aboard the aircraft mentioned in item 1 above and intended for consumption by passengers and crew members may be issued in the territory of the other Contracting State for immediate consumption aboard free of customs duties and other charges levied on the occasion of the importation, exportation and transit of goods, provided such aircraft can be continuously supervised by customs authorities at intermediate landings.

Article VII

1. There shall be fair and equal opportunity for the designated airlines of both Contracting States to operate international air services on the specified routes between their respective territories, in accordance with paragraph (2) of Article II.

2. In operating these services, the designated airlines of each contracting State shall take into account the interests of the airlines of the other Contracting State so as not to affect unduly the air services which the latter provide on the whole or part of the same routes.

3. On any specified route the capacity provided by the designated airlines of one Contracting State together with the capacity provided by the designated airlines of the other Contracting State shall be maintained in reasonable relationship to the requirements for air transport on that route.

4. In the application of the principles stated in the preceding paragraphs of this Article :

(a) the air services provided by a designated airline shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to the current and reasonably expected requirements of that airline for the carriage of traffic originating in or destined for points within the territory of the Contracting State which has designated that airline ;

(b) the capacity provided under sub-paragraph (a) above may be augmented by supplementary capacity adequate for the carriage of international air traffic both originating at and destined for points on the specified routes in the territories of States other than that designating the airline. Such additional capacity shall be related to traffic demands of the areas through which the designated airline operates, after taking account of the air services established by airlines of the other Contracting State and of the States referred to above

insofar as they are carrying international air traffic originating in or destined for their territories.

5. A designated airline of one Contracting State shall not operate a service over a section of a specified route by means of a "change of gauge" without the prior approval of the aeronautical authorities of the other Contracting State.

Article VIII

1. The designated airlines shall furnish reasonable notice to the aeronautical authorities of both Contracting States prior to the inauguration of services on the routes specified in accordance with paragraph (2) of Article II, the type of service, the types of aircraft to be used and the flight schedules. This shall likewise apply to later changes.

2. The aeronautical authorities of one Contracting State shall furnish to the aeronautical authorities of the other Contracting State at their request such periodic or other statistical data of the designated airlines as may be reasonably required for the purpose of reviewing the capacity provided by any designated airline of the first Contracting State on the routes specified in accordance with paragraph (2) of Article II. Such data shall include all information required to determine the amount of traffic carried and the origins and destinations of such traffic.

Article IX

1. Tariffs to be charged for passengers and freight on the routes specified in accordance with paragraph (2) of Article II shall be fixed by taking into account all factors, such as cost of operation, reasonable profit, the characteristics of the various routes and the tariffs charged by any other airlines which operate over the same routes or parts thereof. In fixing such tariffs, the provisions of the following paragraphs should be observed.

2. The tariffs shall, if possible, be fixed for each route by agreement between the designated airlines concerned. For this purpose the designated airlines should abide by such decisions as are applicable under the traffic conference procedures of the International Air Transport Association (IATA), or should, if possible, agree directly between themselves after consulting with airlines of third countries which operate over the same routes or parts thereof.

3. Any tariffs so agreed shall be submitted for approval to the aeronautical authorities of both Contracting States at least thirty days prior to the proposed date of their introduction. This period may be reduced in special cases if the aeronautical authorities so agree.

4. If no agreement has been reached between the designated airlines in accordance with paragraph (2) above, or if one of the Contracting States does not agree to the tariffs submitted for its approval in accordance with paragraph (3) above, the aeronautical authorities of the two Contracting States should by common accord fix the tariffs for those routes or parts thereof on which no agreement was reached.

5. If no accord as envisaged in paragraph (4) above is reached between the aeronautical authorities of the two Contracting States, the provisions of Article XIV shall apply. Until such time as an arbitral award is rendered, the Contracting State which has expressed disagreement with the tariffs shall be entitled to require the other Contracting State to maintain the tariffs previously in effect.

Article X

If a general multilateral air transport convention accepted by both Contracting States enters into force, the provisions of the multilateral convention shall prevail. Any discussions with a view to determining the extent to which the present Agreement is superseded, amended or supplemented by the provisions of the multilateral convention, shall take place in accordance with Article XIII of the present Agreement.

Article XI

Each airline designated by either Contracting State may maintain and employ its own personnel for its business transactions at airports of the other Contracting State and in the cities of the other Contracting State where it intends to maintain an agency. If a designated airline does not establish its own organization at airports of the other Contracting State, it should have such work performed, as far as possible, by the personnel of such airports or of a designated airline of the other Contracting State.

Article XII

Exchanges of views shall take place as needed between the aeronautical authorities of the two Contracting States in order to achieve close cooperation and agreement in all matters pertaining to the application and interpretation of this Agreement.

Article XIII

Consultation may be requested at any time by either Contracting State for the purpose of discussing amendments to the present Agreement or the Route Schedule. The same applies to discussions concerning the interpretation and application of the present Agreement if either Contracting State considers that an exchange of views within the meaning of Article XII has been without success. Such consultation shall begin within ninety days from the date of receipt of the request.

Article XIV

1. To the extent to which any disagreement arising out of the interpretation or application of the present Agreement cannot be settled in accordance with Article XIII it shall be submitted to an arbitral tribunal at the request of either Contracting State.
2. Such arbitral tribunal shall be composed in each individual case of one member to be designated by each Contracting State ; these two members shall then agree upon the choice of a national of a third State as their chairman. If the members have not been designated within sixty days and the chairman within ninety days of the date of notification by either Contracting State of intention to request arbitration, either of the Contracting States may, in the absence of any other form of agreement, invite the President of the Council of the International Civil Aviation Organization (ICAO) to make the necessary appointments. Where the President is a national of one of the two Contracting States or is otherwise prevented from carrying out this function, his deputy in office shall make the necessary appointments.
3. The arbitral tribunal shall reach its decisions by majority of vote. Such decisions shall be binding. Each of the Contracting States shall bear the expenses of its own member. The remaining expenses shall be borne in equal parts by each of the Contracting States. In all other respects, the arbitral tribunal determine its own procedure.

Article XV

The present Agreement, any amendments to it and any exchange of notes under paragraph (2) of Article II shall be filed with the International Civil Aviation Organization (ICAO) for registration.

Article XVI

1. The present Agreement shall be ratified. The instruments of ratification shall be exchanged in Bonn as soon as possible.
2. The present Agreement shall come into force thirty days after the instruments of ratification have been exchanged.
3. Each Contracting State may at any time give notice of termination of the present Agreement. This Agreement shall terminate one year after the date of the receipt of such notice by the other Contracting State.

IN WITNESS WHEREOF the undersigned, duly authorized for this purpose by their respective governments, have signed the present Agreement and have affixed thereto their seals.

DONE at Ottawa this 4th day of September, One thousand nine hundred and fiftynine, in the German and English languages, both texts being equally authentic.

For the Federal Republic of Germany :

Hubert SIEGFRIED

For Canada :

H. C. GREEN

EXCHANGE OF NOTES

I

No. 119/59

Sir :

I have the honour to refer to paragraph (2) of Article II of the Air Transport Agreement between the Federal Republic of Germany and Canada signed at Ottawa on September 4, 1959.¹ In the negotiations which have been conducted in connection with the above-mentioned Agreement it has been agreed that air services may be operated on the routes specified in the following Route Schedule :

I. Routes to be operated by airlines designated by the Federal Republic of Germany :

<i>Points of Departure</i>	<i>Intermediate Points</i>	<i>Points in Canadian Territory</i>	<i>Points Beyond</i>
Any point or points in the territory of the Federal Republic of Germany	Any point or points on the route between the Federal Republic of Germany and Canada*	Montreal	(a) Chicago (b) Boston or New York**

II. Routes to be operated by airlines designated by Canada :

<i>Points of Departure</i>	<i>Intermediate Points</i>	<i>Points in Territory of Federal Republic of Germany</i>	<i>Points Beyond</i>
Any point or points in the territory of Canada	Any point or points on the route between Canada and the Federal Republic of Germany*	Düsseldorf	(a) Vienna (b) A point in Europe to be determined by Canada

* No traffic rights shall be exercised between any of the intermediate points and points in the territory of the other Contracting State.

** It is understood that the traffic rights in I (b) shall not be exercised until Canada has determined the point in II (b).

III. A designated airline may, if it so desires omit one or more of the points on the established routes, provided that the point of origin of a route lies in the territory of that Contracting State which has designated the airline.

¹ See p. 260 of this volume.

I have the honour to inform you that the Government of the Federal Republic of Germany agrees with the above Route Schedule. I should be grateful if you would inform me whether the Government of Canada also agrees with this Route Schedule. If this should be the case, the present note and your reply shall be regarded as constituting an Arrangement between our Governments.

Accept, Sir, the renewed assurance of my highest consideration.

(Signed) SIEGFRIED

Ottawa, September 4, 1959

The Hon. Howard C. Green
Secretary of State for External Affairs
Ottawa

II

No. 123

Excellency :

I have the honour to acknowledge receipt of your Note 119/59 of September 4, 1959 which reads as follows :

[See note I]

I have the honour to inform you that my Government also agrees with this Route Schedule. Your note and my reply shall be regarded as constituting an arrangement between our Governments.

Accept, Excellency, the renewed assurance of my highest consideration.

H. C. GREEN
Secretary of State for External Affairs

Ottawa, 4 September 1959
His Excellency Dr. Herbert Siegfried
Ambassador of the Federal Republic
of Germany
Ottawa